



**Asia-Pacific  
Economic Cooperation**

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2018/SOM1/EC/WKSP2/008

**International Institute for the Unification of Private  
Law Instruments That Facilitate the Use of Modern  
Technology for Contract Management**

Submitted by: UNIDROIT



**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**



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March 2018



**Asia-Pacific  
Economic Cooperation**

## **APEC Workshop on the Use of Modern Technology for Dispute Resolution and Electronic Agreement Management**

**UNIDROIT Instruments that facilitate the use of  
modern technology for contract management**

**Papua New Guinea**

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## Overview

- Introduction to UNIDROIT
- UNIDROIT Principles of International Commercial Contracts
  - Operation of the principles
  - Use of the Principles for use in Modern Technology for Contract Management



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# UNIDROIT

- **Institute for the Unification of Private Law (UNIDROIT)**
- **Independent Intergovernmental Organisation set up in 1926 as an auxiliary organ of the League of Nations**
- **Re-established in 1940 on the basis of a multilateral treaty**
- **Membership in all continents (63 members)**
  - (10 APEC member economies: Australia, Canada, Chile, China, Indonesia, Japan, the Republic of Korea, Mexico, Russia and the United States)



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# UNIDROIT

- **UNIDROIT Mission is to develop internationally harmonised, modern standards for commercial law.**

## **Statutory objective:**

*“to examine ways of harmonising and coordinating the private law of States, and to prepare gradually for the adoption by the various States of uniform rules of private law.”*

- Strong legislative role: 28 international instruments (treaties, principles, rules, model clauses) created.



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# UNIDROIT

## UNIDROIT Instruments



**UNIDROIT Model  
Law on Leasing  
(2008)**



**Convention on  
International  
Interests in Mobile  
Equipment (2001)**



**Legal Guide on  
Contract Farming  
(2014)**



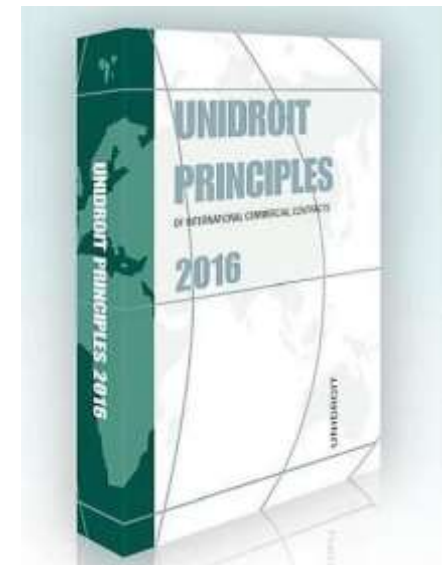
**UNIDROIT  
Convention on  
stolen or illegally  
exported Cultural  
Objects  
(1995)**



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## Principles of International Commercial Contracts

- **UNIDROIT Principles of International Commercial Contracts**
  - Fourth edition released in 2016
  - Additional provisions addressing long term contracts
  - Previous editions in 1994, 2004 and 2010
  - UNIDROIT Model Clauses for Use of UNIDROIT Principles of International Commercial Contracts (2013)
- **Soft law instrument (non-binding)**
  - Based on extensive comparative law studies carried out over decades
  - Prepared by a group of eminent experts in the field of international contract law representing all major legal systems and geo-political regions of the world





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## Principles of International Commercial Contracts

### A Successful Alternative to Legislative Harmonisation

- **Challenges in worldwide harmonisation of the law of international business transactions through international treaties**
- **Non-binding “Principles”**
  - Do not need to be approved by a Diplomatic Conference
  - Do not require ratification by States
  - Are applied for their persuasive value
  - Can be easily adapted to changing conditions of international trade





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## Principles of International Commercial Contracts

### Content of the Principles

- **The Principles cover the most important areas of contract law**
  - formation,
  - interpretation,
  - validity,
  - performance,
  - non-performance and remedies,
  - agency,
  - third party rights,
  - set-off,
  - assignment of claims and transfer of obligations,
  - limitation periods



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## Principles of International Commercial Contracts

### Use of the UNIDROIT Principles

- **Not used as originally envisioned**
  - Rarely used as codification of domestic laws (Lithuania, Spain, Scotland)
- **Instead, most successful as global background law, in a gap-filling role**
  1. Chosen as applicable law for parties to international commercial contracts
  2. Used by adjudicators when *lex mercatoria* is chosen by parties
  3. Used by adjudicators where there is an absence of a choice of law
  4. Used as international trade or customs usages
  5. Used in arbitrations
  6. Used by adjudicators in domestic contractual disputes



