



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

UNIDROIT 2008  
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### **SUMMARY OF THE DECISIONS TAKEN ON 8 SEPTEMBER 2008**

1. It was decided that language should be inserted in Chapter VI reflecting that this Chapter was based on a minimum harmonisation approach. Moreover, the text of the draft Convention should make clear that the disapplication of insolvency-timing provisions such as 'zero hour' rules should not apply to top-up and substitution arrangements only, but also to the rest of Chapter VI. The issue of the treatment of collateral agreements after the commencement of insolvency proceedings was deferred.
2. The Drafting Committee was asked to consider the relationship between paragraph 1 of Article 28 and the definitions set out in paragraph 2 of that Article. Some drafting suggestions were made in respect of the definitions. Article 28(h) should also cover enforcement events occurring by operation of law.
3. It was decided that Article 30 should take both the enforcement of security collateral agreements and that of title transfer collateral agreements into account.
4. The square brackets in Article 31, paragraph 2 should be deleted. Moreover, there was support for the view that the Official Commentary should make clear that a right of use could not only be exercised in financing transactions, but, for example, also in prime brokerage structures.
5. In respect of Article 32 it was decided that the Official Commentary should reflect that the whole of Chapter VI is subject to the rules of non-Convention law relating to rights concerning restitutions, errors or lack of capacity, etc. Moreover, the Drafting Committee was asked to amend the text of the draft Convention so as to make clear that set-off / netting rules would be subject to national requirements relating to, e.g., the reciprocity of claims.
6. There was consensus on the view that Article 33(1) was limited to the disapplication of insolvency rules with a time element, such as zero-hour rules, but was no safe harbour for preference and other avoidance rules.
7. The informal Working Group on Insolvency presented its work and outlined the approach to be taken in the draft Convention in respect of insolvency. The Drafting Committee was asked to present a draft text reflecting the approach presented and approved by the Commission of the Whole.
8. The informal Working Group on Articles 2 and 4 reported that there had been a last meeting and that it recommended the deletion of Article 2. This proposal was supported by the Commission of the Whole.

9. The Commission of the Whole approved the draft Preamble set out in CONF. 11 – Doc. 7 and referred the document to the Drafting Committee with one drafting suggestion.

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