



**Asia-Pacific
Economic Cooperation**

2017/SOM1/EC/SEM/011

Session 11

Contract Enforcement and Dispute Settlement: Relevance of UNCITRAL Texts

Submitted by: UNCITRAL Regional Centre for Asia and the Pacific






**Seminar on Use of International Instruments to
Strengthen Contract Enforcement in Supply Chain
Finance for Global Businesses Including Micro,
Small, and Medium Enterprises**

Nha Trang, Viet Nam

24-25 February 2017

UNCITRAL United Nations Commission on International Trade Law



Contract enforcement and dispute settlement: relevance of UNCITRAL texts

Jin Ho KIM
Legal Expert
UNCITRAL Regional Centre
for Asia and the Pacific
24 February 2017, Viet Nam

Global Supply Chains and Contracts

Sales Contract/Supply Contract/Procurement Contract

Transport Contract/Warehousing Contract

Credit Contract/Foreign Exchange Contract

Facility/Loan Agreement

Security Agreement

Insurance Agreement

* *[Disputes Settlement Clause]*



Features of International Contracts

- Transaction value and amount will be higher and larger
- Parties are located in different jurisdictions
- Disputes generally do not end up in courts
- Other ADR mechanisms are available including the enforcement of arbitral awards
- Applicable (substantive) law issues arise

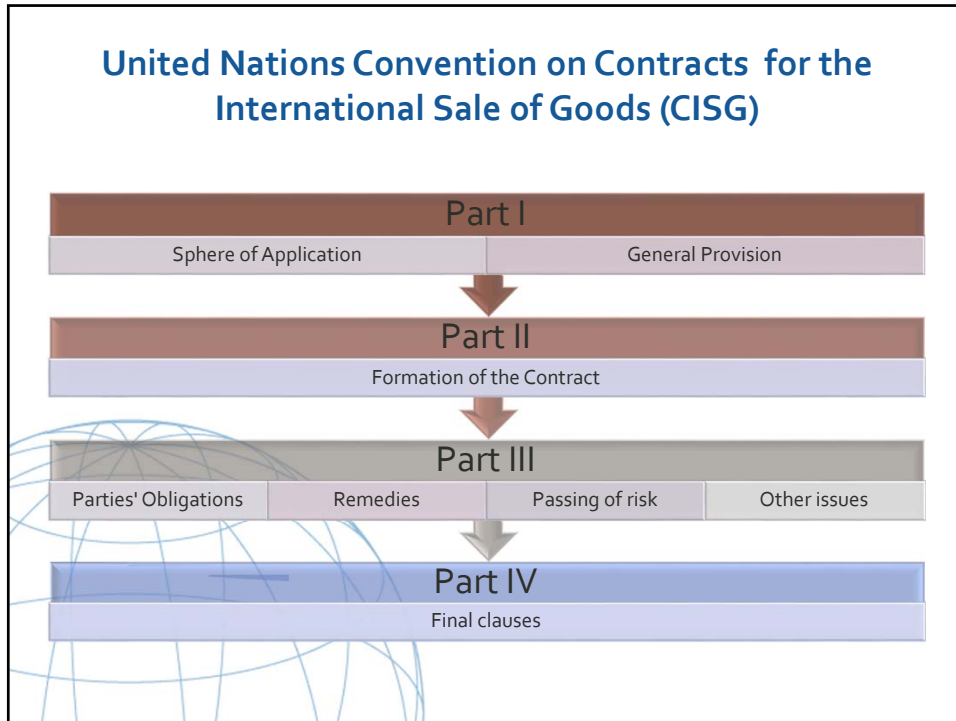
UNCITRAL texts

(CISG, e-CC, New York Convention, Model Law on Secured Transaction, Model Law on Arbitration, Conciliation etc.) provide guidance on how to resolve these issues.

