Celebrating the 40th Anniversary of the CISG:
CISG as a Tool for Global Trade
– Theory and Practice
The CISG and Access to Commercial Justice in a Changing World of Trade

The CISG as a Tool for Global Trade
-Theory and Practice
Hong Kong 27 October 2020
Mark Walter
The New World of Trade

- E-Commerce
- Regional and Global Value Chains
- Micro-Multinationals
- Local Content Requirements
- Services
- Smart Contracts
- COVID-19
Two kinds of Contracting

Relational

Written terms of reference, contract farming

...and everything in between?

Formal relational, long term contracts

Arm’s Length
The hypothesis on how lack of access to commercial justice inhibits growth goes something like this:

- MSMEs doing business across borders lack access to justice.
- If contract enforcement is unlikely, there is little incentive to enter into sophisticated contracts.
- The alternative is often purely relational contracting which has high transaction costs for international transactions.
- High transaction costs and the market limitations attendant to reliance only on trust networks results in barriers to entry.
The Contracting Ecosystem / Value Chain

4 components or stages

Negotiation

Use of contracts is unlikely if efficient dispute resolution is unavailable

Performance

Dispute Resolution

Dispute resolution mechanisms will not thrive if businesses are not using proper contracts

Behind the border

Mechanisms:
- Negotiation
- Litigation
- Mediation
- Arbitration
- Med-Arb
- ODR
- Smart Contracts

Beyond the border

Substantially higher transaction costs for relational contracts

- CISG
- New York Convention
- Singapore Convention
- BITs
- Domestic Law
- Domestic Policy
- Capacity and Implementation

Enforcement
Better access to cross-border commercial justice will incentivize better understanding and use of contracts which should, in turn, result in lower transaction costs and lower barriers to entry for micro, small and medium businesses wishing to engage in regional and global value chains.
Harmonization

Litigation, arbitration and mediation

Online Dispute Resolution

“Smart” contracting (e.g., blockchain)

Capacity building and related regulatory reform
## Contracting Ecosystem Theory of Change

### Inputs/Outputs

<table>
<thead>
<tr>
<th>Policy Level</th>
<th>Legal Community Level</th>
<th>Firm Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>CISG ratification and support</td>
<td>Mediation/Arbitration training</td>
<td>“Culture of Contract” training</td>
</tr>
<tr>
<td>NY Convention implementation support</td>
<td>Support to arbitration and mediation centres</td>
<td>Link grants and TA</td>
</tr>
<tr>
<td>Assistance for implementation of Arbitration Law in line with international norms</td>
<td>Academic support</td>
<td>Catalyse innovation through new kinds of contracts</td>
</tr>
<tr>
<td>Commercial judicial training</td>
<td>Law firm support</td>
<td>Negotiation Training</td>
</tr>
<tr>
<td>Mediation certifications for judges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Singapore Convention</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PPPs/Investor Agreements</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Leverage/Collaboration

- ASEAN/APEC; Int’l Law Firms; UNCITRAL; Governments

### Outcomes

- Adoption and appropriate implementation of international legal instruments, such as NY Convention and UNCISG
- Awards recognised and enforced
- Firms understand and use contracts, moving away from the higher transaction costs associated with relational contracting. Larger firms use arbitration/mediation clauses
- Increased engagement with GVCs and other trade
- Broader understanding of commercial rule of law

### Impact

- Greater certainty for investors
- Improved rule of Law
- Improved culture of contract
- Assurance that contracts and awards will be recognized and enforced
- Increased investment
- Economic growth
- Poverty reduction
- Increased sectoral dispersion
- Reduced entrenchment of economic power
- Contributions to structural reform integrity
“We need to send entrepreneurs out of the trenches armed with more than baguettes”

Please feel free to contact me at mark_walter@dai.com