



# **An enabling legal environment for mobile payments and peer-to-peer networks**

**Context presented by the Moderator**

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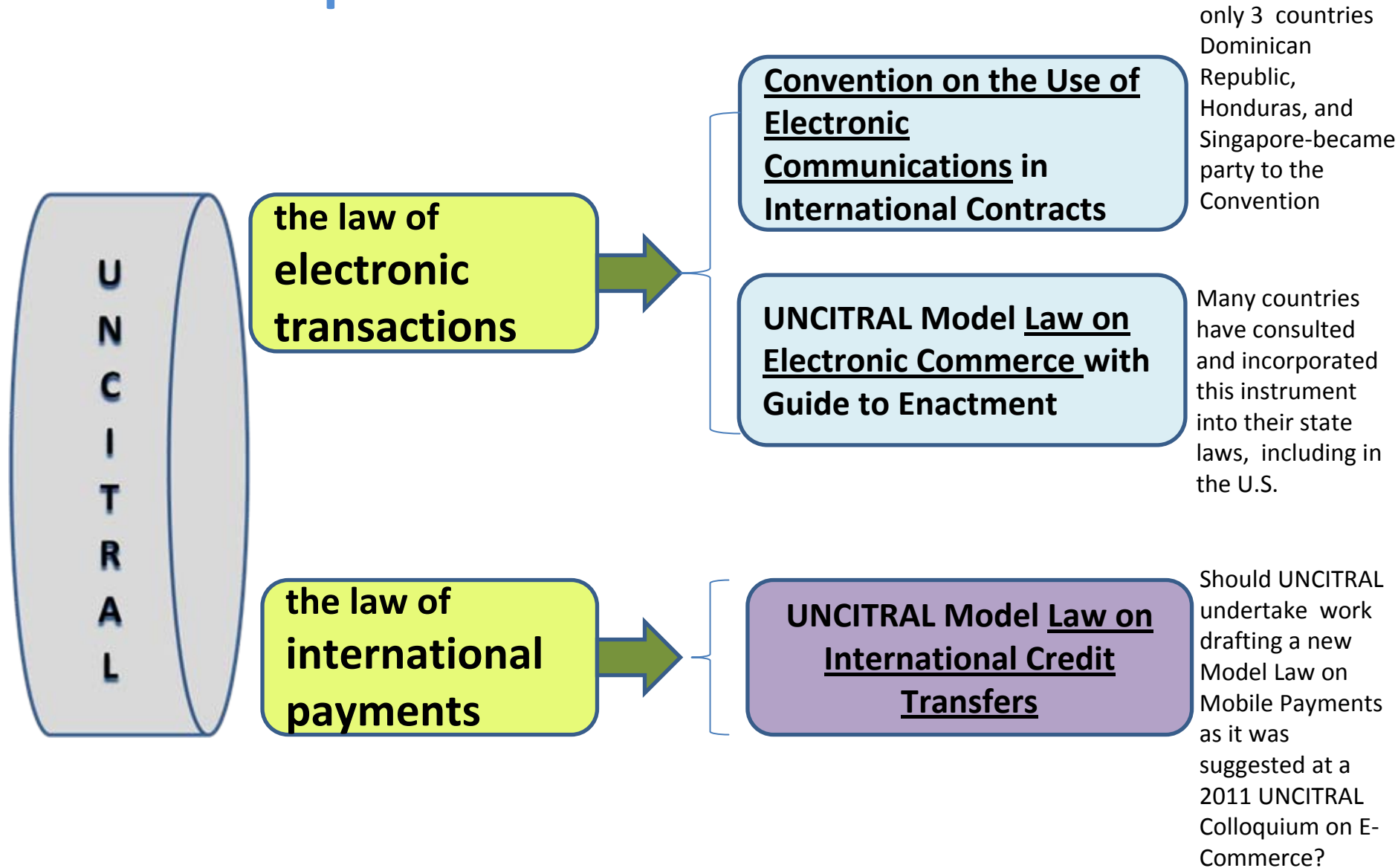
## Why is “mobile” important?

