



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

DIPLOMATIC CONFERENCE TO ADOPT A  
CONVENTION ON SUBSTANTIVE RULES REGARDING  
INTERMEDIATED SECURITIES

**Committee on Emerging Markets Issues,  
Follow-up and Implementation  
Fourth Meeting  
Beijing, 29 – 30 March 2017**

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#### **ANNOTATED AGENDA**

1. Opening of the meeting
2. Adoption of the Agenda
3. Colloquium on Financial Markets Law
4. Review of the draft Legislative Guide on Intermediated Securities
5. Consideration of legislative measures taken by States or other follow-up and promotional measures regarding UNIDROIT's financial markets instruments
6. Other business

## Annotations to the Agenda

### Item No. 1 – Opening of the meeting

1. The final session of the diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities (Geneva, 5-9 October 2009), *inter alia*, adopted the UNIDROIT Convention on Substantive Rules for Intermediated Securities (the 'Geneva Securities Convention' or the 'Convention') and established a Committee on Emerging Markets Issues, Follow-Up and Implementation (the 'Committee') to assist with the Convention's promotion and implementation.
2. The Committee will hold its fourth meeting on 29–30 March 2017 in Beijing, China at the kind invitation of the China Securities Regulatory Commission. The meeting will be opened on Wednesday, 29 March 2017 at 9h and will close on Thursday, 30 March 2017 at 18h. The venue of the meeting will be Focus Place, which is located at 19 Jinrong Street, Xicheng District, Beijing, 100033. Logistical information, including entry requirements and accommodation, will be circulated directly to meeting participants.
3. The first day of the meeting (29 March 2017) will take the form of an open Colloquium on Financial Markets Law (Agenda Item No. 3). The second day of the meeting (30 March 2017) will cover the other items on the draft Agenda, and will be open only to the members of the Committee, delegates of other States, representatives of organisations, and invited observers. On both days, there will be breaks for lunch (12h30-14h) and coffee and tea (10h45-11h and 15h45-16h).

### Item No. 3 – Colloquium on Financial Markets Law

4. The Colloquium on Financial Markets Law, to be held on 29 March 2017, will consider UNIDROIT's financial markets instruments and related efforts to enhance and ensure legal certainty in both current and future securities holding systems. The Colloquium will include expert panels discussing, *inter alia*, intermediated securities holding and transfer in the Asia-Pacific region; recent developments with respect to insolvency law, regulation, and international development; technological advances, such as distributed ledger and blockchain technologies, and their possible application to securities holding and transfer; and ensuring legal certainty with respect to distributed ledger and blockchain technologies. The detailed Programme will be made available as soon as possible on UNIDROIT's website at <http://www.unidroit.org/work-in-progress-studies/current-studies/emerging-markets>.

### Item No. 4 – Review of the draft Legislative Guide on Intermediated Securities

5. The Secretariat is pleased to submit the draft Legislative Guide on Intermediated Securities ('Legislative Guide') to the Committee for its review. This annotation provides (a) background on the Committee's prior consideration of this work; (b) a summary of the work of the informal experts group, which was responsible for preparing and reviewing the draft Legislative Guide; and (c) an overview of the draft Legislative Guide and its review by the Committee.

#### a. Background

6. Since the conclusion of the diplomatic Conference that adopted the Geneva Securities Convention, the Committee has met three times. The first meeting was held in Rome (6-8 September 2010) at UNIDROIT's headquarters, the second in Rio de Janeiro (27-28 March 2012), and the third in Istanbul (11-13 November 2013). Documents from the Committee's prior meetings are available on UNIDROIT's website at <http://www.unidroit.org/work-in-progress-studies/current-studies/emerging-markets>.
7. Initially, the Secretariat prepared in advance of the Committee's first meeting a draft Accession Kit, as a first step toward the development of a Legislative Guide on Principles and Rules capable of enhancing

trading in securities in emerging markets (UNIDROIT 2010 - S78B/CEM/1/Doc. 3). It was intended to provide advice for countries seeking to become Party to the Geneva Securities Convention on how best to incorporate and integrate it into their domestic legal systems.

8. At the first meeting, the Committee decided to divide the draft document in two. The first part containing an explanatory memorandum for the assistance of States and Regional Economic Integration Organisations on the system of declarations under the Convention ultimately became a UNIDROIT document in its capacity as Depositary of the Geneva Securities Convention (UNIDROIT 2011 – DC11/DEP/Doc. 1 rev.). The second part containing references to sources of law outside the Convention was subsequently prepared and provided to the Committee in advance of its meeting in Rio de Janeiro as a potential basis for further work on the future Legislative Guide (UNIDROIT 2011 – S78B/CEM/2/Doc. 2).

