



**DIPLOMATIC CONFERENCE TO ADOPT A  
CONVENTION ON SUBSTANTIVE RULES  
REGARDING INTERMEDIATED SECURITIES  
Final session**  
Geneva, 5 to 7/9 October 2009

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## Comments

*(submitted by the Government of Poland)*

1. Poland would like to raise the following remarks on the UNIDROIT draft Convention on Substantive Rules regarding Intermediated Securities as well as on the Draft Official Commentary to the draft Convention.
2. In our opinion, for the purpose of strengthening legal certainty, the wording relating to securities account agreements in section I-36 of the draft Commentary should be amended. The current wording suggests that such agreements may be made in oral form (*1-36. An account agreement may be oral or in writing or in any other form*). This is a significant move away from the current draft Convention, which does not contain any provisions permitting oral agreements on managing securities accounts.
3. In our opinion the wording of the draft Official Commentary in sections 4-1 – 4-13 does not entirely provide a precise commentary to Article 4(a) of the draft Convention, which may lead to a far from unequivocal interpretation of supervisory and regulatory requirements relating to the management of securities accounts by intermediaries. The clear presumption that in the aforementioned Article mention is made of authorisation and supervision - as a primary condition for applying the provisions of the Convention via a declaration mechanism of the Contracting State – of the activities of intermediaries in relation to the management of securities accounts, would entail the adoption of the relevant supervisory norms for all entities engaged in the safekeeping of securities.
4. Moreover, the Polish Government would like to opt for amending the wording of Article 4(a) itself, changing the expression "*that activity*" with "*the activity of maintaining securities accounts*", which will introduce a greater level of precision to the Article itself.
5. The description in the draft Official Commentary on Article 9(1)(b) ("the right, by instructions to the relevant intermediary, to effect a disposition") does not address, in our opinion, the problem related to the term "*by instructions to the relevant intermediary*", contained within these provisions. These provisions do not include in their scope transferable rights via a securities book-entry made by the account holder of a pledge, or other such rights, which was the intention.

6. Therefore we would like to support a new wording of Article 9(1)(b) proposed by the authors of the draft Official Commentary as follows:

*(b) the right, by instructions to the relevant intermediary or in accordance with an agreement to grant an interest in intermediated securities or control agreement, to effect a disposition under Article 11 or grant an interest under Article 12*

as well as making the relevant amendment to the Official Commentary on this Article.

7. The Polish Government would like to support, in relation to the provisions of the draft Official Commentary on Article 15 (on unauthorised debits), amendment of the wording in Article 15(1)(a) of “*person in whose favour a designating entry has been made*”, to “*person to whom an interest in the relevant intermediated securities has been granted under Article 12*”. The reference to Article 12 will clarify that the requirement for authorisation sent to an intermediary to debit an account, set out in Article 15, does not cover the purchase or control over securities on an account on the basis of disposal methods defined in non-convention law.

8. This would also require the relevant changes to the draft Official Commentary.

9. The part of the draft Official Commentary relating to Article 18 (on acquisition by an innocent person in good faith) shows the difficulty of preparing a universal standard in this respect. The authors of the draft Commentary indicate the narrow protection offered to an innocent person acquiring in good faith as defined in Article 18(1) and 18(2), which does not cover designating entries. This part of the draft Commentary to some extent clarifies the provisions of Article 18, however does still raise doubts as to the practicalities. It is therefore worth reaffirming that the operating rules of CSDs (the customary operators of SSSs) should be recognised in the Convention as a method for eliminating entries made by error in securities accounts.

10. The Polish Government therefore would like to maintain the wording of Article 16, which is related to Article 18 and which was adopted in Geneva, which leaves the question of the purchase of securities in good faith to the rules of securities settlement systems (“*Subject to Article 18, the non-Convention law and, to the extent permitted by the non-Convention law, the account agreement or **the uniform rules of a securities settlement system** determine whether and in what circumstances a debit, credit, designating entry or removal of a designating entry is invalid, is liable to be reversed or may be subject to a condition, and the consequences thereof*”).

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