



**DIPLOMATIC CONFERENCE TO ADOPT A
CONVENTION ON SUBSTANTIVE RULES
REGARDING INTERMEDIATED SECURITIES
Final session**
Geneva, 5 to 7 October 2009

UNIDROIT 2009
CONF. 11/2 – Doc. 2
Original: English/French
February 2009

PROVISIONAL RULES OF PROCEDURE

Rule 1 (Composition of the Conference)

- (1) The Conference shall be composed of the representatives of the States invited by the Swiss Government to attend the Conference.
- (2) Representatives may be accompanied by alternates and advisers.
- (3) International Organisations may be represented by observers if invited by the Swiss Government or the International Institute for the Unification of Private Law (UNIDROIT) to attend the Conference.

Rule 2 (Credentials)

The credentials of representatives of the States, their alternates and advisers and of observers shall be submitted to the Secretary General of the Conference if possible not later than twenty-four hours after the opening of the Conference. The credentials of representatives shall be issued either by the Head of the State or Government, or by the Minister for Foreign Affairs.

Rule 3 (Credentials Committee)

- (1) A Credentials Committee shall be established at the beginning of the Conference. It shall consist of five members representing five States nominated by the President of the Conference.
- (2) The Credentials Committee shall elect its own Chairperson and shall examine the credentials of representatives and observers and report to the Conference without delay.

Rule 4 (Eligibility for participation in meetings)

Any members of a Delegation shall be entitled, pending the presentation of a report by the Credentials Committee and Conference action thereon, to attend meetings and to participate in them, subject, however, to the limits set forth in these Rules. The Conference may bar from any further part in its activities any member of a Delegation whose credentials it finds to be insufficient.

Rule 5 (Officers)

- (1) The Conference shall elect its President. Until such election, the Secretary General of UNIDROIT or, in his absence, his nominee shall act as President of the Conference.
- (2) The Conference shall elect five Vice-Presidents and the Chairperson of the Commission of the Whole referred to in Rule 6.
- (3) The Conference shall have a Secretary General who shall be the Secretary General of UNIDROIT or his nominees.
- (4) The Secretary General shall appoint an Executive Secretary and a Deputy Secretary of the Conference and shall provide and direct the staff required by the respective Organisation for the Conference and its Committees.
- (5) The Secretary General, the Executive Secretary, the Deputy Secretary and any member of the Conference staff designated for that purpose may, at any time, make oral or written statements concerning any question under consideration.

Rule 6 (Commissions, Committees and Working Groups)

- (1) The Conference shall establish a Commission of the Whole open to all Delegations, and a Drafting Committee and such other committees of limited membership, as it may deem necessary.
- (2) The Commission of the Whole, the Drafting Committee and any other committees shall establish such working groups as they may consider to be necessary or desirable.
- (3) The Drafting Committee, any other committee and working groups shall elect their own Chairpersons.

Rule 7 (Powers of the presiding Officer)

The presiding Officer of the Conference, the Commission of the Whole, a committee or a working group shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these Rules, accord the right to speak, put questions and announce decisions. He shall rule on points of order and subject to these Rules, shall have complete control of the proceedings of the body concerned and over the maintenance of order at its meetings.

Rule 8 (Steering Committee)

- (1) There shall be a Steering Committee which shall comprise the President and Vice-Presidents of the Conference as well as the Chairperson of the Commission of the Whole. The President of the Conference or, in his/her absence, a Vice-President designated by the President shall serve as Chairperson of the Steering Committee. The Secretary General of the Conference and the Chairperson of the Drafting Committee may be invited by the President to participate, without the right to vote, in the work of the Steering Committee.
- (2) The Steering Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the co-ordination of its work.

Rule 9 (Public and private meetings)

Meetings of the Conference and the Commission of the Whole shall be held in public, unless the Conference decides otherwise. Meetings of committees and working groups shall be held in private unless the body concerned decides otherwise.

Rule 10 (Participation of observers and technical advisers)

(1) Subject to Rule 20(2), observers may participate in the deliberations of the Conference or any body thereof when the respective meetings are not held in private. With respect to private meetings, individual observers may be invited by the body concerned to attend and to be heard.

(2) Subject to Rule 20(2), technical advisers may be invited by the Conference or any of its bodies to attend and to be heard.

