



UNCITRAL Standards on e-commerce

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UNCITRAL Texts on e-commerce

Electronic Commerce

- ▶ UNCITRAL Model Law on Electronic Commerce(1996)
- ▶ UNCITRAL Model Law on Electronic Signature(2001)
- ▶ United Nations Convention on the Use of Electronic Communications in International Contracts(2005)

ECC Status

State	Notes	Signature	Ratification, Accession(*), Approval(†), Acceptance(‡) or Succession(§)	Entry into force
Central African Republic		27/02/2006		
China		06/07/2006		
Colombia		27/09/2007		
Congo			28/01/2014(*)	01/08/2014
Dominican Republic			02/08/2012(*)	01/03/2013
Honduras		16/01/2008	15/06/2010	01/03/2013
Iran (Islamic Republic of)		26/09/2007		
Lebanon		22/05/2006		
Madagascar		19/09/2006		
Montenegro		27/09/2007	23/09/2014	01/04/2015
Panama		25/09/2007		
Paraguay		26/03/2007		
Philippines		25/09/2007		
Republic of Korea		15/01/2008		
Russian Federation	(b)	25/04/2007	06/01/2014(‡)	01/08/2014
Saudi Arabia		12/11/2007		
Senegal		07/04/2006		
Sierra Leone		21/09/2006		
Singapore	(a)	06/07/2006	07/07/2010	01/03/2013
Sri Lanka	(c)	06/07/2006	07/07/2015	01/02/2016



Why Electronic Communications Convention?

Necessity of the ECC

- Increase of International Trade over the Internet
- Increasing International Trade
- Removal of Legal Barrier
- Eliminating legal uncertainty

Necessity of the ECC

- ▶ Models Law is “Soft Law”
 - ▶ Two model laws have some intrinsic limitations arising from their “soft law” nature
 - ▶ More flexible, but affect uniformity and legal predictability
- ▶ New business model appears consistently

Purpose of the ECC

- ▶ The Electronic Communications Convention aims at
 - ▶ facilitating the use of electronic communications in international trade
 - ▶ by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents.

Significance of the ECC

- ▶ Removal of some formal obstacles by establishing equivalence between electronic and written form
 - ▶ Certain formal requirements contained in widely adopted international trade law treaties, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") and the United Nations Convention on Contracts for the International Sale of Goods (CISG)
- ▶ Facilitating the use of electronic communications in international trade
 - ▶ ECC is intended to strengthen the harmonization of the rules regarding electronic commerce and foster uniformity in the domestic enactment of UNCITRAL model laws relating to electronic commerce, as well as to update and complement certain provisions of those model laws in light of recent practice.

Significance of the ECC

- ▶ Legal basis for international sales contract by electronic communications
 - ▶ Duality of regimes
 - ▶ Supplement to CISG
 - ▶ Remove legal barrier to international electronic sales contract
- ▶ Reinforcing the level of uniformity in the enactment, interpretation and application of the Model Law on Electronic Commerce and the Model Law on Electronic Signature
- ▶ Updating and completing certain provisions of the Model Law on Electronic Commerce and the Model Law on Electronic Signature

Significance of ECC

- Binding Power
- Applies to various types of contracts, not limiting to international sales contract
 - "This Convention applies to the use of electronic communications in connection with the formation or performance of a contract between parties whose places of business are in different States."(Article 1 (1))

Significance of the ECC

- ▶ "1. The provisions of this Convention apply to the use of electronic communications in connection with the formation or performance of a contract to which any of the following international conventions, to which a Contracting State to this Convention is or may become a Contracting State, apply:
 - ▶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958);
 - ▶ Convention on the Limitation Period in the International Sale of Goods (New York, 14 June 1974) and Protocol thereto (Vienna, 11 April 1980);
 - ▶ United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980);
 - ▶ United Nations Convention on the Liability of Operators of Transport Terminals in International Trade (Vienna, 19 April 1991);
 - ▶ United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 11 December 1995);
 - ▶ United Nations Convention on the Assignment of Receivables in International Trade (New York, 12 December 2001).
- ▶ 2. The provisions of this Convention apply further to electronic communications in connection with the formation or performance of a contract to which another international convention, treaty or agreement not specifically referred to in paragraph 1 of this article, and to which a Contracting State to this Convention is or may become a Contracting State, applies, unless the State has declared, in accordance with article 21, that it will not be bound by this paragraph."(Article 20)

Significance of the ECC

- ▶ Good guidance to existing or future domestic e-commerce laws
 - ▶ ECC may provide those countries not having yet adopted provisions on electronic commerce with modern, uniform and carefully drafted legislation.
 - ▶ Useful especially for countries that have not yet adopted UNCITRAL texts
- ▶ Good tool to achieve higher level of uniformity



Outlook of the ECC

Scope of application

- ▶ The ECC applies to all electronic communications exchanged between parties whose places of business are in different States when at least one party has its place of business in a Contracting State (Art. 1).
- ▶ The ECC may also apply by virtue of the parties' choice.
- ▶ Exclusion(Art. 2)
 - ▶ Contracts concluded for personal, family or household purposes, such as those relating to family law and the law of succession
 - ▶ Certain financial transactions, negotiable instruments, and documents of title

Party autonomy

- ▶ General principle of party autonomy
 - ▶ "The parties may exclude the application of this Convention or derogate from or vary the effect of any of its provisions. "(Article 3)
 - ▶ This is the underlying element that has significance in commercial law because it may vary the scope of application of the ECC.
 - ▶ States' declaration can make same result

Legal recognition of electronic communications

- ▶ ECC Article 8 is the most important and fundamental provision
 - ▶ "A communication or a contract shall not be denied validity or enforce- ability on the sole ground that it is in the form of an electronic communication."

