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20 October 2021

The Law Society of Hong Kong
3/F, Wing On House,
71 Des Voeux Road Central,
Hong Kong

(Attention: Mr C. M. CHAN
President)

Dear Mr Chan,

Sale of Goods (United Nations Convention) Ordinance (Cap. 641)
(“Ordinance”)

Thank you for the submission of the Law Society of Hong Kong in 2020 in response to the Consultation Paper on the proposed application of the United Nations Convention on Contracts for the International Sale of Goods (“CISG”) to the Hong Kong Special Administrative Region (“HKSAR” or “Hong Kong”).

Following the said Consultation and the recent legislative exercise to enact the Ordinance, I am pleased to inform that the Ordinance¹ was passed by the Legislative Council (“LegCo”) on 29 September 2021 and will come into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette. Noting that relevant stakeholders may require time to prepare for the implementation of the CISG, the HKSAR Government plans to defer the commencement of the Ordinance until at least six to nine months after its passage.

As explained in the LegCo Brief², the object of the Ordinance is to implement the CISG, without China’s reservation under Article 95, in the HKSAR

¹ The Sale of Goods (United Nations Convention) Ordinance (Cap. 641) is available at: <https://elegislation.doj.ccgo.hksarg/hk/cap641>.

² The LegCo Brief is available at: https://www.legco.gov.hk/yr20-21/english/brief/ilitf181_20210707-e.pdf.

(“**Proposed Application**”). The Proposed Application 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

The CISG is an important and widely adopted commercial law treaty. It provides a uniform text of law for international sales of goods within its scope. Its purpose is to provide a modern, uniform and fair regime for contracts for the international sale of goods, thereby enhancing certainty in commercial exchanges and decreasing transaction costs. There are currently over 90 Contracting States to the CISG, which cover nearly half of the total number of countries in the world and include more than half of Hong Kong’s top 20 trading partners by total volume of trade.

Whilst China is a Contracting State to the CISG, the CISG is currently not applicable to the HKSAR. Pursuant to Article 153 of the Basic Law, the HKSAR Government is in the process of seeking the assistance of the Central People’s Government in completing the necessary steps for the Proposed Application.

In summary, under its Article 1(1)(a), the CISG applies directly to contracts for sale of goods between parties whose places of business are in different Contracting States. The CISG, under its Article 1(1)(b), 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 State³. Moreover, party autonomy is a fundamental principle of the CISG. The parties can, by agreement, exclude the application of the CISG entirely or, with very limited exceptions, derogate from or vary the effect of any provisions of the CISG (under Article 6).

The benefits of applying the CISG to the HKSAR include: the potential to drive GDP and trade growth; preventing Hong Kong businesses from being subject to unfamiliar foreign laws when entering into cross-boundary transactions; improving Hong Kong’s competence in resolving CISG disputes; and providing Hong Kong businesses with an additional choice of law option.

The Ordinance

The main provisions of the Ordinance are as follows: –

- Section 4 gives the CISG the force of law in Hong Kong;

³ Article 95 provides that any State may declare at the time of joining the CISG that it will not be bound by Article 1(1)(b). As explained in paragraphs 11 and 12 of the LegCo Brief, China has made a reservation under Article 95, declaring that it is not bound by Article 1(1)(b). Having carefully considered the relevant pros and cons and in the light of the public responses received during the Consultation, the HKSAR Government’s plan is that the CISG be applied to the HKSAR without China’s Article 95 reservation, which means that the HKSAR will apply the CISG rules under its Article 1(1)(a) and Article 1(1)(b).

- Section 5 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; and
- The text of the Convention is set out in the Schedule to the Ordinance.

Reference materials

Many informative reference materials on the CISG are publicly available, for example, those on the respective webpages of the United Nations Commission on International Trade Law (“**UNCITRAL**”)⁴ and the Institute of International Commercial Law (“**IICL**”) of Pace University⁵ on the CISG. In addition, our Department currently maintains a featured webpage on the CISG⁶, with relevant useful information and resources (including links to the above two webpages) collected for easy access and reference by the public.

We hope that you will find the above and the said webpage of our Department helpful, and we look forward to opportunities to collaborate with the Hong Kong legal sector to further promote the CISG and the Ordinance. Indeed, we will further liaise with your society in due course to discuss such promotion work. If you have any question or comment regarding the above, please feel free to contact our Division (Mr Peter Wong, Deputy Law Officer (Treaties & Law), on 3902 8580 or at peterwong@doj.gov.hk or Miss Katie Kwong, Senior Government Counsel, on 3918 4780 or at katiekwong@doj.gov.hk).

Yours sincerely,



(Ms Linda Lam)

Law Officer (International Law)
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⁴ UNCITRAL’s webpage on the CISG is at:
https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg.

⁵ The IICL’s “CISG Database” webpage is at: <https://iicl.law.pace.edu/cisg/cisg>.

⁶ Our Department’s webpage on the CISG is at:
https://www.doj.gov.hk/en/featured/un_convention_on_contracts_for_the_international_sale_of_goods.html.