



**DIPLOMATIC CONFERENCE TO ADOPT A
CONVENTION ON SUBSTANTIVE RULES
REGARDING INTERMEDIATED SECURITIES**
Geneva, 1 to 13 September 2008

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Comments

(submitted by the Government of Portugal)

In advance of the diplomatic Conference to be held in Geneva in September 2008, the Portuguese delegation is pleased to point out the following observations on the draft Convention. Portugal reserves the right to submit additional comments in the future.

1. Scope of the draft Convention – the need to exclude the basic securities or entitlements as against the issuer

It is generally accepted that the draft Convention's intended scope relates only to indirectly held securities. In other words, the basic securities or basic entitlements (even if dematerialized) as against the issuer are to be excluded from the Convention's scope.

This result is, in our opinion, the only one admissible. Certain articles of the draft Convention could not be logically applicable to directly held securities (see, for example, Articles 17(1) and 21(1)).

Notwithstanding the fact that Article 26(3) of the draft Convention establishes that *"This Convention does not determine whom an issuer is required to recognise as the holder of securities"*, it is our understanding that the current wording of the draft Convention does not clearly provide this delimitation.

In fact, situations where an account is maintained by an intermediary to which basic securities are credited and/or debited and which represents dematerialized basic securities (as, for example, foreseen in the Portuguese Securities Code – Article 61) still fall within the definitions of *"intermediated securities"*, *"securities account"*, *"account holder"* and *"account agreement"*.

Therefore, we consider that the text (possibly Articles 2 and/or 4) should be altered in order to fine tune the scope of the draft Convention.

2. Possibility to limit or exclude the exercise of rights based on regulatory criteria

The Portuguese delegation considers that the text of the draft Convention must explicitly foresee the possibility to limit and/or exclude the exercise of rights inherent to intermediated securities.

According to our view, such an omission could jeopardize the application of very relevant non-Conventional rules regarding transparency (notification of major holdings), takeovers (mandatory bid) and even company law (nominative securities rules).

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