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Item No. 6 on the agenda: Transactions on transnational and connected capital markets -
**(a) UNIDROIT Convention on Substantive Rules regarding Intermediated Securities:
Follow-up work and promotion**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Completion of Official Commentary on the UNIDROIT Convention on Substantive Rules regarding Intermediated Securities and proposal for its promotion and follow-up activities</i>
<i>Action to be taken</i>	<i>See paragraph 8, below</i>
<i>Mandate</i>	<i>Work Programme 2011-2013</i>
<i>Priority level</i>	<i>Promotion of instruments – No priority</i>
<i>Status</i>	<i>On target</i>
<i>Related documents</i>	<i>Annual Report 2010 (C.D. (90) 2), UNIDROIT 2010 – S78B/CME/1/Doc. 4, DC11/DEP/Doc. 1.</i>

INTRODUCTION

1. The UNIDROIT Convention on Substantive Rules for Intermediated Securities (referred to hereafter as “the Geneva Securities Convention”) was adopted at the Final session of the final session of the diplomatic Conference to Adopt a Convention on Substantive Rules regarding Intermediated Securities (Geneva, 5-9 October 2009). At the end of the period specified to verify the text of the Convention and of the Resolutions adopted by the Conference (as to the linguistic changes required to make the texts in the two official languages consistent with one another), those texts became authentic and can be found on the UNIDROIT website.¹

¹ Convention: <http://www.unidroit.org/english/conventions/2009intermediatedsecurities/convention.pdf>
Final Act: <http://www.unidroit.org/english/conventions/2009intermediatedsecurities/finalact.pdf>

2. As of today, the Convention has one Signatory State, Bangladesh. In September 2010, the Federal Executive Council of Nigeria (the Nigerian Federal Cabinet) approved that Nigeria should sign the Geneva Securities Convention and the Hague Securities Convention.

FINALISATION OF THE OFFICIAL COMMENTARY

3. In conformity with Resolution No. 2 adopted at the closing of the final session of the diplomatic Conference, the Secretariat, in consultation with the Chairperson and three members of the Drafting Committee and co-ordinated by a Steering Committee, prepared the necessary amendments and additions to the Official Commentary, with a view to reflecting the basic principles and pertinent questions that the diplomatic Conference considered should be dealt with by the Official Commentary. On 12 August 2010, in accordance with the procedure decided by the Conference, the final draft of the Official Commentary was distributed to all States that had participated in the negotiations as well as to the Observers, inviting them to submit any comments they may have within four months.

4. Several States and Observers submitted comments to the draft that involved modifications being made to the current text of the Commentary. The Secretariat, always in consultation with the Chairperson and members of the Drafting Committee, is therefore continuing with the work necessary to finalise the Official Commentary, which is about to be submitted to the Steering Committee. The Secretariat hopes to have the final, revised version available at the end of the first semester of 2011, with a view to its being published as soon as possible.

DRAFT DECLARATIONS MEMORANDUM

5. The Secretariat has also prepared a draft *Declarations Memorandum* concerning a number of practical questions that Contracting States are advised to take into consideration when they sign, ratify, accept or approve the Convention, or adhere to it. The draft *Declarations Memorandum*, which takes inspiration from the Official Commentary, provides information on the declarations, on their scope, their purpose and their content, as well as on the steps to be taken when they are made. The draft *Declarations Memorandum* takes into consideration the experience gained by the UNIDROIT Secretariat as Depositary of international conventions, as evinced, for example, from the *Declarations Memoranda* prepared for the Cape Town Convention and its Protocols. This draft *Declarations Memorandum*, a preliminary version of which has been prepared for the Governing Council session for information, will be finalised by the Secretariat after the completion of the Official Commentary.

PROMOTION OF THE GENEVA CONVENTION

6. In its Resolution No. 3, adopted at the closing of the final session, the Diplomatic Conference requested that UNIDROIT, in its capacity as Depositary of the Convention, make all appropriate efforts, having regard to available resources, to organise activities with a view to promoting awareness and understanding of the Convention and assessing its continued effectiveness in light of relevant contemporary developments in market circumstances and trends in market regulation, and also with a view to encouraging the Convention's early entry into force.