9. At the second meeting, the Committee discussed, among other things, the Legislative Guide's potential scope, content, and structure. The Committee stressed the importance of formulating principles focusing on private law aspects of securities trading, but participants indicated that given the complexity of the subject matter, consideration of other aspects (including regulatory law) and cooperation with other organisations would be required. Inputs received by the Committee also indicated that the future Legislative Guide should not be a uniform law text, but a document setting out various options on issues fundamental generally to securities trading and particularly to the Convention's proper implementation. The Committee then set up an informal working group to draft a proposal on these issues for consideration by the full Committee at its next meeting.

10. At the third meeting, the Committee focused its attention on the Legislative Guide's scope and structure by discussing the annotated outline presented by the Secretariat (UNIDROIT 2013 – S78B/CEM/3/Doc. 2). This document, prepared in consultation with the informal working group, covered the universe of public and private law subjects related to securities trading in emerging markets. The intent of the broad outline was to provide the Committee with a full picture of transactional, private law topics, as well as related regulatory and public law topics, from which to select those that the Legislative Guide should cover. To narrow the expected content for an initial draft, a group of States presented a proposal focused mainly on private law issues, but which included some regulatory aspects with direct relevance to party transactions. The proposal called for three substantive sections and was accepted by consensus by the Committee to serve as the basis for setting the scope of the Legislative Guide and organising the content and structure of the initial draft (UNIDROIT 2015 – C.D. (94) 6, Annexe 1).

#### **b. Informal experts group**

11. Using the Committee's guidance, an informal group of experts assisted the Secretariat with the preparation and review of the draft Legislative Guide, which has been provisionally re-entitled by that group the "UNIDROIT Legislative Guide on Intermediated Securities: Implementing the Principles and Rules of the Geneva Securities Convention". The informal group is chaired by Mr Hideki Kanda (Member of the UNIDROIT Governing Council and Professor of Law, Gakushuin University) and includes Mr Philippe Dupont (Partner, Arendt & Medernach), Ms Dorothee Einsele (Professor of Law, University of Kiel), Mr Francisco J. Garcimartín Alférez (Professor of Law, Universidad Autónoma of Madrid), Mr Philippe Goutay (Jones Day, Paris), Mr Thomas Keijser (Senior Researcher, Radboud University), Ms Maria Chiara Malaguti (Professor of Law, Catholic University of the Sacred Heart), Mr Charles W. Mooney, Jr. (Professor of Law, University of Pennsylvania), Mr Luc Thévenoz (Professor of Law, University of Geneva), and Ms Wu Jing (Senior Manager, Legal Department, China Securities Depository and Clearing Corporation).

12. Based on a review of a partial initial draft and an agreement on a revised outline at their first informal meeting (Rome, 23-24 October 2015), the experts submitted drafts of the portions for which they were responsible in January 2016, and those drafts were combined into a single document by the Secretariat and circulated to the informal group in February 2016. Following a videoconference held on 7 March 2016 during which initial comments on the combined draft were discussed, it was agreed that the

experts would endeavour to provide comments on the combined draft by the end of March 2016 and then provide revisions to their respective contributions by the end of April 2016. Those revisions were used to create a revised draft (see UNIDROIT 2016 – C.D. (95) 6 rev., Annex 2), which was circulated to the group in advance of its second meeting (Rome, 16-17 May 2016). At that meeting, the group reviewed the revised draft in detail, recommended various changes to be implemented by the Secretariat, and considered how the Secretariat should best collect examples and options for the draft, such as legislative or regulatory text or related descriptions, from various intermediated holding systems to offer States guidance in establishing an intermediated securities holding system or evaluating an existing one.

13. After that meeting, the Secretariat prepared, based on the input received, an updated draft, which was circulated to the group for review and comments on the changes made. Following a period for review by the experts, the Secretariat made additional changes, ultimately preparing a revised draft. That draft, known as the 4 October draft, was circulated to Committee members and to other interested organisations and stakeholders for review, comments, and collection of possible examples and options.

