



**Asia-Pacific
Economic Cooperation**

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**Facilitating the Use of Modern Technology for
Contract Management - Relevance of United Nations
Commission on International Trade Law Texts**

Submitted by: UNCITRAL



**Workshop on the Use of Modern
Technology for Dispute Resolution and
Electronic Agreement Management
Particularly Online Dispute Resolution
Port Moresby, Papua New Guinea
3-4 March 2018**



Facilitating the use of modern technology for contract management <Relevance of UNCITRAL texts>

Jae Sung Lee
Legal Officer, UNCITRAL

Contracts ... contract management?

Sales Contract/Supply Contract/Procurement Contract

Transport Contract/Warehousing Contract

Credit Contract/Foreign Exchange Contract

Facility/Loan Agreement


Security Agreement

Insurance Agreement



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
- Applicable (substantive) law issues arise



UNCITRAL texts 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
- Provides substantive rules to settle disputes related to international sale of goods
- 89 CISG parties account for more than 70% of international trade in goods



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

Part I

Sphere of Application

General Provision

Part II

Formation of the Contract

Part III

Parties' Obligations

Remedies

Passing of risk

Other issues

Part IV

Final clauses

Electronic Commerce

Conventions

- [United Nations Convention on the Use of Electronic Communications in International Contracts \(New York, 2005\)](#)

Model laws

- [UNCITRAL Model Law on Electronic Transferable Records \(2017\)](#)
- [UNCITRAL Model Law on Electronic Signatures \(2001\)](#)
- [UNCITRAL Model Law on Electronic Commerce \(1996\)](#)

Legislative guides and recommendations

- [Recommendations to Governments and international organizations concerning the legal value of computer records \(1985\)](#)

Explanatory texts


- [Promoting confidence in electronic commerce: legal issues on international use of electronic authentication and signature methods \(2007\)](#)

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



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
- 9 parties (Cameroon, Congo, Dominican Republic, Fiji, 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



Creating a favourable environment for access to credit

2001

- United Nations Convention on the Assignment of Receivables in International Trade

2007

- UNCITRAL Legislative Guide on Secured Transactions

2010

- UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property

2013

- UNCITRAL Guide on the Implementation of a Security Rights Registry

2016

- UNCITRAL Model Law on Secured Transactions

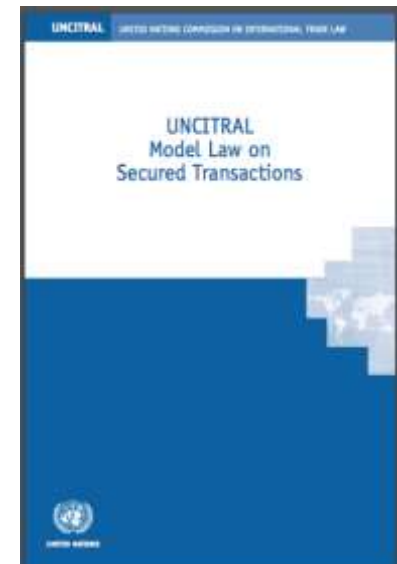
2017

- Guide to Enactment of the UNCITRAL Model Law on Secured Transactions

[Explanatory text] UNCITRAL, Hague Conference and Unidroit Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions (2011)

UNCITRAL Model Law on Secured Transactions

- Comprehensive, unitary & functional approach
- Enhances availability of secured credit
- Enables parties to obtain security rights in a simple and efficient manner
- Facilitates efficient enforcement of creditor's rights
- Allows parties maximum flexibility
- Includes a set of model registry provisions
- Includes a set of rules on the applicable law
- Practice Guide being prepared



The Model Law Approach

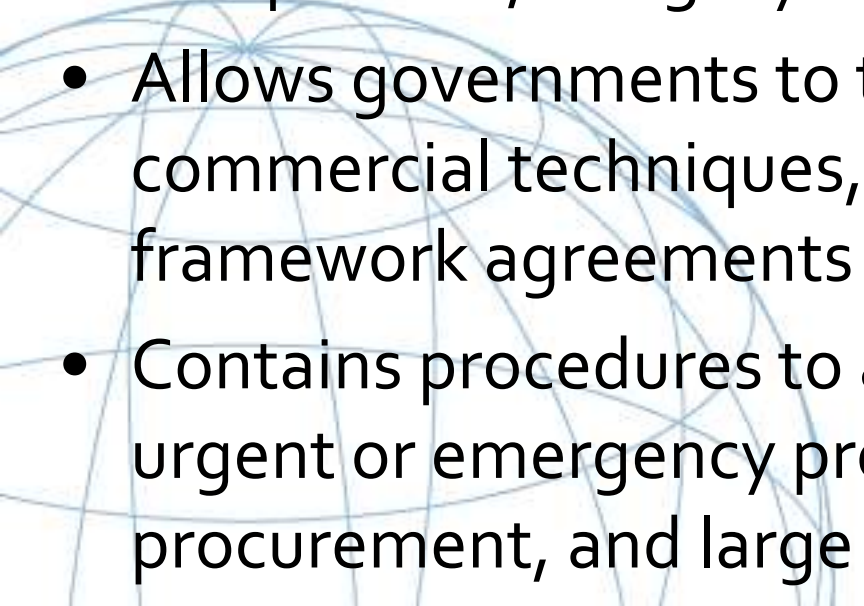
Article 6. Creation of a security right ...

