Singapore and the CISG

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AGC is proud to be a partner of this seminar to mark the 35th anniversary of the United Nations Convention on Contracts for the International Sale of Goods (“CISG”).

- Route to Ratification
- Considerations for adoption of CISG
- Singapore Experience since implementation
- CISG and the digital age
Route to Ratification

Route to Ratification

• In 1993-4, Committee Consulted Business Community
  – All Chambers of Commerce
  – Singapore Manufacturers Association
  – Association of Small and Medium Enterprises

• Focused on Legal Advantages and Trade Advantages
Legal Advantages

• Certain modern clauses not found in English Sale of Goods Act 1893/1979
• Serves gap-filling function when cross-border contract concluded by phone or fax or email
• Better than an unknown/unfamiliar foreign law e.g. Russian Law, China Law or Mexican Law
• Avoid costs in calling foreign law expert in litigation
• Neutral law acceptable to both parties
• Recognises contractual freedom
• Avoid conflict of laws issues
• Hope for harmonisation of ASEAN trade laws
Legal Advantages

• Takes into account modern trade practices and realities.
• The Convention is drafted in simple and plain language for businessmen to understand.
• Useful provisions to practical problems e.g. requiring parties to preserve goods belonging to the other party.
• Convention countries accounted for 61% of the world's trade in 1990 – danger Singapore left behind
• States which participate in 34.66% of Singapore's external trade for 1993 were parties.
Trade Advantages

• Economic powerhouses of China, US and many EU countries are parties.
• All North American Free Trade Area (NAFTA) countries are parties (Canada, US and Mexico)
• Convention is in all 6 official UN languages including Arabic, English, Chinese, French, Spanish and Russian.
• Bridge language barriers.
• Facilitate Singapore Government’s drive for businesses to expand overseas e.g. China
Laws to be reviewed to aid 'go regional' drive

A MAJOR review of laws will be conducted by the Law Ministry and the Attorney-General's Chambers to provide adequate legal infrastructure to support Singapore's drive to regional.

They will, when appropriate, adopt international conventions and model laws which harmonise and facilitate international trade and dispute settlements.

In his addendum to the President's Address released yesterday, Law Minister S. Jayakumar said commercial laws will be reviewed and modified where necessary to create a "more predictable legal environment" for businesses to operate.

He also cited two priorities in law reform: patents and bankruptcy.

New laws will be introduced to upgrade the current patent system and make it more convenient for Singaporeans to obtain patent protection for their inventions.

The ministry plans to change the current requirement that Singaporeans must first have patent protection in the United Kingdom before their inventions can be protected here. Singaporeans will instead be allowed to file applications for patents locally.

On bankruptcy, laws will be introduced to improve the administration of the affairs of bankrupts, and to protect creditors' interests without stifling entrepreneurship.

"We will strike a fair balance between the interests of the debtor, the creditor and society," he said.

There will be greater accountability of bankrupts in the administration of their estates on the one hand, and speedier discharges of bankrupts on the other.

He said the ministry will review other Acts of Parliament which rely on English law. This follows the enactment of the Application of English Law Act 1993, which makes Singapore's commercial law independent of future legislative changes in the UK.

Legislation will also be introduced to abolish all appeals to the Privy Council, a move announced by Chief Justice Yong Pung How on Saturday.

The Registry of Land Titles will convert all lands from the common law to the land titles registration system. It will also computerise the Land Titles Register to handle more land transactions and public searches.

Finally, the A-G's Chambers will provide better legal advice to ministries and government departments by centralising services in its civil division.
Route to Ratification

• Singapore ratified on 16 Feb 1995 wef 1 Mar 1996
• Effect of Reservation under art 95
  – Limit the scope of application of CISG so that it will apply to contracts of sale of goods between parties from different states only when both the states are Contracting States
  – CISG will not apply where one of the parties is not from a Contracting State.
• Original rationale - avoid unintended application of CISG where the contractual parties actually intended Singapore domestic sales law (e.g. Sale of Goods Act) to apply.
Considerations for adoption of CISG
Considerations for Adoption of CISG

• Natural to compare your existing domestic contract/sales law with CISG.

• **Wrong question to ask**: whether CISG is better; whether you would reform your domestic law on your own with the rules in the CISG.

• Foreign party could well take the same position: “I don’t know your law and ours is better”. CISG takes into account or compromises the views of civil and common law jurisdictions.

• Lawyers would be more comfortable with what they already know; e.g. Common Law trained lawyers (used to English Sales of Goods Act) may be less receptive than business community.
Considerations for Adoption of CISG

• CISG may already be applicable law when your traders import/export from/to CISG parties.
• Therefore consult not just lawyers but also Businesses and Traders.
• Evaluate on Trade/Economic Advantages and not just Legal Advantages
• Examine trade statistics to evaluate/explain economic advantages.
• Weigh costs-savings and trade-offs.
• Ready-made option to harmonisation of ASEAN/Asian sales laws.
Implementation

• Treaties not “self-executing” under Singapore Law – Dualist View (ABU v Comptroller of Income Tax [2015] SGCA 4 at [47])
• CISG annexed wholesale as Schedule to Act
• CISG has “force of law” in Singapore (s 4) but art 6 permits opting-out (exclusion), derogation or variation of any provisions.
• CISG became part of Singapore Law (Triulziu Cesare SRL v Xinyi Group (Glass) Co Ltd [2014] SGHC 220)
Implementation

