



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR
THE PREPARATION OF A DRAFT CONVENTION ON
HARMONISED SUBSTANTIVE RULES REGARDING
INTERMEDIATED SECURITIES
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**COMMENTS BY GOVERNMENTS
AND INTERNATIONAL ORGANISATIONS**

(Comments by the Government of Japan)

Note: The following comments are made on the assumption that the current text will take the form of a convention. We may possibly make different comments from the following ones if the text takes another form such as model law etc.

1. **Article 6**

Paragraph (2) (b)

Paragraph (2) (b) provides that "intermediated securities shall be treated as delivered into the possession or control of a collateral taker if the relevant intermediary is itself the collateral taker." However, the domestic laws conceivably differ from one state to another regarding whether or not they recognise a security interest to be granted by an agreement without a credit to the securities account of the collateral taker. Therefore, paragraph (2) (b) should be subject to each Contracting State's option by declaration like paragraph (2) (c), (d) and (e).

Paragraph (3)

If a security interest is granted by the method provided in paragraph (2)(a), it is difficult to recognise it under paragraph (3). It should be taken into consideration that some states permit the method provided in paragraph (2) (a) as the only way to grant a security interest. Therefore, the conditional clause of paragraph (3), i.e. "if the domestic non-Conventional law so permits", should be moved to the beginning of that paragraph so that this conditional clause covers the whole parts of paragraph (3).

2. **Article 7**

Paragraph (4)

It is closely related to each state's public regulations whether a debit or credit which is made conditionally is permitted or not. Accordingly, such a conditional debit or credit under the terms of an account agreement or the rules of a securities clearing or settlement system can be made only if each Contracting State so permits, and that should be clearly specified in the text.

Paragraph (6) (the same as paragraph (2) of article 11)

From the point of view of the functional approach on which this convention is based, detailed conditions for the protection of innocent acquirers or acquirers in good faith should be left to

each Contracting State's legislation. It should be also left to each Contracting State's legislation whether or not to exclude a gratuitous act such as a gift from the protection of innocent acquirers or acquirers in good faith.

3. **Article 13**

This article provides that any provision of the rules or agreements governing the operation of a securities clearing or settlement system take priority over mandatory provisions of domestic insolvency law, and thereby has a serious impact on each State's insolvency legal system. If this article is to be laid down, the validity of this article should be left to each Contracting State's option.