1. A security right is created by a **security agreement**, provided that the grantor has rights in the asset to be encumbered or the power to encumber it.
2. ...
3. ..., a security agreement must be concluded in a writing that is signed by the grantor and:
 - (i) Identifies the secured creditor and the grantor;
 - (ii) Describes the secured obligation;
 - (iii) Describes the encumbered asset ...

Article 18. Achieving third-party effectiveness

1. A security right in an encumbered asset is effective against third parties if a notice ... is registered in the Registry.

UNCITRAL Model Law on Public Procurement

- Contains procedures and principles aimed at achieving value for money and avoiding abuses in procurement (essential procedures for the selection of suppliers and contractors for a given procurement contract)
 - Promotes objectivity, fairness, participation, competition, integrity and transparency
 - Allows governments to take advantage of modern commercial techniques, such as e-procurement and framework agreements
 - Contains procedures to allow for standard procurement, urgent or emergency procurement, simple and low-value procurement, and large and complex projects
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UNCITRAL Model Law on Public Procurement

- Recognizes the importance of procurement planning and **contract management** for the overall effective functioning of the procurement system

*" The contract management phase, if poorly conducted, **can undermine the integrity of the procurement process and compromise the objectives of the Model Law.** Detailed suggestions for contract administration in complex procurement with a private finance component are set out in the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000) and the accompanying Model Legislative Provisions (2004): many of the points made in these instruments apply equally to the management of all procurement contracts, particularly where the contract relates to a complex project. (Guide to Enactment, p. 25)*

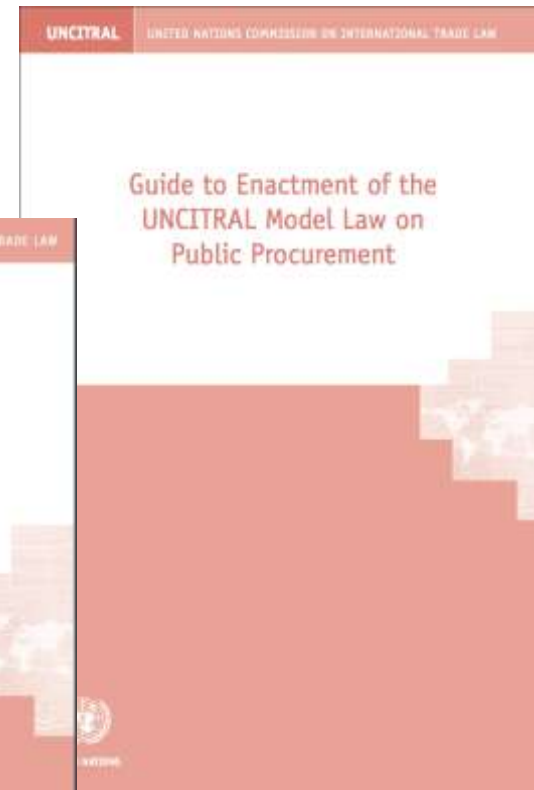
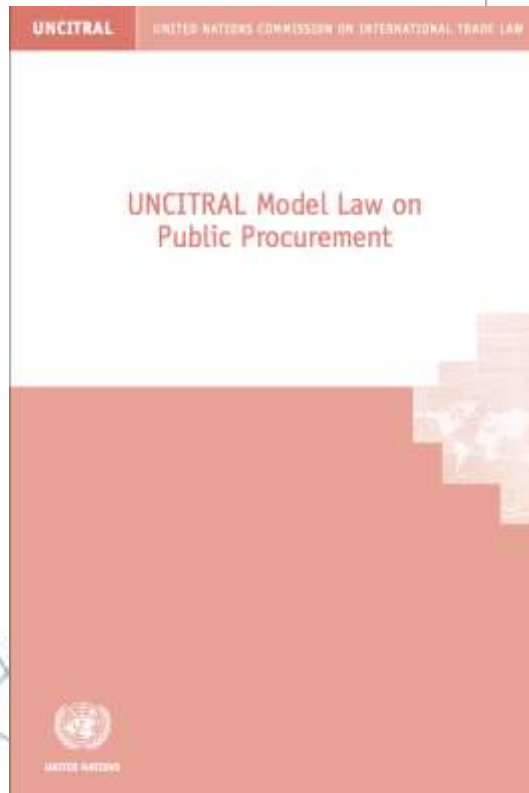
Procurement & Infrastructure Development

UNCITRAL **Legislative Guide** **on Privately Financed** **Infrastructure Projects**

Prepared by the United Nations
Commission on International Trade Law



United Nations
New York, 2001



Thank You!

For more information on the work of
UNCITRAL, please visit our web site
<http://www.uncitral.org>

E-mail: jaesung.lee@un.org

