



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR  
THE PREPARATION OF A DRAFT CONVENTION ON  
SUBSTANTIVE RULES REGARDING INTERMEDIATED  
SECURITIES**

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**Working Group on so called Transparent Systems – Intersessional Work**  
**Comments of Maltese representative on the draft Working Paper on Transparent Systems**

*(submitted by the Government of Malta)*

1. The Maltese Delegation is grateful for the invaluable insights and useful work that the Chairs of the Working Group on Transparent Systems have provided in their Doc. 60.

2. We would like to state that the securities holding model and pattern in Malta follows the "mixed systems" model as mentioned in Doc. 60 wherein part of the holding chain is transparent while another part may be intermediated through intermediaries.

3. To the extent that the issuer CSD in Malta acts as a registrar without exercising any rights or interest on the registered securities, the Maltese Delegation agrees that such securities holdings would not form part of the CSD assets available for its creditors in the event of any enforcement action.

4. We support the views expressed in Doc. 60 calling for clarifications in respect of Articles 3, 19, 21 and 22 of the UNIDROIT Draft Convention. It may well be possible to cater for such clarifications through appropriate elucidation in an Explanatory Report that is meant to accompany the Text of the Final Draft Convention. We are willing to participate in the drafting of such an Explanatory Report which it is hoped will also be made available to the participating Delegations at the next session of the Committee of Governmental Experts next May.

5. On the other hand, Doc. 44 and the Annex to Doc. 66 make ample reference to the role of a "middle entity" or "account operator" that intervenes at an intermediate level between the issuer CSD (as the highest entity) and the underlying identified investor. Now this concept of an "account operator" as a participant at the CSD is non-existent in the set-up of the CSD in the Maltese context. In the absence of any court injunctions or other statutory restrictions, securities accounts at the CSD are opened and made out as freely available to the named investor or intermediary (in the case, for instance, of an omnibus/custodian account) holding such accounts, unless account holders would have granted any rights of pledge, collateral interests or other interests (including rights of usufruct or mandate) in respect of identified securities holdings in favour of identified third parties. It follows therefore that no account operators are necessary for either the opening or the maintenance of a securities account with the CSD.

6. It is only in the context of credit/debit market transfers of securities that standard and published procedures contemplate the initiating and exclusive roles of licensed stockbrokers or appointed financial intermediaries giving effect to such transfer orders as authorised by the account holders themselves.

7. Hence, while the said Annex provides a useful overview of the role of account operators in the Finnish and Colombian systems, it should not be understood as necessarily and invariably contemplating the use of such account operators in all transparent systems. In this regard, we do not understand why the proposed definition of "transparent systems" should necessarily require at least two or more entities in the holding chain (apart from the issuer and the investor) since it is the current Maltese practice in the context of a transparent system, to have just the CSD placed in between the issuer and the investor as the registrar and holding entity itself without the need for any other mediating middle entity.

8. The Maltese delegation hopes that the above comments may contribute to a deeper analysis of transparent systems and we look forward to sharing our thoughts with other interested Delegations at the Working Group level prior to any submission to the CGE in its Plenary Session this coming 21<sup>st</sup> May 2007.