



# New Ordinance on CISG – Updates on Hong Kong’s Law on International Sale of Goods

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## New Ordinance

- The Sale of Goods (United Nations Convention) Ordinance (Cap. 641) (“**New Ordinance**”) was enacted in September 2021 to implement the United Nations Convention on Contracts for the International Sale of Goods (“**CISG**”) in the HKSAR.
- It is envisaged that the Ordinance will take effect in around the third quarter of 2022.



## New Ordinance

- Application of the CISG to the HKSAR seeks to:
  - enhance Hong Kong's legal infrastructure for international sale of goods; and
  - bolster its role as an international hub for trade and dispute resolution.



## CISG

- Concluded in 1980, the CISG is an important and widely adopted Convention.
- As at the end of 2021, there are 94 Contracting States to the CISG, including more than half of the HKSAR's top 20 trading partners by total trade value.



## CISG

The CISG applies to the following 2020 Hong Kong's top 20 trading partners\* :

- China (the Mainland)
- USA
- Singapore
- Japan
- South Korea
- Viet Nam
- Germany
- Netherlands
- France
- Switzerland
- Italy
- Australia

\*[https://www.tid.gov.hk/tc\\_chi/trade\\_relations/mainland/trade.html](https://www.tid.gov.hk/tc_chi/trade_relations/mainland/trade.html)



## Enhance certainty in and reduce costs of doing business

- Where it is applicable, the CISG provides neutral legal rules governing contracts of sale of goods and largely avoids the necessity of determining which jurisdiction's law governs key issues, thereby enhancing certainty in commercial transactions and decreasing transaction costs.



## When does the CISG apply?

### Application scope - Geographical

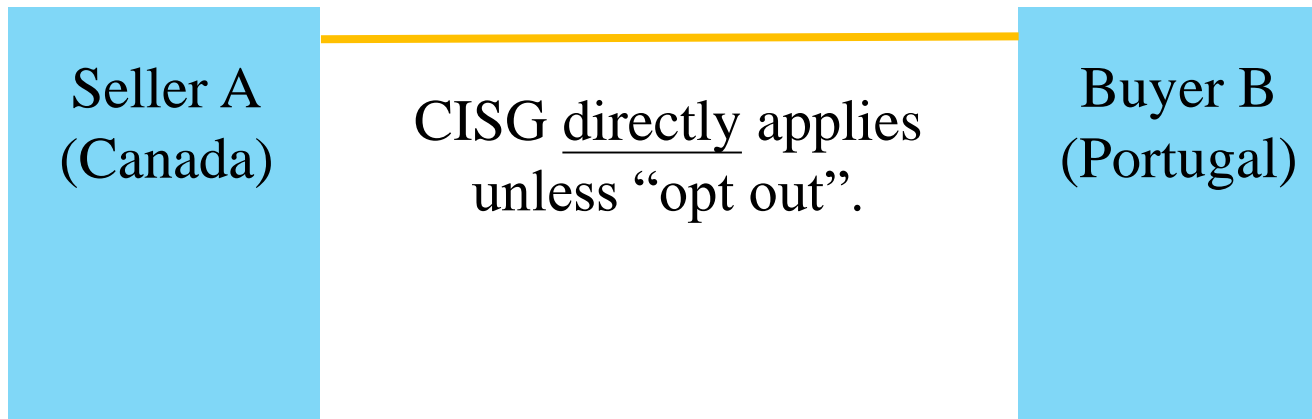
- Under its Article 1(1)(a), the CISG applies automatically to contracts for sale of goods between parties whose places of business are in different Contracting States.
- Under its Article 1(1)(b), the CISG also applies to international sales contracts where the rules of private international law (of the forum) lead to the application of the law of a Contracting State. However, Article 95 provides that any State may declare that it will not be bound by Article 1(1)(b).



## When does the CISG apply?

### Application scope – Geographical

- Article 1(1)(a)



Note: Canada and Portugal are both parties to the CISG





## When does the CISG apply?

### Application cope – Geographical

- Article 1(1)(b)

Seller A  
(Malaysia)

- Applicable law: Swiss law
- Forum court: Swiss court
- CISG applies under Article 1(1)(b) unless “opt out”.

Buyer B  
(Peru)

Note: Peru is a party to the CISG, Malaysia is not



## When does the CISG apply?

### Transactional scope

- The CISG applies to commercial sales of goods, and it will not generally apply to consumer sales (Art. 2(a)).
- Certain sales are excluded from its scope, including sales by auction and sales of certain “goods” e.g. shares, ships and aircraft, and electricity (Art. 2(b)–(f)).



