



**DIPLOMATIC CONFERENCE TO ADOPT A
CONVENTION ON SUBSTANTIVE RULES
REGARDING INTERMEDIATED SECURITIES**
Geneva, 1 to 13 September 2008

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PROPOSAL

(submitted by the Government of Switzerland)

The delegation of Switzerland wishes to submit the following draft of a limited grandfathering clause to the Final Provisions Committee. This draft is largely modeled after Article 60 of the 2001 Cape Town Convention on international interests in mobile equipment.

Article NN - Transitional provision

1. A pre-existing interest retains the priority it enjoyed before the effective date during a period of [two years] after the effective date [or any such period as may be notified by the Contracting State in a declaration].
2. After the period referred to in paragraph 1, a pre-existing interest retains the priority it enjoyed before the effective date if, before that period expires, it has been made effective against third parties by satisfying the condition, or one of the conditions, listed in the declaration by the relevant Contracting State made in accordance with Article 10(4)(a).
3. For the purposes of this Article and of Article 15:
 - a) “pre-existing interest” means any interest, other than a non-consensual security interest, that has been granted before the effective date otherwise than by a credit to a securities account;
 - b) “the effective date” means, in relation with the priority of a pre-existing interest, the time when this Convention enters into force in respect of the relevant Contracting State;
 - c) “the relevant Contracting State” is the Contracting State whose law is applicable under Article 3.

NOTES

1. *Interests granted by a credit to a securities account are not governed by Article 15 and thus do not need a transitional rule in respect of their priority.*
2. *Non-consensual security interests enjoy the priority given to them by the non-Convention law and thus do not require any transitional provision, see Article 10(7).*

3. *During the transitional period specified in paragraph 1, a pre-existing interest retains its original priority irrespective of the method by which it was granted and made effective against third parties.*

4. *After the transitional period, a pre-existing interest retains its original priority if, either:*

a) it was originally created in accordance with one the methods declared by the Contracting State in accordance with Art. 10(4)(a),or

b) it was re-perfected in accordance with one of these methods before the expiry of the transitional period.

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