



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

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**DIPLOMATIC CONFERENCE TO ADOPT A  
CONVENTION ON SUBSTANTIVE RULES  
REGARDING INTERMEDIATED SECURITIES**  
Geneva, 1 to 13 September 2008

UNIDROIT 2008  
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## **FINAL ACT**

**of the first session of the diplomatic Conference to Adopt a Convention  
on Substantive Rules regarding Intermediated Securities held under the  
auspices of the International Institute for the Unification of Private Law  
in Geneva from 1 to 12 September 2008**

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### **of the first session of the diplomatic Conference to Adopt a Convention on Substantive Rules regarding Intermediated Securities held under the auspices of the International Institute for the Unification of Private Law in Geneva from 1 to 12 September 2008**

The Plenipotentiaries at the first session of the diplomatic Conference to Adopt a Convention on Substantive Rules regarding Intermediated Securities, held under the auspices of the International Institute for the Unification of Private Law, met in Geneva, at the invitation of the Government of the Swiss Confederation, from 1 to 12 September 2008 for the purpose of considering the *draft Convention on Substantive Rules regarding Intermediated Securities*, prepared by four sessions of a Committee of Governmental Experts of the International Institute for the Unification of Private Law.

Representatives of the Governments of 52 States participated in the Conference.

The representatives of the Governments of the following 41 States presented credentials in due and proper form:

Albania, the Republic of	Japan
Argentine Republic, the	Latvia, the Republic of
Australia	Luxembourg, the Grand Duchy of
Austria, the Republic of	Malta, the Republic of
Belgium, the Kingdom of	Netherlands, the Kingdom of the
Brazil, the Federative Republic of	Nigeria, the Federal Republic of
Canada	Poland, the Republic of
Chile, the Republic of	Portuguese Republic, the
China, the People's Republic of	Qatar, the State of
Czech Republic, the	Republic of Korea, the
Denmark, the Kingdom of	Slovenia, the Republic of
Equatorial Guinea, the Republic of	South Africa, the Republic of
Finland, the Republic of	Spain, the Kingdom of
French Republic, the	Sweden, the Kingdom of
Germany, the Federal Republic of	Swiss Confederation, the
Hellenic Republic, the	United Kingdom of Great Britain
Hungary, the Republic of	and Northern Ireland, the
India, the Republic of	Thailand, the Kingdom of
Indonesia, the Republic of	Turkey, the Republic of
Ireland	Ukraine
Italian Republic, the	United States of America, the

The following 11 States also participated in the Conference:

Burkina Faso	Malawi, the Republic of
Burundi, the Republic of	Mexican States, the United
Cambodia, the Kingdom of	Nepal
Cameroon, the Republic of	Russian Federation, the
Libyan Arab Jamahiriya,	Tunisia, the Republic of
the Socialist People's	Venezuela, the Bolivarian Republic of

The European Community also participated in the Conference.

The following 11 international Organisations and groups were represented by observers:

Asociación Americana de derecho internacional privado (ASADIP)  
 Association of Global Custodians (AGC)  
 Bank for International Settlements (BIS)  
 European Banking Federation (EBF)  
 European Central Securities Depositories Association (ECSDA)  
 European Issuers  
 Hague Conference on Private International Law (HCCH)  
 International Monetary Fund (IMF)  
 International Swaps and Derivatives Association Inc. (ISDA)  
 Trade Association for the Emerging Markets (EMTA)  
 United Nations Commission on International Trade Law (UNCITRAL)

The European Central Bank (ECB) also participated in the Conference as observer.

The Conference elected as President Mr Dáithí Ó Ceallaigh (Ireland) and further elected as Vice-Presidents:

Mr Harold Burman (United States of America)  
 Mr Antonio Paulo Cachapuz de Medeiros (Brazil)  
 Mr Ranganayakulu Jagarlamudi (India)  
 Mr James Popple (Australia)  
 Ms Maria Vermaas (South Africa).

The Secretariat of the Conference was as follows:

*Secretary General* – Mr Herbert Kronke, Secretary General  
*Executive Secretary and Chief Conference Officer* – Ms Marina Schneider, Senior Officer  
*Deputy Secretary and Chief Scientific Officer* – Mr Thomas Keijser, Senior Officer  
*Deputy Secretary* – Mr John Atwood, Senior Officer  
*Deputy Secretary* – Ms Frédérique Mestre, Senior Officer  
*Deputy Secretary* – Ms Alessandra Zanobetti, Deputy Secretary-General

Other officials of UNIDROIT also provided services to the Conference.

The Conference established a Commission of the Whole, which was chaired by Mr Hans Kuhn (Switzerland); Mr Ulrik Rammeskov Bang-Pedersen (Denmark) was elected Vice-Chairperson of the Commission of the Whole. The Conference also established the following Committees:

*Credentials Committee*

Chairperson: Mr Mohammed Kawu Ibrahim / Mr Edosa Kennedy Aigbekaen (Nigeria)

Members: Argentina  
 Australia  
 Greece  
 Indonesia  
 Nigeria

Adviser: Switzerland

*Drafting Committee*

Chairperson: Mr Hideki Kanda (Japan)

Members: Belgium  
Brazil  
Canada  
Chile  
Germany  
Finland/Sweden  
France  
Japan  
Luxembourg  
South Africa/Nigeria  
Switzerland  
United Kingdom  
United States of America  
  