(a) *First meeting of the Committee on Emerging Markets Issues, Follow-Up and Implementation*

7. The Secretariat convened the first meeting of the States and observers represented on the Committee on Emerging Markets Issues, Follow-Up and Implementation² in Rome from 6 to 8 September 2010 to examine the reception given to the Geneva Securities Convention in the various countries and consider concrete proposals for its promotion (see the report of this meeting in Unidroit 2010 – S78B/CEM/1/Doc. 4). Almost 90 persons attended the meeting, representing Governments, international organisations and others. The first two days of the Committee's meeting took the form of a Colloquium on Financial Markets Law, some presentations of which the Secretariat published in the 2010 3/4 issue of Uniform Law Review (see the programme in Annex 1). In the remaining day the Committee reconvened in a closed meeting open only to its members and delegates of UNIDROIT member States attending as observers to consider the following items of its agenda: (a) the draft Accession Kit to the Geneva Securities Convention; (b) the reception given to the Convention in the various countries and proposals for its promotion; (c) the scope of a possible legislative guide on principles and rules to enhance trading in emerging market (see document C.D.(90) 5(b)); and (d) the proposed new international instrument on the netting of financial instruments (see document C.D.(90) 5(c)).

(b) *Promotion seminars*

8. The Secretariat seeks to promote the Convention as much as possible, in particular by participating to conferences and colloquia such as:

- Congress entitled: "Intermediated Securities – The Geneva Securities Convention, the European Securities Law Directive and their Impact on Securities Laws of selected European Jurisdictions", organised in Luxembourg by the Faculty of Law, Economics and Finance of the University of Luxembourg and the Centre for Banking and Financial Law of the University of Geneva on 23 and 24 September 2010, with the participation of the Secretary General of UNIDROIT;

- Conference entitled "Intermediated securities risk in Europe and beyond", organised in London by the UK Foundation for International Uniform Law and hosted by Freshfields Bruckhaus Deringer on 30 March 2011; and

- International Symposium entitled "Civil Law and Economics 2020: Development and Harmonisation Perspectives of International Economic and Trade Legislation", organised by the University of Costa Rica and the Institute of Private Law (Russia) under the auspices of the Ministry of Foreign Affairs of Costa Rica and the Russian Embassy in Costa Rica on 7 and 8 April, 2011. with participants from Costa Rica, Russian Federation, UNIDROIT, China, Italy, United States/The Netherlands.

ACTION TO BE TAKEN

9. *The Secretariat would invite the Council to take note of the progress made in the revision of the draft Official Commentary to the Geneva Securities Convention and of the activities to promote the Convention.*

² The Committee on Emerging Markets Issues, Follow-up and Implementation is co-chaired by Mr Alexandre Pinheiro dos Santos (Brazil) and Ms Niu Wenjie (China). Members are: Argentina, Cameroon, Chile, France, Greece, India, Japan, Nigeria, Republic of Korea, South Africa, United States of America and the European Union. Indonesia, the European Central Bank, European Issuers, the Hague Conference on Private International Law and the Trade Association for the Emerging Markets have been admitted as observers.

COLLOQUIUM

**THE LAW OF SECURITIES TRADING IN EMERGING MARKETS:
LESSONS LEARNED FROM THE FINANCIAL CRISIS
AND LONG-TERM TRENDS**

Villa Aldobrandini, Via Panisperna 28, 00184 Rome
6 -7 September 2010

PROGRAMME

**MONDAY 6 SEPTEMBER 2010
ENHANCING TRANSPARENCY AND INVESTOR PROTECTION IN SECURITIES
MARKETS**

9:00 am – 10:00 am Arrival and Registration of Participants

10:00 am – 10:15 am **Opening Session**

Chairman H.E. Ambassador Patrick HENNESSY, Chairman of the 65th session of the UNIDROIT General Assembly

Welcome Address - Mr José Angelo ESTRELLA FARIA, Secretary-General, UNIDROIT

Opening remarks

Mr Alexandre PINHEIRO DOS SANTOS, Attorney General, Brazilian Securities and Exchange Commission (CVM), Rio de Janeiro

Ms NIU Wenjie, Director, Legal Affairs Department, China Securities Depository and Clearing Corporation Ltd (SD&C), Beijing

10:30 am – 1:00 pm **1st Session - Legal measures to deter manipulation and other unfair trading practices (including insider trading)**

Chairman Professor Herbert KRONKE, University of Heidelberg, former Secretary-General of UNIDROIT

Mandatory and Contract-based Ownership Disclosure – *Professor Luca ENRIQUES, Consob Commissioner, Rome*

The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU): an International Benchmark for Securities Enforcement – *Ms Rita CUNHA, OICV-IOSCO, Madrid*

12:30 pm – 1:00 pm Comments/Questions by Participants

1:00 pm – 2:30 pm Lunch

2:30 pm – 6:30 pm	2nd Session
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Chairman Mr Hans KUHN, Director, Swiss National Bank

2:30 pm – 4:00 pm ***Fair and equitable treatment of security holders (including take-over bids)***

