



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR
THE PREPARATION OF A DRAFT CONVENTION ON
SUBSTANTIVE RULES REGARDING INTERMEDIATED
SECURITIES**

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**Working Group on so called Transparent Systems – Intersessional Work
Comments of the Delegation of Argentina on the draft Working Paper on Transparent
Systems**

(submitted by the Government of Argentina)

The Working Paper indicates very important matters that arise from the draft Convention regarding transparent systems and their differences with others securities holding systems. The draft Report has considered comments submitted by others Delegations, and suggests possible solutions which should be discussed at the Plenary Session next May.

We would like to make some brief remarks.

In our view, one of the relevant needs for a global efficient market is the coordination of transparent and mixed systems. The transparent systems have to interact with the others, specially those supported by international CSD´s, throw global accounts opened in the name of the CSD's located in such countries where transparent systems are in force. In this scenario, national CSD act as *relevant intermediaries*.

Taking into consideration that the purpose of the Convention is to establish substantive rules regarding intermediated securities, a functional approach should be followed in order to avoid internal soundness and legal uncertainty in the non-Convention law. It seems that a mere exception for the transparent systems should not be enough because the questions raised during the last Plenary Session and exposed in the Working Paper must be clearly solved.

We support the comments of the Brazil's delegation (Doc. 62), but we point out that registrar requirements differ from one jurisdiction to another and it should be difficult to harmonize in the Convention. For instance, the argentine system recognizes to the account holders co-property rights by effect of credits and debits made in the in CSD´s accounts.

Relevant intermediary

We wonder if it would be convenient to add a new category of *account operator*, knowing the concerns of France's delegation (Doc. 66).

Besides, we would like to stress that the draft Convention defines the *relevant intermediary* as the one who “*maintains the securities account for the account holder (Article 1, g)*”. So, the relevant intermediary *maintains* the account, but not the securities, which regularly are held by the CSD. This definition of *relevant intermediary* should be clarified for the transparent systems as suggested in the draft Report, mentioning the intermediaries who are shown in the holding chain and who give instructions to the CSD to make credits and debits in the accounts. Furthermore, it would be necessary to clarify that the CSD can also act as *relevant intermediary* when it operates an account in a CSD which support an intermediated system.

Upper-tier attachments

Regarding the prohibition of *upper-tier attachment* (Article 17, 1), the Argentine CSD is obliged to proceed with the attachment since it is organized as a transparent pattern. The prohibition would create a defense against creditors which would contradict basic legislation.

It appears that upper-tier attachment can be accepted when it is made in a CSD who can identify the securities, with a necessary exception when the national CSD acts as *relevant intermediary* in an international CDS.

Requirement to hold sufficient securities

Concerning the relevant intermediary's obligation to maintaining sufficient securities (Article 19) it would be convenient to make a special reference to the transparent systems where the securities of the securities holders are segregated of those of the intermediary.