European Community

Observers: European Central Bank  
Trade Association for the Emerging Markets

*Final Clauses Committee*

Chairperson: Mr Sébastien Cochard (France)

Members: Argentina  
Canada  
China  
France  
Germany  
Italy  
Switzerland  
Ukraine  
United States of America

*Committee on Emerging Markets Issues, Follow up and Implementation*

Co-Chairpersons: Mr Antonio Paulo Cachapuz de Medeiros (Brazil)  
Ms Huang Cheng (China)

Members: Argentina  
Chile  
France  
Greece  
India  
Japan  
Nigeria  
Republic of Korea  
South Africa

Ukraine  
United States of America

European Community

Observers: Indonesia  
European Central Bank  
European Issuers  
Hague Conference on Private International Law  
Trade Association for the Emerging Markets

The Conference took note with satisfaction of the advancement of the work aiming at the finalisation of the *draft Convention on Substantive Rules regarding Intermediated Securities* and of the fact that the second reading of the text has been completed.

The text of the draft Convention and of the Resolutions adopted by the Conference are subject to verification by the Secretariat of the Conference under the authority of the President of the Conference within a period of thirty days from the date hereof as to the linguistic changes required to make the texts in the two official languages consistent with one another.

The Conference furthermore adopted by consensus the following Resolutions:

**RESOLUTION N° 1****relating to the State of Work and Further Proceedings for the Adoption of the draft Convention on Substantive Rules regarding Intermediated Securities**

*THE CONFERENCE,*

*HAVING ADVANCED* the work aimed at the finalisation of the draft Convention in a satisfactory manner;

*RECOGNISING* that the substantial problem areas identified prior to this Conference as being of significant importance and in need of a widely shared solution (good faith acquisition, insolvency, securities settlement systems) have been successfully resolved;

*MINDFUL* that the Conference has successfully accomplished the policy choices regarding intermediated securities and that the second reading of the draft Convention has been completed;

*RECOGNISING* the particular complexity of this instrument stemming from the functional approach, the many interfaces between uniform law and non-harmonised law, and its subject matter;

*MINDFUL* of a number of delegations' desire to have made available a first draft of the Official Commentary on the Convention to be prepared in accordance with Resolution No. 2 prior to its adoption with a view to deepening their understanding of the draft text as agreed at the outcome of the first session of the Conference;

*RESOLVES:*

*TO EXPRESS* its gratitude to the Government of the Swiss Confederation for having generously hosted this Conference and for indicating its willingness to host a brief final session of the diplomatic Conference for the finalisation and adoption of the draft Convention on a date not later than September 2009;

*TO REQUEST* that invitations to that final session of the Conference be sent out no later than March 2009;

*TO REQUEST* that the first draft of the Official Commentary prepared in accordance with Resolution No. 2 be circulated to all negotiating Governments and observers no later than three months prior to the opening of the final session of the Conference;

*TO INVITE* delegations and observers to submit any request to amend the text of the draft Convention no later than six weeks prior to the opening of the final session, indicating significant problems capable of preventing the Convention from working properly;

*TO REQUEST* the Chairperson of the Drafting Committee, not more than three members of the Drafting Committee to be appointed by him, the Chairperson of the Commission of the Whole, the Chairperson of the Final Clauses Committee, the Chairperson of the Credentials Committee, the Co-Chairpersons of the Committee on Emerging Market Issues, Follow-up Work and Implementation, the Chairperson of the Working Group on Insolvency and the Co-Chairpersons of the Working Group on Settlement and Clearing Systems, in close co-operation with the UNIDROIT Secretariat, to examine the aforementioned requests for amendment and the reasons given and to provide the Conference with recommendations as to whether the submissions requesting amendments meet the aforementioned test, it being understood that such recommendations are not binding; and

*TO INVITE* all delegations and observers to attend the final session of the Conference no later than September 2009 with a view to finalising and adopting the Convention on the closing date.

**RESOLUTION N° 2****relating to the Official Commentary on the Convention**

*THE CONFERENCE,*

*HAVING COMPLETED* the second reading of the draft Convention on Substantive Rules regarding Intermediated Securities;

*CONSCIOUS* of the need for an Official Commentary on this text as an aid for those called upon to work with this instrument;

*RECOGNISING* the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

*MINDFUL* that the Explanatory Report (CONF. 11 - Doc. 4) provides a sound starting point for the further development of this Official Commentary;

*RESOLVES:*

*TO REQUEST* the preparation of a draft Official Commentary on this text by the Chairperson of the Drafting Committee, in close co-operation with no more than three members of the Drafting Committee, the Chairperson of the Commission of the Whole, the Chairperson of the Final Clauses Committee, the Chairperson of the Credentials Committee, the Co-Chairpersons of the Committee on Emerging Market Issues, Follow-up Work and Implementation, the Chairperson of the Working Group on Insolvency and the Co-Chairpersons of the Working Group on Settlement and Clearing Systems, as well as with the UNIDROIT Secretariat;

*TO REQUEST* that such draft containing policy choices and relevant matters considered by the Conference to be addressed by the Official Commentary be circulated by the UNIDROIT Secretariat to all negotiating States and participating observers no later than three months before the final session of the diplomatic Conference inviting comments thereon;

*TO EXPRESS ITS FIRM WISH* that UNIDROIT provide sufficient resources to effectively support the drawing up of the Official Commentary; and

*TO REQUEST* that a revised final version of the Official Commentary be transmitted by the UNIDROIT Secretariat to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference.

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