

# 1 Scope of the Convention

- “International”
- Nationality, civil or commercial character of parties not relevant
- Excluded transactions:
  - Electronic communication relating to personal family and household purposes, trading in regulated exchanges, banking transactions, shares, securities
  - Negotiable instruments...bills of exchange , bills of lading
- Agreements to arbitrate

## 2 Interaction with Other Conventions

- International character
- UNCITRAL Interpretative Declaration 2006 (UN A6/17)
- Place of business: Art 4(g)

### 3 Applicability to other conventions – including Art 20

- New York Convention 1958,
- CISG
- Also to “the formation or performance of a contract to which another international convention' treaty or agreement” which contracting state is a party (unless otherwise declared)
- UNCITRAL Model Law on International Commercial Arbitration

## 4 New York Convention 1958

- Formation of agreement to arbitrate – cannot be rendered “null and void” – saving provision in Art 8(1)ECC
- Writing requirement – Art II(1) NYC
- Under NYC , “writing” satisfied by
  - arbitral clause in contract or arbitration agreement “signed by the parties”
  - “exchange of letter or telegrams” as mode of communications

## 5 “Writing” under ECC

- Not restricted to written words
- Any information which could be accessible and usable for subsequent reference.” - Art 9(2)ECC
- Video
- Audio
- Picture
- Codes or symbols

## 6 Signature under ECC

- No longer required to be made under the hand of signatory
- Identity of party and clear intention to affirm contents sufficient
- Reliable method of identification

- ## 7 Enforcement of foreign awards under NYC
- “duly authenticated original or duly certified copy” of award and the arbitration agreement
  - Electronic originals as functional equivalents – Art 9(5) ECC
    - complete and unaltered
    - electronic attestation permitted
    - similar test for “certified copy”

## 8 Resisting enforcement of foreign award under NYC

- Grounds for resisting enforcement include –  
invalidity of arbitration agreement
- State courts need to consider ECC
- If it is a party to ECC
- If it is not, but the seat of arbitration is a ECC jurisdiction; or, the arbitration agreement is made under a jurisdiction which adopts ECC



## 9 UNCITRAL Model Law on International Commercial Arbitration

- Model Law is not a Convention
- Not applicable directly by text of the ECC – concerns only Conventions
- ECC would influence and harmonise:
  - “writing requirement” for arbitration agreement: Art 7 MAL (2006, Option1)

- Web-based transactions with arbitration clauses
  - *Dell Computer Corp. v. Union des consommateurs*, [2007] 2 S.C.R. 801, the Canadian Supreme Court had ruled that an arbitration clause that can be accessed by means of hyperlink on a web site constitutes a valid arbitration clause.
- Commencement of arbitration- receipt of notice of arbitration

## 10 Conclusions

- ECC is not inclusive not restrictive
- Pro-technology and pro-business
- ECC clarifies and extends application of NYC
- Harmonises with MAL