United Nations Convention on Contracts for the International Sale of Goods (CISG)

- A uniform instrument largely accepted in various legal systems – 35 years anniversary
- Provides substantive rules to settle disputes related to international sale of goods
- 85 CISG parties account for more than 70% of international trade in goods





UNCITRAL
United Nations Commission on International Trade Law

Home | Contact Us | Site Map | Search

Home

Electronic Commerce

- 2007 - Promoting confidence in electronic commerce: legal issues on international use of electronic authentication and signature methods
- 2005 - United Nations Convention on the Use of Electronic Communications in International Contracts
- 2001 - UNCITRAL Model Law on Electronic Signatures with Guide to Enactment
- 1996 - UNCITRAL Model Law on Electronic Commerce with Guide to Enactment, with additional article 5 bis as adopted in 1998
- 1985 - Recommendation on the Legal Value of Computer Records

UNCITRAL Texts & Status

- International Commercial Arbitration & Conciliation
- International Sale of Goods (CISG)
- Security Interests
- Insolvency
- International Payments
- International Transport of Goods
- **Electronic Commerce**
- Procurement & Infrastructure Development

Texts Endorsed by UNCITRAL

- Technical Assistance & Coordination Case Law (CLOUT)
- Library & Research Resources

UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996
with additional article 5 bis as adopted in 1998

UNCITRAL Model Law on Electronic Signatures with Guide to Enactment 2001

United Nations Convention on the Use of Electronic Communications in International Contracts

Electronic Communications Convention in International Contracts (2005)

- ECC builds up and updates the Model Law provisions
- Aims at enhancing legal certainty and commercial predictability where electronic communications are used in relation to international contracts
- Contributes to enabling paperless trade by 1) validating the legal status of electronic transactions by setting general functional equivalence requirements of "writing", "original" and "signature";
2) preventing medium and technology discrimination;
3) enabling cross- border recognition of electronic signatures;
4) permitting the use of electronic means in alternative dispute resolution mechanism
- Entry into force 1 March 2013
- 7 parties (Congo, Dominican Republic, Honduras, Montenegro, Russia, Singapore & Sri Lanka) & 13 other signatories (including China, Colombia, Panama, Paraguay, Philippines & Republic of Korea)

United Nations Convention
on the Use of
Electronic Communications
in International Contracts



The ultimate aim is to resolve commercial disputes *efficiently*

- Increasing need for businesses to resolve disputes **quickly, efficiently** and **constructively**
- Sometimes **privately** and **informally** to maintain their business relationship
- **Unpredictability** leads to increase in short-term costs
- **Backlogs** and **delays** in court proceedings leading to excessive costs
- **Uncertainty** about local law and disparities in domestic legislation
- Domestic courts not always perceived as **impartial** when **foreign parties** are involved

UNCITRAL creating a favourable environment for dispute settlement

- 1958 • Convention on the Recognition and Enforcement of Foreign Arbitral Awards : the New York Convention
- 1976 • UNCITRAL Arbitration Rules
- 1980 • UNCITRAL Conciliation Rules
- 1985 • UNCITRAL Model Law on International Commercial Arbitration
- 2002 • UNCITRAL Model Law on International Commercial Conciliation
- 2010 • Amendments to UNCITRAL Model Law on International Commercial Arbitration
- 2010 • Revised UNCITRAL Arbitration Rules
- 2013 • UNCITRAL Transparency Rules on Treaty-based Investor-State Disputes
- 2014 • UN Convention on Transparency in Treaty-based Investor-State Arbitration: the Mauritius Convention on Transparency

UNCITRAL Model Law on International Commercial Arbitration

- Adopted in 1985, amendments adopted in 2006
- Establishes a unified legal framework for the fair and efficient settlement of international commercial disputes
- Covers all stages of the arbitral process
- Conforms to current practice in international trade and modern means of contracting with regard to the form of arbitration agreement and the granting of interim measures
- Takes the form of a “model law” which provides more flexibility for enacting jurisdictions
- Prepared as a freestanding arbitration statute

