

Organisers



Early Days: Application of the CISG in Hong Kong and to Parties from Hong Kong

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The CISG's introduction in Hong Kong

- ▶ CISG was introduced in Hong Kong effective 1 December 2022
 - PRC declaration: CISG shall apply to Hong Kong SAR
 - Sale of Goods (United Nations Convention) Ordinance (Cap. 641) came into operation on 1 December 2022
- ▶ Why is there yet no published CISG case law in Hong Kong?
- ▶ Experience: Early days are quiet days
 - Reason 1: Temporal applicability of the CISG
 - Reason 2: CISG awareness in Hong Kong still developing
 - Reason 3: CISG not only applies *in* Hong Kong, but *to* contracts with Hong Kong parties anywhere

Temporal applicability in and to Hong Kong

Art. 1(1) CISG [Sphere of application]

This Convention applies to contracts of sale of goods between parties whose **places of business are in** different States:

- (a) when the States are **Contracting States**; or
- (b) when the rules of private international law lead to the application of the law of a Contracting State.

Art. 100(1) CISG [Temporal applicability]

This Convention applies to the formation of a contract only when the **proposal for concluding the contract is made on or after the date** when the Convention **enters into force** in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

Avoiding the ‘only half of the field’ mistake

- ▷ The ‘only half of the field’ mistake
- ▷ Covering the entire field: CISG disputes involving a party from Hong Kong may be decided:
 - By courts in Hong Kong
 - By courts in the contracting partner’s home jurisdiction
 - By courts in a third jurisdiction
 - By arbitral tribunals
- ▷ Has the CISG been yet applied to post-2022 HK-related sales contracts elsewhere?
 - Most recent published decision involved contract from 2020
- ▷ But: permanent factor for CISG’s perceived practical relevance

CISG's application in/to other jurisdictions (1)

 Fiji CISG decisions by courts in Fiji: 0 CISG decisions worldwide involving parties from Fiji: 0	 Finland CISG decisions by courts in Finland: 27 CISG decisions worldwide involving parties from Finland: 57	 France CISG decisions by courts in France: 570 CISG decisions worldwide involving parties from France: 965
 Gabon CISG decisions by courts in Gabon: 0 CISG decisions worldwide involving parties from Gabon: 0	 Georgia CISG decisions by courts in Georgia: 18 CISG decisions worldwide involving parties from Georgia: 14	 Germany CISG decisions by courts in Germany: 854 CISG decisions worldwide involving parties from Germany: 1977

(Screenshot from www.cisg-online.org (30 April 2024))

CISG's application in/to other jurisdictions (2)



Isle of Man

CISG decisions by courts on the Isle of Man: 0
CISG decisions worldwide involving parties from the Isle of Man: 2



Israel

CISG decisions by courts in Israel: 7
CISG decisions worldwide involving parties from Israel: 22



Italy

CISG decisions by courts in Italy: 147
CISG decisions worldwide involving parties from Italy: 1060



Japan

CISG decisions by courts in Japan: 6
CISG decisions worldwide involving parties from Japan: 44



Jersey (British crown dependency)

CISG decisions by courts in Jersey: 0
CISG decisions worldwide involving parties from Jersey: 5



Jordan

CISG decisions by courts in Jordan: 0
CISG decisions worldwide involving parties from Jordan: 7

(Screenshot from www.cisg-online.org (30 April 2024))

CISG's application in/to other jurisdictions (3)



Singapore

CISG decisions by courts in Singapore: 8

CISG decisions worldwide involving parties from Singapore: 62

Published CISG cases adjudicated by courts in Singapore:

8 decisions 3 cases

Published CISG cases worldwide involving parties from Singapore:

62 decisions 52 cases

Parties from Singapore most frequently settled their CISG disputes in:

1. Arbitration	22 decisions	22 cases	42.31 %
2. Australia	7 decisions	6 cases	11.54 %
3. China	7 decisions	5 cases	9.62 %
4. Korea, Republic of (South Korea)	4 decisions	3 cases	5.77 %
5. Uzbekistan	3 decisions	3 cases	5.77 %
6. Spain	5 decisions	2 cases	3.85 %
7. Germany	3 decisions	2 cases	3.85 %
8. USA	2 decisions	2 cases	3.85 %
9. Singapore	2 decisions	2 cases	3.85 %
10. Belgium	2 decisions	1 case	1.92 %

(Screenshots from www.cisg-online.org (30 April 2024))

Factors influencing the CISG's application

- ▷ CISG awareness among legal practitioners in a given jurisdiction
 - Experience of counsel in international sales matters
 - Is the CISG part of the law school curriculum?
- ▷ Does application depend on a party pleading the CISG?
 - In CISG Contracting States, CISG is local (not: foreign) law
 - Role of *iura novit curia* principle
- ▷ Frequency of the CISG's exclusion (Art. 6 CISG) in practice
 - But: any exclusion requires *both parties'* consent (!)

The way forward

- ▶ First CISG cases involving a Hong Kong party can be expected soon
- ▶ CISG awareness of practitioners necessary to be able to use the CISG to clients' advantage
 - In other jurisdictions, CISG awareness already exists
- ▶ Only educated contractual exclusion of the CISG advisable

Thank you!

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