

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

OVERVIEW

1. Article 93 enables States to restrict the application of the Convention to some of its territorial units, thereby excluding other territorial units from the Convention's application. This enables federal States to accede to the Convention for some territorial units when otherwise legally restricted to apply it to all their territorial units.

2. Australia,¹ Canada,² Denmark³ and New Zealand⁴ have made declarations pursuant to Article 93.

3. By virtue of article 93 (1) and article 93 (4), if a declaration is not made restricting the Convention's applicability to select territorial units, the Convention will extend to all territorial units of that State. Otherwise, if an article 93 declaration is made, a territory is not considered a Contracting State (for purposes of article 1 (1) (a)) unless so provided by the declaration.

4. Article 93 (2) is self-explanatory. See also the discussion of the depositary's functions and obligations in the Digest for article 89.

5. If a place of business is within a territorial unit that the State has declared will not be bound to the Convention under article 93 (1), the place of business is not considered within a Contracting State under article 93 (3). As such, applicability of the Convention cannot be established via article 1 (1) (a). Regarding issues surrounding multiple places of business, see the discussion in the Digest for article 10.

6. A declaration made pursuant to article 93 (1) must be made at the time of signature,⁵ ratification, acceptance, approval or accession, and may be amended at any time by submitting another declaration.⁶

PEOPLE'S REPUBLIC OF CHINA AND HONG KONG

7. Prior to the retrocession of Hong Kong to the People's Republic of China on 1 July 1997, the Convention did not apply to Hong Kong. After the retrocession (under which Hong Kong is now considered a Special Administrative Zone of China with a different legal system), the People's Republic of China deposited with the Secretary General of the United Nations a declaration announcing the conventions to which China was a party and which thereafter should apply to Hong Kong.⁷ CISG was not on this list.

8. There is a division among court decisions as to whether China's declaration satisfies the requirements to constitute an article 93 (1) declaration, thereby excluding application of the Convention to Hong Kong. Some decisions have held that China's declaration as it relates to the Convention amounts to an article 93 declaration,⁸ i.e., as Hong Kong is not listed as a territorial unit to which the Convention applies, the Convention is not applicable to disputes between parties from Hong Kong (a non-contracting "State") and another Contracting State (China has also made an article 95 reservation, excluding the application of article 1 (1) (b)). Other cases have held, based on the interpretation of article 93 (1) in conjunction with article 93 (4), that China's declaration does not preclude the applicability of the Convention to disputes between parties from Hong Kong and another Contracting State.⁹ It was held in a recent decision that Hong Kong was not a Contracting State in that China had not yet made a declaration to extend the Convention to Hong Kong under article 93(1).¹⁰ The decision reflects the general disinclination of courts in mainland China to apply the Convention in such cases, but the reasoning is dubious. Under article 93 (1) a Contracting State must make an affirmative declaration as to which territorial units the Convention will apply (which was not done in China's declaration to the United Nations). Absent such a declaration, article 93 (4) automatically extends the Convention to all the territorial units, including Hong Kong.

Notes

¹ “The Convention shall apply to all Australian States and mainland territories and to all external territories except the territories of Christmas Island, the Cocos (Keeling Islands) and the Ashmore and Cartier Islands.” https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19.

² “The Government of Canada declares, in accordance with article 93 of the Convention that the Convention will extend to Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island and the Northwest Territories.” 9 April 1992. “The Convention shall also extend to Quebec and Saskatchewan.” 29 June 1992. “The Convention applies also to the Territory of the Yukon.” 18 June 2003. “The Government of Canada declares, in accordance with Article 93 of the Convention, that in addition to the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan, as well as the Northwest Territories and the Yukon Territory, the Convention shall extend to the Territory of Nunavut. The Government of Canada also declares that the declaration made at the time of its accession to the Convention on April 23, 1991, the declaration deposited on April 9, 1992, the declaration deposited on June 29, 1992 and the declaration deposited on July 31, 1992, remain in effect.” https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19.

³ Upon ratification Denmark declared that the Convention shall not apply to the Faroe Islands and Greenland. United Nations Convention on Contracts for the International Sale of Goods, 11 April, 1980, 1489 U.N.T.S. 3, see Note 10. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19.

⁴ New Zealand acceded to the Convention with a declaration of non-application to the Cook Islands, Niue and Tokelau (22 September 1994) United Nations Convention on Contracts for the International Sale of Goods, 11 April, 1980, 1489 U.N.T.S. 3, see Note 10. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&clang=_en#19.

⁵ Article 97 (1) provides that “[d]eclarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

⁶ See *infra* note 2.

⁷ Letter of notification of Treaties Applicable to Hong Kong after 1 July 1997, Deposited by the Government of the People’s Republic of China with the Secretary-General of the United Nations, June 20, 1997, 36 I.L.M 1675.

⁸ CLOUT case No. 1030 [Cour de cassation, France, 2 April 2008], English translation available on the Internet at www.cisg.law.pace.edu (“[T]he People’s Republic of China has effectuated with the depositary of the Convention a formality equivalent to which is provided for in article 93 CISG. Consequently, the CISG is not applicable to the special administrative region of Hong Kong.”). See also U.S. District Court, Eastern District of Tennessee, United States, 20 October 2010 (*America’s Collectibles Network, Inc. v. Timlly (HK)*, 746 F. Supp. 2d 914), available on the Internet at www.cisg.law.pace.edu; U.S. District Court, Northern District of Georgia, United States, 17 December 2009 (*Innotex Precision Limited v. Horei Image Products, Inc.*), available on the Internet at www.cisg.law.pace.edu (“The CISG was not included among the 127 listed treaties [on the list], indicating that the Chinese Government did not intend to extend the CISG to Hong Kong.”); Hubei High People’s Court, People’s Republic of China, 19 March 2003, English translation available on the Internet at www.cisg.law.pace.edu (“Hong Kong is not a Contracting State of the CISG. Therefore the CISG is not applicable.”).

⁹ U.S. District Court, Northern District of Illinois, United States, 3 September 2008 (*CAN Int’l, Inc. v. Guangdong Kelon Electronical Holdings et al.*), available on the Internet at www.cisg.law.pace.edu (“In the absence of such a declaration [pursuant to article 93], Article 93 (4) automatically extends the CISG to China’s territorial units, including Hong Kong.”); U.S. District Court, District of Arkansas, United States, 23 December 2009 (*Electrocraft Arkansas, Inc. v. Electric Motors, Ltd et al.*), available on the Internet at <http://cisg3.law.pace.edu>, But see U.S. District Court, Arkansas, United States, 2 April 2010] (*Electrocraft Arkansas, inc. v. Super Electric Motors, Ltd*), available on the Internet at www.cisg.law.pace.edu (inviting counsel to revisit question of whether Hong Kong is a Contracting State under the Convention).

¹⁰ High People’s Court of Zhejiang Province, People’s Republic of China, 15 December 2010, (*Hong Kong Yingshun Development Co. Ltd v. Zhejiang Zhongda Technology Import Co. Ltd*) (2010) *Zhe Shang Wai Zhong Zi* No. 99 Civil Judgment, available on the Internet at www.court.gov.cn.