Functional equivalence

- ▶ Establishing general rules of functional equivalence for paper-based requirements such as “writing”, “signature” and “original” in Article 9
 - ▶ Article 9 reflects the general principle of ‘freedom of form’
 - ▶ ECC requires only minimum requirements for electronic communication to meet the functional equivalence with paper-documents.

Place of business

- ▶ ECC Article 4 (h)
 - ▶ "Place of business" means any place where a party maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location.
- ▶ ECC Article 6 (4)
 - ▶ "A location is not a place of business merely because that is: (a) where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or (b) where the information system may be accessed by other parties. "

Information requirements

▶ ECC Article 7

- ▶ Allows parties to disclose information such as identity and place of business in accordance with the domestic law

Time of dispatch and receipt

- ▶ Time of dispatch(Article 10 (1))
 - ▶ When the electronic communication leaves an information system under the control of the originator
- ▶ Time of receipt(Article 10 (2))
 - ▶ When it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee

Place of dispatch and receipt

▶ ECC 10 (3)

- ▶ "An electronic communication is deemed to be dispatched at the place where the originator has its place of business and is deemed to be received at the place where the addressee has its place of business, as determined in accordance with article 6."

Invitation to make offers

- ▶ "A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance."(Article 11)

Automated message system

- ▶ ECC Article 12
 - ▶ "A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract. "

Error in electronic communications

- ▶ ECC Article 14 applies to errors that occur in transmissions where an automated message system does not provide the person with the possibility to correct the error.
- ▶ ECC does not affect other laws that regulate errors apart from the input error mentioned above.
 - ▶ ECC does not apply to other errors and it is leaved to be governed by the domestic law.
- ▶ ECC applies to conditions such as:
 - ▶ An input error made by the natural person
 - ▶ The automated message system does not actually provide an opportunity to correct the error

Error in electronic communications

- ▶ “Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:
 - ▶ (a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and
 - ▶ (b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.”
- ▶ (Article 14 (1))



On-going work of UNCITRAL Working Group IV

Draft Model Law on ETR

- ▶ Electronic Transferable Records
 - ▶ Not yet widely used in the world
- ▶ Consensus on ETR legislation is necessary after more discussion
- ▶ On-going work of UNCITRAL WG IV
 - ▶ Outcome could be in form of model law
 - ▶ This will accelerate full dematerialization of commercial documents