Rule 11 (Quorum)

A majority of the States represented at the Conference or at any body thereof and whose representatives have not notified the Secretary General of their departure shall constitute a quorum.

Rule 12 (Speakers)

(1) The presiding Officer shall call upon speakers in the order in which they have expressed their desire to speak; he may call a speaker to order if his observations are not relevant to the subject under discussion.

(2) Generally, no delegation should be called to speak a second time on any question except for clarification, until all other delegations desiring to speak have had an opportunity to do so.

(3) The presiding Officer may close the list of speakers, adjourn or close the debate and limit the time allowed to each speaker and the number of times each speaker may speak on any question, unless the body concerned decides otherwise. When the time allowed to each speaker is limited and a speaker has spoken for his allotted time, the presiding Officer shall call him to order without delay.

(4) At meetings of the Conference, the Chairperson of a Commission or a Committee may be accorded precedence for the purpose of explaining the conclusions arrived at by the body concerned. In commission or committee meetings, a similar precedence may be given to the Chairperson of a working group.

Rule 13 (Points of Order)

During the discussion on any matter, and notwithstanding the provisions of Rule 12, a representative may at any time raise a point of order, and the point of order shall be immediately decided by the presiding Officer. Any representative may appeal against the ruling of the presiding Officer and any discussion on the point of order shall be governed by the procedure stated in Rule 16. The ruling of the presiding Officer shall stand unless over-ruled by a majority of votes cast. A representative speaking on a point of order may speak only on this point, and may not speak on the substance of the matter under discussion before the point was raised.

Rule 14 (Basic Proposals)

The draft Convention on Substantive Rules regarding Intermediated Securities, as it stood after the second reading of the text by the Conference at the end of the first session of the diplomatic Conference, shall constitute the basic proposal for discussion by the Conference.

Rule 15 (Motions and Amendments)

(1) A motion or amendment shall not be discussed until it has been seconded. Motions and amendments may be presented and seconded only by representatives. However, observers may make a motion or amendment provided that such motion or amendment is seconded by the representatives of two States.

(2) A motion shall not be withdrawn when an amendment to the motion is under discussion or has been adopted. A motion which has been withdrawn may be reintroduced by any representative.

Rule 16 (Procedural matters)

Subject to Rule 15(1) any representative may move at any time the suspension or adjournment of the meeting, the adjournment of the debate on any question, the deferment of discussion of an item, or the closure of the debate on an item. After such a motion has been made and explained by its proposer, only one speaker shall normally be allowed to speak in opposition to it, and no further speeches shall be made in its support before a vote is taken. Additional speeches on such motion may be allowed at the discretion of the presiding Officer, who shall decide the priority of recognition.

Rule 17 (Order of Procedural Motions)

Subject to Rule 13, the following motions shall have priority over all other motions, and shall be taken in the following order:

- (a) to suspend the meeting;
- (b) to adjourn the meetings;
- (c) to adjourn the debate on an item;
- (d) to defer the debate on an item;
- (e) for closure of the debate on an item.

Rule 18 (Reconsideration of Proposals)

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter and to two speakers opposing the motion, after which it shall be put immediately to the vote.

Rule 19 (Discussions in Working Groups)

Working groups shall conduct their deliberations informally and Rules 12(3), 13, 15, 16, 17 and 18 shall not apply to them.

Rule 20 (Voting Rights)

- (1) Each State duly represented at the Conference or at any body thereof shall have one vote.
- (2) Observers and technical advisers shall not be entitled to vote.

Rule 21 (Voting of presiding Officer)

The presiding Officer of the Conference or of any of its bodies shall not have the right of vote on behalf of his State.

Rule 22 (Majority required)

- (1) Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting. Decisions on matters of procedure shall be taken by a majority of the representatives present and voting.
- (2) If the question arises whether a matter is one of procedure or of substance, the presiding Officer shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the presiding Officer's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting.
- (3) For the purpose of these Rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives abstaining from voting or casting an invalid vote shall be considered as not voting.

Rule 23 (Method of Voting)

Voting shall normally be by voice, by show of hands, or by standing. In meetings of the Conference there shall be a roll-call if requested by the representatives of two States. The vote or abstention of each State participating in roll-call shall be recorded in the minutes.

