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Item No. 6 on the agenda: Transactions on transnational and connected capital markets –
(b) Principles and rules capable of enhancing trading in securities in emerging financial markets

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Examination of initial steps to develop a future legislative guide on principles and rules capable of enhancing trading in securities in emerging markets</i>
<i>Action to be taken</i>	<i>See paragraph 12 below</i>
<i>Mandate</i>	<i>Work Programme 2011-2013</i>
<i>Priority level</i>	<i>Medium/low</i>
<i>Related documents</i>	<i>UNIDROIT 2010 – C.D. (89) 5(b); UNIDROIT 2010 – S78B/CEM/1/Doc. 3, Part II; UNIDROIT 2010 - S78B/CEM/1/Doc. 4</i>

MANDATE

1. The Governing Council will recall that, following the completion of work to adopt the Intermediated Securities Convention, and in light of the Governing Council's repeated affirmation of the importance it attached to the subject (see C.D. (88) 17, § 59), the UNIDROIT General Assembly, at its 65th session 2009, decided to include work on a "legislative guide containing principles and rules capable of enhancing securities trading in emerging markets" in the current UNIDROIT Work Programme (A.G. (65) 10, §§ 18 et 26).

2. At the close of its 89th session in 2010, the Council took note of the steps which the Secretariat was planning to take with a view to preparing a future Legislative Guide containing principles and rules capable of enhancing trading in emerging markets. In light of the Secretariat's work load, and considering current projects and projects proposed for the 2011-2013 triennial period, the Council decided that work on the Legislative Guide would be given medium / low priority.

3. At its 67th session in December 2010, the General Assembly confirmed the inclusion of this topic in the Work Programme for the 2011-2013 triennial period and the level of priority suggested by the Governing Council, i.e., that the work should be accorded medium / low priority (cf. UNIDROIT 2010 – A.G. (67) 9 rev., Annex III).

STATUS OF THE PROJECT

4. The Governing Council will recall that, as a first stage towards the development of a Legislative Guide, the UNIDROIT Secretariat approached a consultant to prepare an "Accession Kit" intended to advise countries ratifying the Geneva Securities Convention on how best to incorporate the Convention and integrate it into their domestic legal systems (cf. UNIDROIT 2010 – C.D.(89)5 (b)).

5. The complexity of the subject-matter covered by the Geneva Securities Convention, and the delicate balance between uniform rules and domestic law, prompted the Secretariat to prepare recommendations specifically dealing with the declarations system (Part I of the draft Kit) (cf. UNIDROIT 2011 – C.D.(90)5 (a)), to provide guidance as to the relationship between the Convention rules and domestic law in the Contracting States, and make suggestions on how to tackle issues not dealt with in the Convention or which Contracting States are free to deal with in their own way (Part II of the draft Kit). The Secretariat felt that this could help to generate a discussion of all the other legal aspects involved in establishing an up-to-date financial market and thus provide the groundwork for the enlarged Legislative Guide containing principles and rules capable of enhancing trading in emerging markets.

6. The final version of this document was submitted to the Secretariat in August 2010 and formed the basis for the work of the 1st meeting of the *Committee on emerging markets issues and implementation* (hereinafter: *the Committee*)¹ which was held at UNIDROIT headquarters in Rome from 6 to 8 September 2010 (cf. UNIDROIT 2010 - S78B/CME/1/Doc. 4). One of the items on the agenda was the scope of the prospective Legislative Guide, in light of various related legal aspects that had been tentatively identified at an early stage of the work on the project.²

7. The members of the Committee stressed the importance of such a document but felt that great care would have to be taken to avoid overlap with the Official Commentary, which should remain the sole text designed to explain the issues dealt with in the Convention through the Convention itself. The document under scrutiny was intended as a useful guide for prospective signatories or Contracting States to ensure that the international instrument they were adopting was consistent with their domestic legal system and to enable them, where appropriate, to amend their legal provisions.

8. The Committee also indicated that the Colloquium that had preceded their meeting had shown that some of the issues under discussion concerned areas in which UNIDROIT had no particular expertise, since they did not fall within the Organisation's mandate (for example, securities trading, market integrity, securities lending, the timing of settlement, finality in the

¹ The Committee on Emerging Markets Issues and Implementation is co-chaired by Mr Alexander Pinheiro dos Santos (Brazil) and Ms Niu Wenjie (China). Members are: South Africa, Argentina, Cameroon, Chile, United States of America, France, Greece, India, Japan, Nigeria, Republic of Korea and the European Union. Indonesia, the European Central Bank, the Hague Conference on Private International Law, European Issuers and the *Trade Association for the Emerging Markets* have been granted observer status.

² Such as "(a) Nature and types of securities, including fungible and dematerialised securities; (b) Transactional structure of bond issues; (c) Transactional structure of share issues (IPOs); (d) Organisational and transactional provisions to enhance liquidity on secondary markets; (e) General contract law and special rules relating to trading in securities; (f) Legal issues relating to trading and settlement; (g) Legal issues relating to collateralised transactions; (h) Regulatory framework" (see <http://www.unidroit.org/english/workprogramme/study078/main.htm>).

system or market usages, etc.); given the complexity of the subject, it would make sense for the Secretariat to secure the assistance of a wide range of experts and of other Organisations, in particular UNCITRAL.

9. The Secretariat indicated that the prospective Guide would not be a uniform law text but simply a document setting out different options. At all events, the starting-point would be those areas of the law which, while related to the Geneva Securities Convention, were not directly or fully dealt with by that instrument. Part II of the draft "Accession Kit" would be something in the nature of a roadmap.³ (see Table of Contents, Part II, annexed to this document).

PROCEDURE/TIMETABLE

10. The Secretariat intends to send Part II of the draft "Accession Kit" to a number of experts for in-depth comment as to the scope and content of the prospective Legislative Guide.

11. The outcome of these consultations will be submitted to the participants in the next meeting of the Committee provided this meeting, initially planned for November 2011, can be held before March 2012, so as to allow for more wide-ranging consultations as to the emerging markets' real needs in terms of capital market legislation and regulation.

ACTION TO BE TAKEN

12. *The Secretariat invites the Council to examine the first steps envisaged with a view to developing a future legislative guide on principles and rules capable of enhancing trading in emerging financial market and to decide on the procedure to be followed.*

³ UNIDROIT 2010 – S78B/CME/1/Doc. 3, Part II, pp. 40-57.

ANNEX**Accession Kit to the UNIDROIT Convention on Substantive Rules for Intermediated Securities****("Geneva Securities Convention")**

(Draft prepared by the Secretariat – English only)

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