



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
SUBSTANTIVE RULES REGARDING INTERMEDIATED
SECURITIES
INFORMAL WORKING GROUP ON INSOLVENCY-RELATED
ISSUES**

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**Informal Working Group on Insolvency-related Issues
Comments on the Paper of the Chairman (Doc. 97)**

(submitted by the delegation of Australia)

Australia has a strong interest in the interaction of the substantive rules on intermediated securities with the domestic corporate insolvency framework. We appreciate the work of the Informal Working Group in identifying the issues surrounding draft Article 18 (and 24/33) and think the points raised in the paper have merit.

We accept that certainty for participants in the intermediated securities market is important and that harmonisation through international instruments is one way to achieve this. However, there are also considerations of certainty and predictability of insolvency outcomes for other stakeholders - especially other creditors - that need to be considered. Variation of the normal rules of corporate insolvency in special cases is not something that should be embarked upon lightly and exceptions, though they exist, have traditionally been very few.

As the paper notes at paragraph 10, prospective Contracting States need to assess the operation and scope of their insolvency law in arriving at a position in relation to whether a general disapplication of domestic insolvency law is warranted. Such an assessment would achieve optimal results if conducted with a good understanding of the policy underpinnings of the draft Convention and the policy behind the insolvency framework, and in consultation with relevant stakeholders.

While we think the concerns and issues raised in the paper about the interaction of draft Articles 18, 24 and 33 with the insolvency framework are valid, more work is needed - preferably in consultation with relevant stakeholders - in terms of coming to a policy position on whether the override/disapplication proposals in the draft Articles are warranted.

Finally we note that the UNCITRAL Working Group on Insolvency Law, which produced the UNCITRAL Legislative Guide on Insolvency Law, has previously commented on proposals of other UN Working Groups that would have an impact on insolvency laws. We suggest that, if they have not already done so, the Committee seek input on the paper from the UNCITRAL Insolvency Law Working Group Secretariat.