14. At its third meeting (Rome, 12-13 December 2016), the group reviewed in detail the comments and possible examples and options received by that time and took them into account in recommending modifications to the draft Legislative Guide. It also recommended that the possible examples and options be moved from the draft Legislative Guide into a separate document that could then serve as the basis for a webpage on UNIDROIT's website, on which the examples and options could be keyed to the relevant paragraphs of the Legislative Guide and be kept up to date. After the meeting, a follow-up videoconference was held on 16 January 2017 to review the revised draft Legislative Guide, which would subsequently be submitted to the Committee for review at its fourth meeting.

### **c. The draft Legislative Guide and its review by the Committee**

15. The draft Legislative Guide (UNIDROIT 2017 – S78B/CEM/4/Doc. 2) seeks to enhance legal certainty and economic efficiency with respect to the holding and transfer of intermediated securities, in both domestic and cross-border situations, in either of two ways. First, in complementing the Geneva Securities Convention, it is hoped that the Legislative Guide will promote its adoption and implementation. Second, in summarising the Convention's key principles and rules, it is hoped that, even where the Convention is not adopted, such principles and rules could be chosen and implemented in those systems.

16. The Legislative Guide is structured in nine Parts as follows.

- Part I provides an overview on intermediated securities, describing their origins and development and identifying five general models of intermediated securities holding systems.
- Part II describes in brief the Geneva Securities Convention, including its purpose to reduce legal uncertainty and risk, its core and functional harmonisation approach, and the important role of law outside the Convention.
- Parts III-VII identify legislative principles, summarise key principles and rules regarding holding and transfer of intermediated securities, and explain their interaction with law outside the Geneva Securities Convention. These Parts include coverage of:
  - rights of account holders and the duties and liabilities of intermediaries (Part III);
  - transfer of intermediated securities (Part IV);
  - integrity of the intermediated holding system (Part V);
  - insolvency protection (Part VI); and
  - special provisions in relation to collateral transactions (Part VII).

- Parts VIII-IX also identify legislative principles and provide overviews on conflict of laws aspects (Part VIII) and on other instruments and regulations and the implementation of the Convention or its principles and rules in a domestic legal framework (Part IX).
- The Annexes to the Legislative Guide list the legislative principles (Annex 1) and the references to law and rules outside of the Convention (Annexes 2-5).
- In addition, model examples of legislative or regulatory texts or related descriptions, as well as bibliographic references, are continuing to be collected and are to be included on UNIDROIT's future webpage for the Legislative Guide (see UNIDROIT 2017 – S78B/CEM/4/Doc. 3).

17. For the review of the draft Legislative Guide, the Secretariat proposes that the Committee consider and discuss, as necessary, its various parts listed above seriatim. If any State or observer wishes to make detailed comments on the draft Legislative Guide or to provide possible examples or options for inclusion on UNIDROIT's future webpage for the Legislative Guide, the Secretariat would be grateful to receive them (via email to Ms Isabelle Dubois, [i.dubois@unidroit.org](mailto:i.dubois@unidroit.org)) no later than Friday, 10 March 2017. It is hoped that the Committee will recommend submission of the Guide to the UNIDROIT Governing Council for review and adoption at its 96<sup>th</sup> session (Rome, 10-12 May 2017).

**Item No. 5 – Consideration of legislative measures taken by States or other possible follow-up and promotional measures regarding UNIDROIT's financial markets instruments**

18. The diplomatic Conference that approved the Geneva Securities Convention requested UNIDROIT, in its capacity as Depositary of the Convention, to make all appropriate efforts to organise activities with a view to promoting awareness and understanding of the Convention and assessing its continued effectiveness in light of relevant contemporary developments in market circumstances and trends in market regulation, and also with a view to encouraging the Convention's entry into force and its signature, ratification, and acceptance (UNIDROIT 2009 - CONF. 11/2 – Doc. 41, Resolution No. 3).

19. With respect to the UNIDROIT Principles on the Operation of Close-Out Netting Provisions (the 'Netting Principles'), at its 92<sup>nd</sup> session in May 2013, the UNIDROIT Governing Council commended the Committee of governmental experts for completing the draft Netting Principles and adopted them, together with the accompanying comments, and requested that the Secretariat take steps to promote the Netting Principles' widespread dissemination and implementation.

20. As the draft Legislative Guide follows up on and promotes both the Geneva Securities Convention and the Netting Principles, the Secretariat would welcome a discussion of legislative measures taken by States or other follow-up and promotional measures regarding these instruments.