Take-over Rules for Listed Companies, the Basic Issues – *Professor Peter DORALT, former Chairman, Austrian Takeover Commission*

Investor Protection in the context of Take-over Bids – *Professor Alain PIETRANCOSTA, University of Paris I*

Issuers Regulation after the Financial Crisis – *Mr Carmine DI NOIA, Vice Director General, Assonime*

4:00 pm – 4:30 pm Comments/Questions by Participants followed by refreshments

4:30 pm – 6:00 pm ***Collective investment schemes: protection of client assets, prevention of conflict of interests and liability***

UCIs: Prevention of Conflicts of Interest, Protection of Assets and Liability – *Ms Isabelle LEBBE, Arendt & Medernach Law Firm, Luxembourg*

The Geneva Convention Meets Securities Regulation: Beyond Intermediated Securities – *Professor Charles W. MOONEY, Jr., University of Pennsylvania, Philadelphia*

6:00 pm – 6:30 pm Comments/Questions by Participants

6:30 pm – 8:00 pm *Vin d'honneur*

TUESDAY 7 SEPTEMBER 2010
THE LEGAL FRAMEWORK FOR SECURITIES TRADING IN EMERGING MARKETS:
THE GENEVA SECURITIES CONVENTION AND BEYOND

9:00 am – 11:00 am **1st Session – Securities trading meets corporate law: what are "securities" and who holds them?**

Chairman Professor Hideki KANDA, University of Tokyo

Corporate law and Geneva Convention: a Bone of Contention ? – *Mr Hubert de VAUPLANE, General Counsel Crédit Agricole S.A. Group, Paris*

Trends and Patterns in Brazilian Law – *Ms Nora RACHMAN, Securities Law Expert, São Paulo*

Who is the shareholder? Shareholders, account holders and nominees – *Professor Luc THÉVENOZ, University of Geneva*

10:30 am – 11:00 am Comments/Questions by Participants followed by refreshments

11:00 am – 1:00 pm **2nd Session – Securities trading meets property law: holding patterns and rights of account holders**

Chairman Professor Charles W. MOONEY, Jr., University of Pennsylvania, Philadelphia

Book-entry Operations and Property Law – *Professor Hideki KANDA, University of Tokyo*

Acquisition and Disposition of Intermediated Securities: The Interplay between the Convention and National Law – *Professor Francisco J. GARCIMARTÍN ALFÉREZ, Universidad Rey Juan Carlos, Madrid*

Security interests under the Geneva Securities Convention – matters optional or left to law outside the Convention – *Mr Michel DESCHAMPS, McCarthy Tétrault, Montréal*

Fraud and error under the Convention and under English law – *Mr Guy MORTON, Freshfields Law Firm, London*

12:30 pm – 1:00 pm Comments/Questions by Participants

1:00 pm – 2:30 pm

Lunch

2:30 pm – 4:30 pm **3rd Session - *Insolvency and liability of intermediaries***

Chairman Professor Luc THÉVENOZ, University of Geneva

Cross border Insolvency: Impact on Securities Holding and Settlement –
Mr Wouter BOSSU, Legal Department, International Monetary Fund

Loss Sharing in the Insolvency of an Intermediary – *Mr José M. GARRIDO,*
Private Sector and Infrastructure Practice Group (LEGPS), World Bank

Development of Intermediated Securities and Insolvency Laws in Transition
Economies – *Professor Alexander BIRYUKOV, Kyiv National University*

4:00 pm – 4:30 pm Comments/Questions by Participants followed by refreshments

4:30 pm – 6:30 pm **4th Session – *Governance structures and regulation of securities settlement and clearing systems***

Chairman Mr Alexandre PINHEIRO DOS SANTOS, Attorney General, Brazilian Securities and
Exchange Commission (CVM), Rio de Janeiro

The Implications for the Regulation of Securities Clearing and Settlement
Systems in the U.S. from the Recent Financial Reform Legislation – *Mr Michael*
SCHUSSLER, Federal Reserve Bank of New York

Some International Aspects of the Regulation on Financial Markets
Infrastructures – *Mr Konstantinos TOMARAS, European Commission*

The Challenges of Establishing an Efficient Securities Settlement System in an
Emerging Market – *Mr Kennedy AIGBEKAEN, Nigerian SEC*

6:00 pm – 6:30 pm Comments/Questions by Participants

6:30 pm – 7:00 pm **Closing remarks**

Professor Berardino LIBONATI, President of UNIDROIT

Mr José Angelo ESTRELLA FARIA, Secretary-General, UNIDROIT