

# UNCITRAL Working Group II Colloquium on Recognition and Enforcement of Electronic Arbitral Awards

Roundtable discussion – exploring desirable  
approaches

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2 October 2024

**Dr. Lars Markert**

# Table of contents

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I. Issue and goals	<b>p. 3</b>
II. The proposed approaches	<b>p. 6</b>
III. Overarching issues – potential solutions?	<b>p. 10</b>

# Issue and goal

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- **Issue:** New York Convention does not explicitly address electronic awards, causing uncertainties and preventing the widespread use of electronic awards
- **Goal:** Establish near-term certainty about the recognition and enforcement of electronic awards in a majority of contracting States to the New York Convention

# Legislative options

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- Amendment to the New York Convention
- Additional recommendation on the interpretation of the New York Convention
- Supplementary convention or protocol on the recognition and enforcement of electronic arbitral awards
- Amendment to the Model Law on International Commercial Arbitration

# Arbitration practitioner's perspective

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- Practical solution for States to integrate into domestic legal framework and for practitioners to make use of
- Confidence that no paper-based award will be required at the execution stage
- Reasonably near-term implementation

# Amendment to New York Convention

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- New York Convention is still working as intended
  - Regulation of electronic awards alone might not justify an amendment to the convention
  - Comprehensive revision/modernization likely a long-term process
- Amendment to the New York Convention unlikely to be a near-term solution – significant undertaking if only this particular issue were to be addressed

# Additional recommendation on the interpretation of the New York Convention

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- Previously used in 2006 to address diverging interpretations of Article II (2) of the New York Convention resulting from discrepancies between different language versions
    - Not necessarily comparable with the electronic award question
  - An interpretation should stay within the boundaries of the wording of the New York Convention
  - A recommendation might not be applied in a unified manner
- Recommendation not a preferred solution and potentially difficult considering the wording of the New York Convention

# Supplementary convention or protocol

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- Likely quicker process than larger amendment of New York Convention
  - Uniform application among contracting States provides legal certainty
  - Imposes public international law obligation on contracting States to implement the domestic legislation necessary to enable the recognition and enforcement of electronic awards
- Potential compromise between near-term results and effectiveness



# Amendment to the Model Law

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- Not all contracting States to the New York Convention are Model Law jurisdictions
  - Model Law amendments have historically been adopted with significant time lag
  - A model law might not be applied in a unified manner
- Amendment to the Model Law alone is unlikely to be a near-term solution

# Overarching issues

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- Likely no approach will result in widespread use of electronic awards until a critical mass of States have adopted it
- States need to amend domestic laws as far as possible to abolish requirements for paper-based signed originals of awards throughout the execution process
- Differing form and technical standards for electronic awards
  - E.g. globally divergent requirements for accepted electronic signatures

# Potential solutions

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- Supplementary convention or protocol potentially earlier implemented than other approaches whilst providing legal certainty
- Solution for recognition and enforcement of electronic awards without the need to additionally regulate the subsequent domestic execution process
- Model Law amendment could complement a supplementary convention or protocol by providing examples for how domestic laws could be amended
- UNCITRAL WGII recommendation addressed to arbitral institutions to provide practical means for electronic signatures meeting technical and form requirements

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THANK YOU VERY MUCH FOR YOUR ATTENTION

# Dr. Lars Markert, LL.M



1-1-2 Otemachi, Chiyoda-ku  
Tokyo, 100-8124 Japan  
E: l.markert@nishimura.com  
T: +81 3 6250 6200

"very well-connected, creative and extremely reliable" partner who "carries a lot of authority" and is "very much on top of his game."

Chambers Global 2021 – Dispute Resolution International: Japan

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Who's Who Legal: Arbitration 2019 - Thought Leaders

"He regularly demonstrates immaculate legal expertise combined with an impressive grasp of complex technical issues"

Who's Who Legal: Arbitration 2018

Lars is a partner in the Tokyo office of Nishimura & Asahi's international dispute resolution group. He advises on international arbitration and cross-border litigation, with an emphasis on investor-state arbitration and Asia, in particular Japan. Lars also deals with cases involving governments, and has advised foreign investors and states on issues of foreign direct investment and public international law, including related negotiations and investor-state disputes. He has conducted over 60 international arbitration proceedings under many of the frequently used international arbitration rules, such as ICC, SIAC, JCAA, KCAB, VIAC, ICDR, DIS, ICSID and UNCITRAL, as counsel and as arbitrator.

## Selected Credentials:

- **Japanese pharmaceutical company** in ICC arbitration arising out of license and distribution agreement
- **Japanese pharmaceutical company** in ICC arbitration arising from co-promotion agreement
- **Japanese pharmaceutical company** in ICC arbitration arising out of exclusive distributorship agreement
- **Japanese trading company** in JCAA arbitration against Philippine company arising out of unpaid deliverables
- **Japanese company** in SIAC emergency arbitration proceedings arising out of development agreement
- **Taiwanese technology manufacturer** in JCAA arbitration arising out of IP rights against Japanese electronics company
- **Korean trading company** in German court proceedings arising out of international sales contract
- **Korean trading company** in contract dispute with Japanese trading company
- **KCAB arbitration** for German manufacturer arising out of contract dispute with Korean licensee
- **KCAB arbitration** in post M&A dispute between Korean seller and Swedish acquirer (secretary to tribunal)
- **Chinese renewable energy company** in contract dispute about purchase price adjustment with German material supplier
- **Chinese merchant** in contract dispute about non-payment of goods with German purchaser
- **Chinese investor** in DIS arbitration arising out of post M&A-dispute against German seller
- **German sports equipment manufacturer** in KCAB arbitration in contractual dispute with Korean licensee



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**Nishimura & Asahi (Gaikokuho Kyodo Jigyo)**

Otemon Tower, 1-1-2 Otemachi, Chiyoda-ku, Tokyo

100-8124, Japan

Tel +81 36250 6200