

**Speech by SJ at the Effectively Resolving Disputes with Chinese Parties
under the CISG Vis East Moot Affiliated Event by CIETAC Hong Kong
Arbitration Center - The Adoption of the CISG and Its Impact on
Resolving Disputes in Hong Kong (English only)**

Ladies and gentlemen,

1. Good afternoon to you all. It gives me great pleasure to speak at this event. I would like to thank the CIETAC Hong Kong Arbitration Center for organising this webinar, which provides a valuable opportunity for the sharing of views and knowledge on this important topic of “Effectively Resolving Disputes with Chinese Parties under the CISG”.

**Application of the CISG to the Hong Kong Special Administrative Region
(Hong Kong SAR)**

2. The National 14th Five-Year Plan supports the Hong Kong SAR to enhance its status as an international trade centre as well as a centre for international legal and dispute resolution services in the Asia-Pacific region. In line with the national plan, the Sale of Goods (United Nations

Convention) Ordinance was enacted last September to enable the implementation of the CISG in the Hong Kong SAR. This marks an important development of our law on international sale of goods.

3. Having celebrated its 40th anniversary in 2020, the CISG has been described as “the most successful substantive uniform commercial law treaty”.¹ It embodies the collaborative efforts of many jurisdictions with different legal traditions, and establishes a truly uniform legal regime for international sale of goods. Starting with 11 ratifying states, including China, back in 1988, the CISG has achieved wide adoption currently by 94 Contracting States, covering most of the leading world merchandise traders² as well as more than half of Hong Kong’s top 20 trading partners.³

4. The Hong Kong SAR will be able to take the full benefit of the CISG for sales transactions between businesses of Hong Kong and other CISG jurisdictions, upon completion of the relevant process under Article 153

¹ As commented by the Secretary of the United Nations Commission on International Trade Law, Ms Anna Joubin-Bret, at the 4th UNCITRAL Asia Pacific Judicial Summit in Hong Kong Legal Week 2021.

² World Trade Organization, ‘World Trade Statistical Review 2021’ (available at: https://www.wto.org/english/res_e/statis_e/wts2021_e/wts2021_e.pdf) Table A6, p. 58.

³ See: https://www.tid.gov.hk/english/trade_relations/mainland/trade.html.

of the Basic Law and formal notification by the Central People's Government to the Secretary-General of the United Nations as depositary for the CISG. We are hopeful that the CISG will be applied to the Hong Kong SAR in full, without China's Article 95 reservation,⁴ later this year. This arrangement is made possible under the "one country, two systems" principle.

Mainland – Hong Kong SAR transactions

5. 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 Government's public consultation in 2020, there was general support to apply the CISG rules to transactions between businesses in the Mainland and businesses in the Hong Kong SAR by way of a bilateral arrangement between the two jurisdictions. To follow up, the Hong Kong SAR Government is working on reaching such arrangement through discussion with the Central People's Government. This approach has

⁴ Article 95 of the CISG provides that, "[a]ny State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by sub-paragraph (1) (b) of article 1 of this Convention." China has made a reservation under Article 95 of the CISG (declaring that it is not bound by Article 1(1)(b)), which excludes the application of the CISG through the application of the private international rules.

been successfully adopted since 1999 in the context of enforcing arbitral awards under the New York Convention, which I shall talk about later on.

Strengthening the Hong Kong SAR's position as an international hub for trade and dispute resolution

6. According to the World Trade Organization (WTO), Asia outperformed other regions of the world in merchandise trade growth over the last two years.⁵ This entails growth in international commercial transactions and, inevitably, related disputes in Asia. As a deal making and dispute resolution hub, the Hong Kong SAR with the benefits of the CISG would certainly be in an even better position to leverage the global trend.

7. Applying the CISG to the Hong Kong SAR could facilitate deal making and reduce transaction costs as it allows for a uniform sales law, that is familiar to both local and overseas traders, to govern the bulk of Hong Kong businesses' international sales transactions. The CISG would apply

⁵ World Trade Organization, 'World Trade Statistical Review 2021' (available at: https://www.wto.org/english/res_e/statis_e/wts2021_e/wts2021_e.pdf) p. 37.

directly where a sale of goods contract is between parties located in different Contracting States. This would avoid recourse to private international law rules to determine the law applicable to the contract, thereby introducing certainty and predictability in commercial transactions.

Use of arbitration to resolve CISG disputes

8. Indeed, amid the robust development of cross-border trade, arbitration has emerged as one of the popular alternative dispute resolution mechanisms and is well-known for its respect for party autonomy, neutrality, flexibility and international enforcement. Over four decades since the adoption of the CISG, the CISG has frequently been applied in international arbitration as the substantive law to resolve international trade disputes.

