

**Speech by LO(IL) at the CIETAC International  
Arbitration Institute 2022 Summer/Fall Course on the  
CISG (English only)**

Distinguished guests, ladies and gentlemen,

1. I am very pleased to be here today to speak on behalf of the Department of Justice (“DoJ”) of the Hong Kong Special Administrative Region (“HKSAR”). First and foremost, I would like to congratulate the China International Economic and Trade Arbitration Commission (“CIETAC”) for holding this second virtual Summer/Fall Course which I have no doubt will be yet another fruitful educational programme to both participants in the academia and those practising in the legal field.

2. The DoJ is thankful for CIETAC's invitation to be a supporting organisation of this course themed on the United Nations Convention on Contracts for the International Sale of Goods ("CISG"). The course will deepen participants' understanding of this important convention in the context of international commercial law and dispute resolution, which is much needed for legal professionals in this modern age when cross-border transactions constitute an indispensable part of the commercial world.

## **CISG and Arbitration**

3. As at now, there are 95 Contracting States to the CISG<sup>1</sup>.

They are from all legal traditions and levels of economic development and together they represent over two-thirds of the global economy<sup>2</sup>.

4. The CISG is a multilateral instrument which establishes a uniform legal regime for cross-border sale of goods contracts. The uniform rules for sales contracts in the CISG provide traders with an efficient, modern and comprehensive legal framework to support their commercial activities<sup>3</sup>. Due to the international nature of cross-border sale of goods contracts, it is not uncommon for parties to these contracts to resort to international arbitration as a means of dispute resolution. For example,

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<sup>1</sup> See [https://uncitral.un.org/en/texts/salegoods/conventions/sale\\_of\\_goods/cisg/status](https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status)

<sup>2</sup> See <https://uncitral.un.org/cisg40>

<sup>3</sup> Ibid.

multinational corporations may prefer arbitration to litigation in some instances where confidentiality is of paramount concern.<sup>4</sup> It is thus essential that legal professionals specialising in the commercial law and dispute resolution areas have a good working knowledge of the CISG.

## **The CISG in the HKSAR**

5. In light of the worldwide significance of the CISG, the Government of the HKSAR has taken proactive steps over the past few years to take forward the matter of applying and implementing this convention in our jurisdiction, which is expected to improve our legal

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<sup>4</sup> See <http://arbitrationblog.kluwerarbitration.com/2019/01/12/hong-kong-a-listed-companys-duty-of-confidentiality-in-arbitration-and-its-duty-of-disclosure-to-the-public/>

professionals' competence in advising on transactions from the CISG perspective as well as resolving CISG-related disputes and further buttress Hong Kong's status as a reputable international dispute resolution hub.

### Latest development

6. I am pleased to inform that pursuant to the relevant process under Article 153 of the Basic Law, as well as the requisite declaration and notification on 4 May 2022 by the Central People's Government to the United Nations Secretary-General (as the depositary for the CISG) for applying the CISG to the HKSAR (without China's reservation in respect of Article 1(1)(b) under Article 95 of the CISG), the Convention (without China's said reservation) will apply to the HKSAR with

effect from 1 December 2022<sup>5</sup>.

### Public consultation and enactment of the Ordinance

7. As some of you may know, this journey started in 2020, when the HKSAR Government conducted a seven-month public consultation on the application of the CISG to the HKSAR (“Consultation”) in that year. After noting that there is general support among the respondents to the Consultation for the proposal to apply and implement the CISG in the HKSAR, and after consulting the Legislative Council Panel on Administration of Justice and Legal Services, the Government of the HKSAR introduced the Sale of Goods (United Nations Convention) Bill into the Legislative Council in 2021 and the Sale of Goods

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<sup>5</sup> See DOJ’s webpage on the CISG at [https://www.doj.gov.hk/en/featured/un\\_convention\\_on\\_contracts\\_for\\_the\\_international\\_sale\\_of\\_goods.html#:~:text=The%20CISG%20is%20an%20important,of%20goods%20within%20its%20scope.](https://www.doj.gov.hk/en/featured/un_convention_on_contracts_for_the_international_sale_of_goods.html#:~:text=The%20CISG%20is%20an%20important,of%20goods%20within%20its%20scope.)