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## Principles of International Commercial Contracts

### UNIDROIT Principles: Comparison to the CISG

- Like the Vienna Convention (CISG), the Principles represent an effort to harmonise the law of international contracts through rules that are
  - Acceptable in different legal systems
  - Drafted to address the special needs of international trade
- Unlike the Vienna Convention, the Principles
  - Have no binding force
  - Are not limited to one type of contract and cover a wide spectrum of subjects on the law of obligations



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## Principles of International Commercial Contracts

### UNIDROIT Instruments to facilitate the use of modern technology for contract management

- UNIDROIT has not produced any instruments that focus solely on e-commerce or smart contracts.
- **However, throughout its four editions, the operation of the UNIDROIT Principles have been routinely audited to reflect emerging technologies and innovative e-commerce practices.**
- **As such, the UNIDROIT Principles remain a highly relevant and important source of law in considering the regulation and use of modern technology for contract management.**



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## Principles of International Commercial Contracts

### UNIDROIT Instruments to facilitate the use of modern technology for contract management

- Several UNIDROIT Principles specifically adapted to facilitate contracts with digital elements and smart contracts.
- **Smart Contracts:** A smart contract is “a set of promises, specified in digital form, including protocols within which the parties perform on these promises”  
(*Nick Szabo, Smart Contracts: Building Blocks for Digital Markets, 1996*)





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## Principles of International Commercial Contracts

### UNIDROIT Instruments to facilitate the use of modern technology for contract management

- First consideration of adapting Principles to address electronic contracting during 1996 Working Group session.
- 1999 study comparing provisions of UNIDROIT Principles with the corresponding provisions of the 1996 UNCITRAL Model Law on Electronic Commerce.
- 2002 release of report by Professor Bonell analysing how the UNIDROIT Principles facilitate electronic contracting.



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## Principles of International Commercial Contracts

### UNIDROIT Instruments to facilitate the use of modern technology for contract management

- The 2004 Edition of the Principles adapted 3 Articles to better reflect electronic contracting practices:
  - Article 1.2 (No form required)
  - Article 2.2.8 (Acceptance within a fixed period of time)
  - Article 2.1.18 (Modification in a particular form)
- Other examples of Articles that are well suited to the facilitation of electronic contracting practices:
  - Article 1.10 (Notice)
  - Article 1.11 (Definitions)
  - Article 2.1.1 (Manner of formation)
  - Article 2.1.6 (Mode of acceptance)



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## Principles of International Commercial Contracts

### ARTICLE 1.2

*(No form required)*

**Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.**

- Article 1.2 is stated in sufficiently general terms to accommodate both electronic communications and smart contracts.





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## Principles of International Commercial Contracts

### ARTICLE 1.10

*(Notice)*

**(1) Where notice is required it may be given  
by any means appropriate to the circumstances.**

- Underlying principle is that communication of notice is not subject to any particular requirement or form.
- Which means are appropriate will depend on the actual circumstances of the case, in particular on the availability and the reliability of the various modes of communication, and the importance and/or urgency of the message to be delivered.
- For smart contracts, it could be any digital form, data, and running programs that are appropriate to the circumstances.



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## Principles of International Commercial Contracts

### ARTICLE 2.1.1

*(Manner of formation)*

**A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.**

- In the context of purely automated contracting, the term “conduct of the parties” is sufficiently broad to cover automatic procedures or algorithms that the parties have agreed.
- The concept of “conduct” can extend to mutual consent to set in motion a series of self-executing electronic actions in smart contracts.



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## Principles of International Commercial Contracts

### ARTICLE 1.11

*(Definitions)*

**“writing” means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.**

- Broad enough to extend to digital communications.
- Some challenges in relation to smart contracts based on blockchain technology, which could be difficult to reproduce in tangible form.



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## Conclusion

### UNIDROIT Instruments to facilitate the use of modern technology for contract management

- The UNIDROIT Principles for International Commercial Contracts remain one of the leading sources as a balanced restatement of international contract law.
- The Principles have been adapted to ensure their continued use in the digital age to respond to changes in technology and the expansion of electronic contracting practices.
- Future revisions of the Principles to amend them to changes in practice and technology remain possible.



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# Principles of International Commercial Contracts

## Further Resources

Upcoming regional event:

- Current UNCITRAL/HCCH/UNIDROIT coordination project on international contract instruments
- Further information on UNIDROIT website:

<https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016>





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**Thank you for your attention!**

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