INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT CONVENTION ON HARMONISED SUBSTANTIVE RULES REGARDING INTERMEDIATED SECURITIES
Second session
Rome, 6 / 14 March 2006

UNIDROIT 2006
Study LXXVIII – Doc. 38
Original: English
March 2006

COMMENTS BY GOVERNMENTS AND INTERNATIONAL ORGANISATIONS

(Comments by the Government of Argentina)

Section 1:

We consider that it would be advisable to incorporate the concepts included in the second subparagraphs of Section 1(m) and 1(n) ["in such circumstances and to such matters as may be provided by the account agreement or the domestic non-Convention law"] in the wording of the first subparagraphs.

We understand that this amendment will be equal to the treatment given to the collateral taker and the account holder, regarding the instructions they send to the intermediary.

Section 6:

Regarding paragraph 2(b) of this Article, we would like to point out that in our internal legal framework, the fact that the relevant intermediary is itself the collateral taker is not enough to consider that the securities have been delivered into the possession or control of the collateral taker. It is still necessary to make a registration in the securities account.

Therefore, we suggest two possibilities:

i) Eliminating the subparagraph, since we understand that provisions of subparagraph 2(c) include the case of an intermediary that is also the collateral taker.

ii) Adding, at the end of the subparagraph, "and the requirements of the domestic non-Convention law have been fulfilled".

Section 7:

The comments made on Article 6 applies also to subparagraph 3(b) of Article 7. Therefore, we suggest to include the same phrase at the end of such subparagraph.

Regarding paragraph 4, we think that the phrase between brackets should not be modified or deleted, since it would give juridical confidence to every party involved in the operation.

I consider that the possibility of reversing a debit or credit of securities (or a designation entry) should have some kind of limitation (e.g., time limit). Otherwise, participants would never be certain of the effectiveness of a credit or debit made in their securities account.

We suggest further discussion about this issue during the next session to be held in Rome.

Chapter VII:

Regarding paragraph 1 on Section 22, we understand that natural persons should be included in the term “collateral provider”. Otherwise, we could have some collateral transactions that would be out of the scope of the Convention.

For the same reason, we believe that the words “of a financial character” should be deleted from the paragraph 2.