(United Nations Convention) Ordinance (Cap. 641) was enacted last September.

8. This piece of implementing legislation will come into operation on 1 December 2022<sup>6</sup>.
9. From then on, the CISG will apply to the HKSAR in full without China's reservation made in respect of Article 1(1)(b), which means that the CISG will apply to a contract of sale of goods between parties whose places of business are in different States: when those States are Contracting States under Article 1(1)(a) or when the rules of private international law of the forum lead to the application of the law of a Contracting State pursuant to Article 1(1)(b).

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<sup>6</sup> See DOJ's webpage on the CISG at [https://www.doj.gov.hk/en/featured/un\\_convention\\_on\\_contracts\\_for\\_the\\_international\\_sale\\_of\\_goods.html#:~:text=The%20CISG%20is%20an%20important,of%20goods%20within%20its%20scope.](https://www.doj.gov.hk/en/featured/un_convention_on_contracts_for_the_international_sale_of_goods.html#:~:text=The%20CISG%20is%20an%20important,of%20goods%20within%20its%20scope.)

10. This arrangement is made possible under the “one country, two systems” principle in the Basic Law.

11. We are most grateful to the Central People’s Government for its support to this meaningful cause all along the way, hence enabling the CISG to be applied to the HKSAR.

#### Mainland-HKSAR transactions

12. Being an international treaty governing international sale of goods, the CISG does not apply to transactions within China as a matter of treaty law. In the Consultation, there was general support to apply the CISG rules to these transactions, with a preference for achieving this by way



of a Mainland - HKSAR arrangement<sup>7</sup>. The Government of the HKSAR will follow up in this regard.

### Overriding effect and interpretation of the CISG provisions

13. The HKSAR will soon be able to take the full benefit of the CISG, in particular, regarding the sale of goods transactions between businesses in Hong Kong and in other CISG jurisdictions. This virtual CISG course, with a comprehensive coverage of the legal topics/issues concerning the CISG, is of great timing and relevance in the following aspects.

14. First, there are differences between the CISG (being a set of uniform international sales rules) and relevant existing Hong Kong law. Such differences concern rules

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<sup>7</sup> ILD's Internal reference: Para 14 of the LegCo Brief on the CISG Bill at [https://www.legco.gov.hk/yr20-21/english/brief/ilitf181\\_20210707-e.pdf](https://www.legco.gov.hk/yr20-21/english/brief/ilitf181_20210707-e.pdf).

for formation of contract of sale and the rights and obligations of the seller and buyer arising from such a contract, which include remedies for breach of contract. Under section 5 of the Ordinance<sup>8</sup>, these differences will be subject to the overriding effect of the relevant provisions of the CISG. This virtual course which covers various specific topics about the CISG will help participants better appreciate the implications of the relevant CISG provisions comprehensively in a practical manner.

15. Further, the CISG legal issues would require interpretation and application by the relevant courts and tribunals, and also by legal professionals advising on the

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<sup>8</sup> Section 5 of the Ordinance provides that if there is any inconsistency between the Ordinance or the CISG and any other law, the Ordinance or the CISG prevails to the extent of the inconsistency.

cases in question. In the interpretation of the CISG, regard is to be had to its international character and to the need to promote uniformity in its application as well as the observance of good faith in international trade<sup>9</sup>. For this purpose, the CISG provisions, principles, rulings and reference materials to be studied in this virtual course will be of paramount importance.

## **Conclusion**

16. The CISG is about to be applied to Hong Kong. This virtual course to be delivered by some of the most renowned experts in this field represents an invaluable opportunity for legal professionals to equip themselves

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<sup>9</sup> Article 7(1) of the CISG.

with the knowledge and skills essential to the understanding of this important convention. On this note, I wish CIETAC every success in the delivery of this course. I hope this programme will be fruitful to all of you. Thank you!