## When does the CISG apply?

### Subject matter scope

- The CISG governs (1) formation of the contract of sale, and (2) the rights and obligations of the seller and buyer arising from such a contract, including remedies for breach of contract (Art. 4).
- Certain matters are expressly excluded from the scope of the CISG, for example: the validity of the contract; the effect of the contract on the property in the goods sold (Art. 4).



## Party autonomy and opting out

- Party autonomy is a fundamental principle of the CISG. Parties can, by agreement, opt out of the CISG entirely in favour of other law or derogate from or vary the effect of virtually any CISG rule (Art. 6).



## Benefits of applying the CISG to the HKSAR

### Benefits

The benefits of applying the CISG to the HKSAR include:

- Allow Hong Kong businesses to trade with their overseas counterparts using a sales law that both are familiar – preventing local businesses from being subject to unfamiliar foreign laws when entering into cross-boundary transactions
- Potential to drive GDP and trade growth



## Benefits of applying the CISG to the HKSAR

### Benefits

- Improving Hong Kong's competence in resolving CISG disputes
- Automatic application of the CISG could provide safety net to protect traders' interests



## Applying the CISG to the HKSAR

- Although the CISG has entered into force for China since 1988, the Convention is currently not applicable to the HKSAR.
- Subject to completion of the relevant process under Article 153 of the Basic Law as well as requisite formal notification by the Central People's Government to the Secretary-General of the United Nations, the Convention is expected to apply to the HKSAR with effect in around the third quarter of 2022.



## Applying the CISG to the HKSAR

### Reservation under Article 95 of the CISG

- China has made a reservation under Article 95 of the CISG (declaring that it is not bound by Article 1(1)(b)).
- In response to the submissions received in the related public consultation in 2020 (“**Consultation**”), subject to the above-mentioned requisite application procedures and notification, the CISG is expected to apply to the HKSAR in full, that is without China’s Article 95 reservation.





## Inconsistency between the New Ordinance/ the CISG and any other Hong Kong law

- There are differences between the CISG and relevant existing Hong Kong law concerning rules for formation of contract of sale and the rights and obligations of the seller and buyer arising from such a contract.
- Under section 5 of the New Ordinance , these differences will be subject to the overriding effect of the relevant provisions of the CISG.



## Inconsistency between the New Ordinance/ the CISG and any other Hong Kong law

<b>CISG</b>	<b>Hong Kong law</b>
<ul style="list-style-type: none"><li>• Freedom of contract from form and evidential restrictions (Art. 11).</li></ul>	<ul style="list-style-type: none"><li>• Largely same stance as CISG Art. 11: parole evidence rule still applies.</li></ul>



## Inconsistency between the New Ordinance/ the CISG and any other Hong Kong law

	<b>CISG</b>	<b>Hong Kong law</b>
Acceptance of offer	Late acceptance may still be effective	“Postal rule”
Revocation of offer	Provides for when an offer can and cannot be revoked <u>Generally, more pro-contract than HK law</u>	Offer unsupported by consideration revocable at will



## Inconsistency between the New Ordinance/ the CISG and any other Hong Kong law

	<b>CISG</b>	<b>Hong Kong law</b>
Non-conforming goods	Seller may be able to cure defects	Buyer's right to reject goods
Inspection of goods (and notice requirement)	Inspection by buyer once obtaining possession (and notice requirement)	Inspection by buyer within reasonable period of time



## Inconsistency between the New Ordinance/ the CISG and any other Hong Kong law

<b>CISG</b>	<b>Hong Kong law</b>
<ul style="list-style-type: none"><li>• Fundamental breach as defined is a much <b><u>stricter</u></b> requirement – when established, innocent party entitled to “avoid” the contract. Rarely established.</li></ul>	<ul style="list-style-type: none"><li>• Generally, allows for greater rights of termination.</li></ul>



## Interpretation of the CISG

- In interpreting the CISG, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade (Art. 7).
- Autonomous and uniform interpretation vs “homeward trend”.



## The Mainland-HKSAR Transactions

- Being a convention governing international sale of goods, the CISG **does not** apply to transactions within China, including those between businesses in Mainland China and businesses in the HKSAR.
- To follow up on the submissions received in the Consultation, the HKSAR Government is working on reaching such arrangement through discussion with the Central People's Government.



## Want to know more?

- For practical information about the CISG and details of related promotional events, please visit our Department's featured webpage on the Convention.



- Thank you!