Rule 24 (Conduct during Voting)

After the presiding Officer has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. Except in the case of elections held by secret ballot, the presiding Officer may permit representatives to explain their votes after the voting. The presiding Officer may limit the time to be allowed for such explanations.

Rule 25 (Division of Proposals and Amendments)

- (1) Parts of a proposal or amendment thereto shall be voted on separately if the presiding Officer, with the consent of the proposer, so decides or if a representative requests that the proposal or amendment thereto be divided and the proposer raises no objection. If the proposer objects to a request for division, permission to speak on the request shall be given first to the representative making the request to divide the proposal or amendment, and then to the mover of the original

proposal or amendment under discussion, after which the request to divide the proposal or amendment shall be put immediately to the vote.

(2) If all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall be considered to have been rejected as a whole.

Rule 26 (Voting on Amendments)

Any amendment to a motion shall be voted on before a vote is taken on the motion. When two or more amendments are moved to a motion, the vote should be taken on them in their order of remoteness from the original motion, commencing with the most remote. The presiding Officer shall determine whether a proposed amendment is so related to the motion as to constitute a proper amendment thereto, or whether it must be considered as an alternative or substitute motion.

Rule 27 (Voting on Alternative or Substitute Motions)

Alternative or substitute motions, shall, unless the meeting otherwise decides, be put to vote in the order in which they are presented, and after the disposal of the original motion to which they are alternative or in substitution. The presiding Officer shall decide whether it is necessary to put such alternative or substitute motions to vote in the light of the vote on the original motions and any amendments thereto. This ruling may be reversed by a majority of votes cast.

Rule 28 (Decisions on Competence)

Subject to Rule 13, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

Rule 29 (Tie vote)

In the event of a tie vote, a second vote on the motion concerned shall be taken at the next meeting, unless the Conference, Commission, Committee or working group decides that such second vote be taken during the meeting at which the tie vote took place. Unless there is a majority in favour of the motion on this second vote, it shall be considered lost.

Rule 30 (Proceedings of Commissions, Committees and Working Groups)

Subject to Rule 19, Rules 12 to 29 above shall be applicable, *mutatis mutandis*, to the proceedings of commissions, committees and working groups, except that decisions of such bodies shall be taken by a majority of the representatives present and voting but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by Rule 18.

Rule 31 (Co-ordination by the Steering Committee)

(1) The Steering Committee may meet from time to time to review the progress of the Conference and its commissions, committees and other subsidiary bodies and to make recommendations for furthering such progress. It shall also meet at such other times as the Chairperson deems necessary or upon the request of any other of its members.

(2) Questions affecting the co-ordination of their work may be referred by other commissions, committees and subsidiary bodies to the Steering Committee, which may make such arrangements as it thinks fit, including the holding of joint meetings of Committees or subcommittees and the establishment of joint working groups. The Steering Committee shall appoint, or arrange for the appointment of, the Chairperson of any such joint body.

Rule 32 (Languages)

(1) Documents of the Conference shall be prepared and circulated in the English and French languages.

(2) The English and French languages shall be used in the deliberations of the Conference and the Commission of the Whole. Speeches made in any of the two languages shall be interpreted into the other language.

(3) Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

(4) Documents and written statements submitted by observers will in principle be distributed by the Secretariat to the delegations at the Conference in the language in which they have been presented.

Rule 33 (Record of Proceedings)

(1) Minutes of the meetings of the Conference shall be prepared by the Secretariat and approved by the President of the Conference.

(2) Proceedings of commissions, committees and working groups shall be recorded in such form as the body concerned may decide.

Rule 34 (Amendment of the Rules of Procedure)

These Rules may be amended, or any portion of the Rules may be suspended, at any time by a decision of the Conference taken by a two-thirds majority vote of the representatives present and voting.

Rule 35 (Signature of Instruments)

- (1) The Final Act resulting from the deliberation of the Conference shall be submitted for signature by the delegations.
- (2) Full Powers shall be required of each representative or alternate representative who signs any convention or other international instrument which may be drawn up and opened for signature by the Conference.
- (3) Full Powers shall be issued either by the Head of State or Head of Government, or by the Minister for Foreign Affairs.

– END –