The gap between the numbers of cell phone and formal financial services users suggests that cell phones can be a powerful tool for financial inclusion

Mobile payments provide scalable transactionality building into a broader range of financial products and services catering to the bottom of the pyramid

Mobile phones can be used as new transformational channels and not only for additive uses

# Mobil payments are at the cross-section of two aspects of international trade law



# UNCITRAL's WORK

## Convention on the Use of Electronic Communications in International Contracts

enables cross border e-commerce and m-commerce (definitions of data message and electronic communication already encompasses communications via mobile devices)

establishes the functional equivalence between electronic communications and paper documents

establishes the general principle that communications are not to be denied legal validity solely on the grounds that they were made in electronic form.

## UNCITRAL Model Law on International Credit Transfers

This law can cover mobile payments effected through a mobile payment network operator

It was drafted having in mind banks as handlers of high speed electronic credit transfers but it does not deal specifically with issues of consumer protection.

# An enabling legal environment for mobile payments and peer-to-peer networks

**A legal environment is enabling when it promotes innovation, fosters fluid market entry and exit by diverse players and facilitates sustainable market development**

**“enable legal environment” is a dynamic proposition and adapts and evolves as the market enters different stages.**

Initially it must facilitate innovation by removing barriers and ensuring a level playing field, which must grant equal legal standards for diverse players engaging in the same activity

As innovations are implemented the enabling environment turns to mitigate operational risk and enhance consumer protection

As consolidation sets in, prudential regulation and systemic risks become more relevant

A mature market needs to remain competitive and efficient to deliver productivity gains

# Consensus I: Components to build an enabling legal environment for mobile payments

- 1. Multiple independent regulatory agencies must coordinate their visions to effectively create a legal enabling environment**
- 1. Competitive Market structure to foster innovation and lower costs**
- 3. Definitions of deposit, electronic money, and payments**
- 4. Network of correspondent agents**
- 5. Risk based AML/CFT proportional to risk**
- 6. Product design lightens AML/CFT requirements**

## **Consensus II: Main components to build an enabling legal environment for mobile payments**

**7. New Prudentially Supervised entities are created to manage the e-money**

**8. These Capital structure entities allow all types of shareholders to enter the e money market**

**9. Allocation of the burden of loss concerning mobile payments is borne by the service provider.**

**a)Some countries define Correspondent Agent's responsibilities in case of fraud in their Agent Regulation-defined in the contract between Financial Service provider and the Agent.**

**b)Countries where Mobile Financial Services are offered directly by TELECOM agents will require a separate regulation for establishing the responsibilities of their Agents**

**10. Technological Risks Regulation and mitigation strategies in place prior to e-money becoming operational**

# Consensus: Recommendation on UNCITRAL's future work on Mobile Payments and Peer to Peer Networks

UNCITRAL's existing instruments can accommodate Mobile Payment's changing technologies

Convention on the Use of Electronic Communications in International Contracts

UNCITRAL Model Law on International Credit Transfers

**UNCITRAL WORKING GROUP SHOULD MONITOR MARKET DEVELOPMENTS TO BROADEN SCOPE OF ALREADY EXISTING LEGAL INSTRUMENTS -AVOIDING DUPLICATION WITH OTHER TECHNICAL ENTITIES\*. A GUIDE SUMMARIZING THE RECOMMENDATIONS OF ALL INVOLVED INSTITUTIONS WOULD SERVE COUNTRIES AS REFERENCE FOR DESIGNING THEIR OWN STATE LAWS**

\* BCBS (Basel Committee)  
CPSS (Committee on Payments and Settlement Systems)  
(Financial Action Task Force)  
IAIS (Insurance Supervisors)  
IADI (Deposit Insurers)