



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

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REPORT BY THE INFORMAL WORKING GROUP ON INSOLVENCY

(submitted by the Chair of the informal Working Group)

Task:

To consider the different options proposed in reference to Article 18 and the relationship between the provisions of Article 17 and Article 18 with regard to distinction between insolvency of intermediary and insolvency in relation to account holders/holders of interests under Articles 9 and 10.

Options:

Two options – to leave Article 18 as it is or to delete Article 18 entirely – were ruled out as unable to satisfy the need for clarifications with regard to insolvency issues that was voiced by several delegations.

Clarification may involve changing not only Article 18 but also Article 17 and other Articles of the Convention.

There were three main proposals for clarification:

- i) Additional points in relation to the present wording of Article 18.
- ii) To make clear the distinction between the situation when an intermediary becomes insolvent in relation to its account holders (vertical insolvency aspect) and the situation when an insolvency occurs in relation to other parties in case of acquisition/disposition under Article 9 and holders of interests under Article 10 (horizontal insolvency aspect).
- iii) To consider the method of drafting the general policy of impact of insolvency on matters under the Convention i.e. the general exclusion of interference with insolvency rules and the provisions of the Convention to which insolvency rules are subject.

Working Group's proposal:

1. The copying of wording from the Cape Town Convention into Article 18 in the present draft should be abandoned, since the property issues and their relationship to insolvency rules in this Convention are essentially different.
2. Instead there should be a clear statement that insolvency rules are not affected by the Convention unless explicitly stated in relevant Articles of the Convention.

3. The clear statement presently in Article 17(1) regarding account holders' rights in the insolvency of an intermediary (vertical insolvency aspect) should be retained.

4. A new clear statement regarding insolvency situations related to Articles 9 and 10 interests (horizontal insolvency aspect) should be added. It should state that where rights and interests in intermediated securities have become effective under Articles 9 or 10, they should be treated as equally effective as other effective rights or interests according to the applicable insolvency law.

5. Apart from including statements 2-4 in the Convention, some Articles other than 17/18 may have to be amended as regards reference to their effects in insolvency situations. The Working Group proposes that Articles (9, 10), 15, 16, 22, 24, 29, 31 and 33 should be considered for such amendments.

6. The Working Group proposes that statements 2-4 should be made in either Articles 17 or (new) 18. The exact wording for the proposed changes should be referred to the Drafting Committee. The Working Group will give its tentative suggestions in writing to that Committee.

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