Future agenda

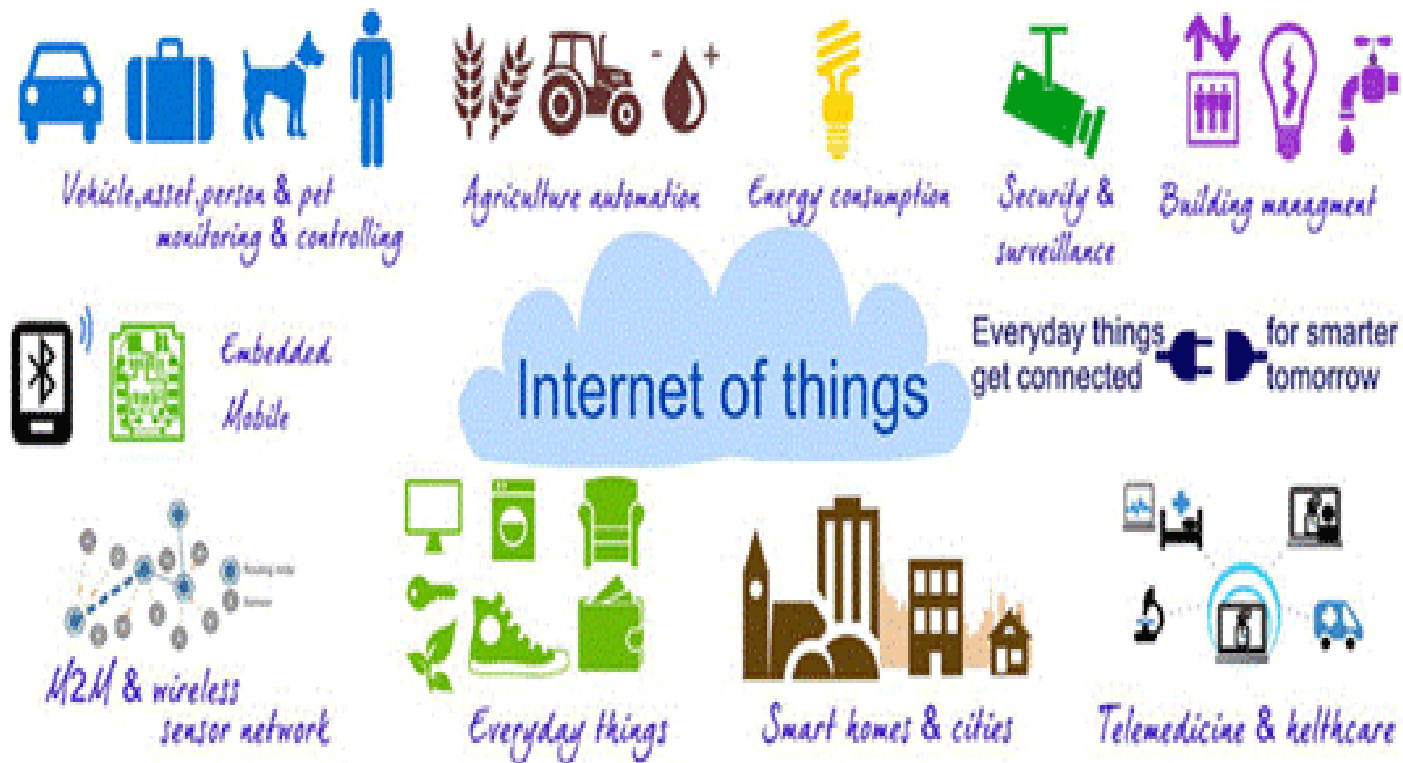
- ▶ Identity management (IdM)
 - ▶ Evolution of electronic signature?
 - ▶ Necessary to upgrade Model Law on Electronic Signature?
 - ▶ Relevant to Personal Data Protection
- ▶ Cloud Computing
 - ▶ Service level agreement
 - ▶ Model contract between Service provider and User



From the perspective of IoT or
hyper-connected society

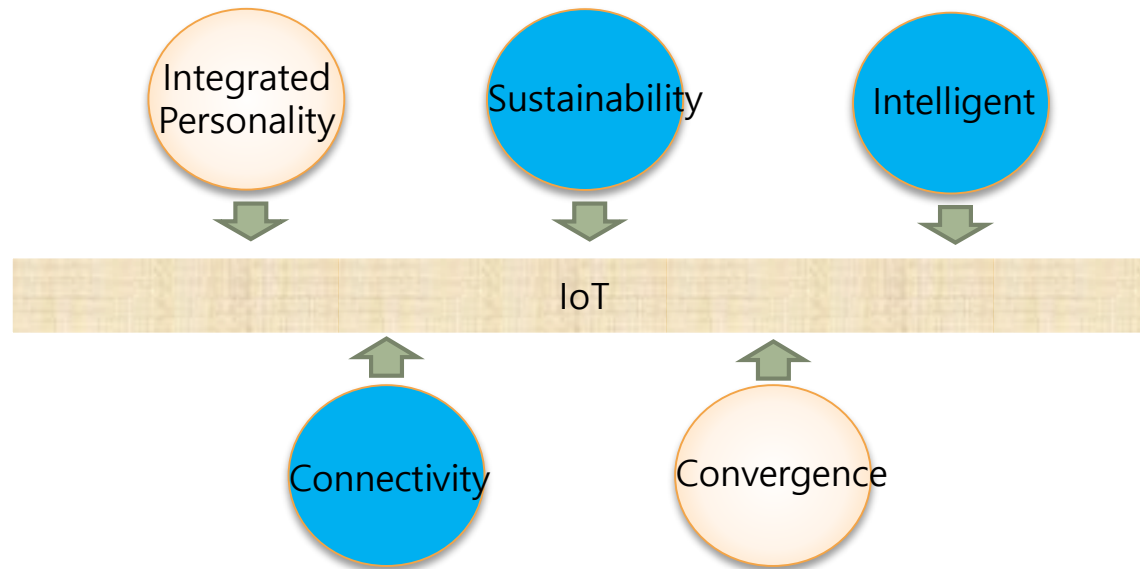
Why the ECC again now?

The world we are about to confront




Img Source: datasciencebe.com

Hyper-connected transactions



ECC: its future

- ▶ The world is changing and developing very fast.
 - ▶ Cloud computing
 - ▶ Internet of Things
 - ▶ Explosive increase of global trade based on mobile payment or smart innovation
- ▶ ECC can give very important legal basis to the changing international transactions environment
 - ▶ Automated messages system
 - ▶ Error in electronic communications
- ▶ ECC is the First step toward the future
 - ▶ More necessary to unify e-commerce law under FTA, TPP, etc.

The background features a repeating pattern of small, stylized figures in various colors (orange, blue, green, purple) on a light grey background. Overlaid on this are several large, semi-transparent colored rectangles: a large orange one in the top left, a blue one in the top center, a green one in the middle, and a purple one on the right side.

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Thank you very much!