



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

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Observations on transitional rules

(submitted by the Delegation of the Republic of Korea)

1. Priority Issue concerning Established Rights on Indirectly Held Securities before the Entry into Force of the Convention

Inserting a 'grace period' has the advantage of clarifying priorities among competing rights after the expiration of the grace period. However, the method has two disadvantages: it imposes additional costs on a collateral taker in relation to the measures to rival other rights and can not fully protect the rights of an existing collateral taker. In other words, a collateral taker who does not take countermeasures during the grace period may, in the long run, lose the lawfully purchased and held rights due to the enforcement of the Convention.

On the other hand, a 'grandfathering clause' has the advantage of protecting the rights of a collateral taker without any additional costs and the procedures required are simpler than those for a grace period. On the negative side, however, it requires different standards to be applied depending on whether a right was established before or after the entry into force of the Convention, which may make it complicated to prioritize competing rights.

As reviewed above, a 'grace period' and a 'grandfathering clause' have their own merits and demerits. However, the basic purpose of the transitional rule is to protect the rights of a collateral taker before the entry into force of the Convention and therefore it will be more reasonable to choose a grandfathering clause, which has a competitive advantage as it helps realize the purpose, and protect the rights of a collateral taker before the Convention enters into force.

In addition, the measure under which each Convention signatory is given the choice between a grace period and a grandfathering clause according to its circumstances needs to be discussed.

2. Other Issues concerning Transitional Rules

The necessity of a transitional rule can be determined and defined depending on the legal system of each signatory. Therefore, it is worthwhile to discuss a measure which provides that the Convention has only general transitional rules and that concrete transitional rules are specified in each signatory's Convention Enforcement Act.