INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT CONVENTION ON SUBSTANTIVE RULES REGARDING INTERMEDIATED SECURITIES
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COMMENTS BY GOVERNMENTS AND INTERNATIONAL ORGANISATIONS

(Comments by the Government of Poland)

Article 1 [Definitions]

Adding to art. 1 a definition of the issuer should be considered.

Article 2 [Scope of application]

In our opinion the scope of application should be completed – there should be an indication that the Convention applies to cross-border holdings and transfers of indirectly held securities. Therefore we propose to rephrase the art. 2 as follows:

> "1. - This Convention applies to cross-border holdings and transfers of indirectly held securities, not to securities in the direct possession of the investor or held in individual safekeeping for the investor.
>
> 2. - This Convention applies where rules of private international law of the forum state designate the law of a contracting state.".

Article 4 [Acquisition and disposition of intermediated securities]

The art. 4.2 is not clear enough. It may be interpreted as it refers only to third parties and not to the intermediary, which is in conflict with the intention in our opinion. Therefore we propose to remove the phrase "against third parties" or to clarify the existing regulation.

Article 5 [Security interests in intermediated securities]

In the latest draft of the Convention there is no clear explanation whether a transfer of title by way of any grant of a security interest is acceptable or not. Therefore we propose to define in art. 1 the disposition and acquisition – the following wording may be used:

> "disposition" means any transfer of title whether outright or by way of security and any grant of a security interest, whether possessory or non-possessory;"

"acquisition" means any acquisition of title whether outright or by way of security and any acquisition of a security interest, whether possessory or non-possessory;".

Article 9 [Intermediated securities]

In our opinion it would be useful to underline that the intermediary should not be responsible for fulfilling issuers obligations.

Article 15 [Prohibition of upper-tier attachment]

It appears that the distinction between rights executed by account holders on their own account and rights executed by account holders on third parties' account should be drawn. It is particularly essential in case of omnibus accounts.

Article 16 [Instructions to the intermediary]

In our opinion art. 16.2 (e) should refer to a participant of a clearing or settlement system as well. Regulations of C&S systems may impose obligations on participants in this scope. Therefore we propose the following wording:

(e) where the intermediary is the operator or a participant of a clearing or settlement system, the rules of that system.".