



**DIPLOMATIC CONFERENCE TO ADOPT A
CONVENTION ON SUBSTANTIVE RULES
REGARDING INTERMEDIATED SECURITIES
Final session**
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Comments

(submitted by the Government of the Federal Republic of Germany)

1. In respect of the comments submitted by the German delegation the following amendments of the draft Official Commentary are suggested:

Re Article 9

2. The German delegation suggests adding in section 9-24 the following:

“The principles of Article 9(1)(a)(i) and (ii), meaning the distinction between an intermediary and the final investor or intermediary acting for its own account, may apply to the other rights conferred by non-Convention law (Article 9(1)(d)).”

3. As already mentioned in the comments submitted by the German delegation, the final sentence should be deleted in section 9-25.

Re Article 11

4. Further to this delegation's remarks re Article 11, the German delegation suggests inserting in section 11-11 in fine, i.e. after '...effective against third parties.', the following:

“In light of the foregoing, it is clear that the requirement that each credit must be linked to a matching debit, as provided for in certain jurisdictions, is not to be characterized as a ‘further step’ within the meaning of paragraph 2. Furthermore, it follows that in jurisdictions which do not provide for any of the aforementioned or other formalities, where interests are characterized as rights in rem and where such rights by definition always take effect erga omnes, paragraph 2 may be said to have no sphere of application.”

Re Article 16 (Registered share with restricted transferability)

5. The German delegation mentioned that under German law there is a special type of registered share called a “vinkulierte Namensaktie” (registered share with restricted transferability). A “vinkulierte Namensaktie” can only effectively be acquired when the issuer consents to such acquisition. Therefore the German Delegation suggests inserting a new section 16-23 in the Official Commentary:

“In respect of a special type of registered share called a “vinkulierte Namensaktie” (registered share with restricted transferability) the issuer’s consent to the acquisition of such registered share is an admissible condition within the meaning of Article 16.”

Re Article 18

6. There are some doubts in Germany as to whether the draft Convention, in regard to good faith acquisition, is completely in line with the German property law regime. The Informal Working Group on innocent acquisition (former Article 14) made important comments in respect of the relationship between credit and debit in cases of innocent acquisition (CONF. 11 - Doc. 8, 7.2) which in our view eliminate the doubts mentioned. The German delegation therefore suggests recapitulating these comments (including the examples) in the Official Commentary.

Re Article 29 (Relationship between Article 8(2) and Article 29(2))

7. The introductory sentence in the commentary on Article 29 at section 29-24 should state more precisely that Article 29(2) “is an exception to the general rule declared in Article 8(1)...”

8. Furthermore, the following sentence should be added:

“Article 29(2), however, is not an exception to the general rule declared in Article 8(2) that this Convention does not determine whom the issuer is required to recognise as the holder of the securities or as the person entitled to receive and exercise the rights attached to the securities or to recognise for any other purpose (see commentary on Article 8 Example 8-1).”

9. Example 29-5 should be amended by insertion of a new third sentence:

“In case of a nominee holding structure the Contracting State may also require that the names of the AHs for whom the bank holds the shares be registered in the shareholder register or disclosed to the issuer as a prerequisite for the bank to exercise the voting rights.”