• But CISG prevails over other laws in Singapore to the extent of any inconsistency (s4) e.g. rule that acceptance effective when reaches offeror rule (art 18(2)) prevails over common law “postal rule”.
Singapore Experience since implementation
Singapore Contracts

• CISG has been part of Singapore law since 1996. Not 35 years from 1980 (or 27 years from 1988) but almost 20 years.
• Applicable to trade between Singapore and another CISG party - 38 States in 1994 (when ratification was considered) and 82 today.
  • Exceptions:
    • Article 2: e.g. goods bought for personal, family or household use, unless the seller neither knew or ought to have known that the goods were bought for such use
    • Article 6: e.g. parties may exclude the application of CISG
• Search of “Sale of Goods Act” in LAWNET found 301 documents.
• No significant local case law on Sale of Goods (United Nations Convention) Act.
• Arbitration cases (Confidential)
Singapore Contracts

• CISG is part of the curriculum of local law schools (but not a core subject).
• CISG not difficult to research (but with different sources):
  – Preparatory materials (aids to interpretation)
  – Commentaries
  – Authorities from contracting States (Case Law on UNCITRAL Texts (CLOUT))
• No evidence of significant issues or problems with implementation of CISG.
Chwee Kin Keong v Digilandmall.com [2004] 2 SLR(R) 594; [2004] SGHC 71
Digilandmall.com sold HP laser printers over its website. HP Printer’s $3854 price was mistakenly altered to just $66. Chwee & others placed orders for substantial number of printers but Digilandmall refused to honour the orders.

VK Rajah JC (as he then was) said at [100] :
– There is however another statute that ought to be taken into consideration in determining the appropriate default rule in e-commerce transactions. The Vienna Sales Convention applies in Singapore as a consequence of the Sale of Goods (United Nations Convention) Act (Cap 283A, 1996 Rev Ed).
– It appears that in Convention transactions, the receipt rule applies unless there is a contrary intention. Offer and acceptances have to “reach” an intended recipient to be effective. It can be persuasively argued that e-mails involving transactions embraced by the Convention are only effective on reaching the recipient. If this rule applies to international sales, is it sensible to have a different rule for domestic sales?
CISG in Singapore Case – International Arbitration

- Evidence of CISG issues in international arbitration.
- *Quarella SpA v Scelta Marble Australia* [2012] SGHC 166
- Clause 25, Distributorship Agreement set out that it was governed by CISG and where not applicable by Italian law.
- Singapore High Court declined to set aside award on basis that Tribunal made wrong choice of applicable law.
- *Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd* [2014] SGHC 220
- *Triulzi* unsuccessfully sought to set aside arbitral award under Art 34(2)(b)(ii), UNCITRAL Arbitration Model Law on disingenuous argument that Tribunal’s decision not to apply CISG as the applicable law of the 3 contracts is in conflict with Singapore’s public policy.
CISG and the digital age
CISG and the Digital Age

• CISG was adopted in 1980 when the Internet did not exist.
• In 1980, electronic communications or contracting would involve an analogue telephone conversation or a telex or fax communication.
• General issues with electronic contracting are not specific to the CISG:
  • Legal requirements for writing (e.g. contract “in writing” or evidenced in writing)
  • Signatures (e.g. “signed by …”)
  • Communication of Offer (and withdrawal)
  • Acceptance of offer (e.g. sent electronically and with no human intervention)
CISG and the Digital Age

- UNCITRAL tackled general issues with a separate electronic contracts convention (i.e. covers more than CISG): **UN Convention on the Use of Electronic Communications in International Contracts** (CUECIC) 2005.

- CUECIC sanctions use of electronic communications for purposes of 6 listed treaties, including the CISG.

- Without CUECIC: How does the CISG work in the digital age?
CISG and Electronic Contracts

• CISG Article 13 addresses electronic equivalents of traditional paper “writings”:
  – “For the purpose of this Convention ‘writing’ includes telegram and telex.
  – Commentators have suggested that article 13 “must be read to include all electronic forms of communication as well.”
• No requirement of a signature or an original writing is stated in the CISG.
• Article 11’s freedom of form rule states:
  – “[A contract of sale] may be proved by any means, including witnesses.”
CISG and Electronic Contracts

• Matters not settled or governed by the CISG are settled "in conformity with the law applicable by virtue of the rules of private international law" (Article 7(2) CISG).

• CISG can function without any adaptations and need not be supplemented with any additional rules to facilitate or validate electronic communications (Eliza Mik).
CISG and the Digital Age

- Singapore Common Law recognises electronic records and electronic signatures as equivalent to “writing” and “signatures” ((e.g. SM Integrated Transware v Schenker Singapore [2005] 2 SLR(R) 651).
- Reinforced by ss 7 and 8, Singapore Electronic Transactions Act (“ETA”).
- Singapore High Court in Chwee v Digilandmall.com observed that CISG applicable to electronic contracts.
- In 2010, Singapore ratified CUECIC 2005
- Given domestic effect through revamped ETA 2010 (commencement: 1 Jul 2010)
- Residual law is Singapore law when it is the law chosen by the parties or is otherwise the applicable law.
Comments