9. Although the CISG is an international law treaty which mandates the adherence of Contracting States and their courts, it is generally accepted that arbitral tribunals have a duty to apply the CISG as a choice of law made by the parties. Failure to apply the law chosen by the parties may

incur a risk of the enforcement of the award being refused under the New York Convention, on the basis of excess of authority or procedural irregularity.⁶

10. The CISG is no stranger to the arbitration community in Hong Kong. In recent years, we have seen international CISG-related arbitrations administered by local arbitral institutions. With the full implementation of the CISG in Hong Kong later this year, I believe it will further consolidate Hong Kong's position as an international legal and dispute resolution centre in the Asia-Pacific region and beyond.

Hong Kong as the preferred seat of arbitration

11. As a long-established free port, Hong Kong has been a major player in the world trade market with close economic ties with the Mainland and the rest of the world. According to the statistics published by the WTO, in 2020, Hong Kong ranked sixth and eighth in world trade respectively

⁶ The Chartered Institute of Arbitrators, "The arbitrator's duty to apply the CISG" (available at: <https://www.ciarb.org/resources/features/the-arbitrator-s-duty-to-apply-the-cisg/>)

in both exports and imports of merchandise.⁷ The global competitiveness is premised upon a variety of intrinsic strengths Hong Kong enjoys under “one country, two systems”. The Basic Law maintains the capitalist economic and trade systems and safeguards the free movement of goods. Hong Kong is also a separate customs territory from the Mainland, adopting zero-tariff policy. The conducive trading environment lays solid foundation to the introduction of the CISG in Hong Kong as well as the wider use of Hong Kong’s legal and dispute resolution services to resolve CISG-related disputes.

12. Hong Kong’s leading position in arbitration is well supported by the International Arbitration Surveys conducted by Queen Mary University of London, in which Hong Kong was ranked the third most preferred seat for arbitration worldwide in 2021 and indeed has continuously been the top five globally since 2015. As a world-renowned seat of arbitration, Hong Kong has much to offer. We have a well-established legal system underpinned by the rule of law and the independence of the judiciary. Hong Kong is also the only common law jurisdiction that practices

⁷ World Trade Organization, “Trade Profile of Hong Kong, China” (available at: https://www.wto.org/english/res_e/statis_e/daily_update_e/trade_profiles/HK_e.pdf)

bilingual law in English and Chinese, and the courts and tribunals can operate in both languages. As CISG disputes involve parties from different states, the bilingual set-up would greatly enhance access to justice to both English- and Chinese-speaking parties.

13. The Arbitration Ordinance is an up-to-date legislation on arbitration law based on the latest version of the UNCITRAL Model Law on International Commercial Arbitration adopted in 2006. It is reviewed regularly and updated to stay abreast of the latest international developments. Statutory amendments were made in 2017 to clarify that disputes over intellectual property rights are arbitrable and third party funding for arbitration is permissible in Hong Kong. In response to the recommendations of the Law Reform Commission on the introduction of outcome fee related structures for arbitration in Hong Kong, we have recently taken steps to introduce legislative amendments to meet the expectations of users and industry players for flexible fee arrangements.

14. Under the New York Convention, arbitral awards made in Hong Kong can be enforced in almost all contracting states to the CISG. The reciprocal enforcement of awards between Hong Kong and the Mainland is given effect by an Arrangement signed by the two jurisdictions in 1999, which

was then refined by the Supplemental Arrangement in 2021. With the implementation of the groundbreaking interim measures arrangement signed with the Mainland in April 2019, parties to arbitral proceedings seated in Hong Kong and administered by eligible arbitral institutions can apply directly to the Mainland courts for interim measures. This is certainly a game-changer and gives Hong Kong a comparative advantage as the seat of arbitration in resolving CISG disputes between international and the Mainland parties.

15. The Department of Justice has supported a series of CISG legal training workshops to prepare legal practitioners for the implementation of the CISG in Hong Kong. I am pleased to see this informative programme being put together by our good friends from CIETAC Hong Kong. I believe that training programmes will help promote a more in-depth understanding of the CISG and its operation in arbitrations.

16. Ladies and gentlemen, the Belt and Road Initiative (BRI) has strengthened connectivity and opened up new trade opportunities between China and the rest of the world. Currently, over 140 countries are participating in the BRI, and nearly half of them are members of the

CISG. It is envisaged that there will be more sales of goods, equipment and construction materials that fall within the ambit of the CISG as well as related disputes, unfortunately, between enterprises in China and other BRI countries.

17. The CISG is a successful commercial law treaty, providing a set of uniform rules to govern contracts for the international sale of goods and remove legal barriers in cross-border trade. Under “one country, two systems”, the full implementation of the CISG would enable the Hong Kong SAR to capitalise on and further enhance its legal and dispute resolution services, as well as to harness the opportunities brought forth by the National 14th Five-Year Plan.

18. On this note, I wish you all a fruitful webinar. Thank you.

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