



**DIPLOMATIC CONFERENCE TO ADOPT A  
CONVENTION ON SUBSTANTIVE RULES  
REGARDING INTERMEDIATED SECURITIES  
Final session**  
Geneva, 5 to 7/9 October 2009

UNIDROIT 2009  
CONF. 11/2 – Doc. 31  
Original: English  
7 October 2009

**INTERIM REPORT  
OF THE FINAL CLAUSES COMMITTEE**

*(submitted by the Chairman of the Final Clauses Committee)*

1. The Final Clauses Committee met on Tuesday 6 October 2009 and Wednesday 7 October 2009, and considered the Articles contained in Chapter VII of the Draft Convention (CONF. 11/2 – Doc. 4), together with the comments on Chapter VII contained in CONF. 11/2 – Doc. 21. As a result of its deliberations, the Committee submits to the Commission of the Whole the following interim report with proposed amendments and comments relating to the Final Provisions of the Convention. Attachment 1 to this report illustrates the Final Provisions, incorporating the amendments proposed by the Committee.

**Article 40(1)**

2. The Committee proposes that Article 40 (1) be amended as follows:

“This Convention shall be open for signature in Geneva on [9 October 2009]~~at the concluding meeting of by States participating in~~ the diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities held at Geneva from 1 September 2008 to 12 September 2008 and from 5 October 2009 to [9] October 2009. After [9 October 2009] this Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome, and at such other places as the Depositary may determine, until it enters into force in accordance with Article 42.”

3. The Committee considers that this article should permit flexibility as to the location of any signing event/conference (such as have been staged in relation to other international instruments).

**Article 41(2)**

4. The Committee proposes that Article 41 (2) be amended as follows:

“The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred

to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly and formally notify the Depository in writing of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.”

5. The Committee considers that this article should clarify that the notification to the Depository must be a formal written notification, such as is required of other notifications referred to in Chapter VII (see, for example, Article 45(2)).

#### **Article 43 (1), (2)**

6. The Committee proposes that Article 43 (1) be amended as follows:

“If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, ~~declare~~ make an initial declaration that this Convention is to extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.”

7. The Committee proposes that Article 43 (2) be amended as follows:

“Any such initial declarations ~~are~~ is to be formally notified in writing to the Depository and shall state expressly the territorial units to which this Convention applies.”

8. Article 43(1), reflecting long-standing practice in private international conventions regarding the approach to States with territorial units, provides that Contracting States would be able to make a declaration as to territorial units only up until the time of ratification, acceptance, approval or accession. In light of the redrafting of Article 45(1), the Committee has proposed some consequential changes to Article 43(1) and (2), as well as minor grammatical changes.

#### **Article 45**

9. The Committee proposes that Article 45 be amended as follows:

“1. Declarations authorised by the provisions of the Convention, ~~other than the initial declaration provided for in Article 43(1),~~ may be made ~~in accordance with the following provisions at any time.~~

2. ~~Declarations, and confirmations of declarations, are to be made. These declarations or subsequent declarations amending those declarations or any withdrawal of such a declaration made under this Convention shall be notified~~ in writing and formally notified to the Depository.

3. ~~Any~~ declaration made ~~by a Contracting State prior to the entry into force of the Convention for that State at the time of signature, ratification, acceptance, approval or accession, or made prior to the entry into force of the Convention for the State concerned,~~ shall take effect simultaneously with the entry into force of the Convention for the State concerned. A declaration of which the Depository receives formal notification after such entry into force shall take effect on the first day of the month following the expiration of six months after the date of its receipt by the Depository. ~~Declarations made upon at the time of signature or prior to the ratification must be confirmed upon ratification are subject to confirmation upon ratification, acceptance or approval.~~

4. A Contracting State that makes a declaration under this Convention may modify or withdraw it at any time by a notification in writing formally notified to the Depository. The modification or withdrawal shall take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Depository. ~~may make a subsequent declaration at any time after the date on which this Convention has entered into force for it, by notifying the Depository to that effect.~~

~~5. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depository.~~

~~65.~~ Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no ~~such subsequent~~ declaration, modification or withdrawal of a declaration ~~s~~ had been made, in respect of all rights and interests arising prior to the effective date of ~~any~~ such ~~subsequent~~ declaration, or modification or withdrawal of a declaration."

10. The Committee proposes to group all of the rules pertaining to the making, modification and withdrawal of declarations in a single article of the Convention. The proposed amendments would achieve that result and improve clarity and consistency.

#### **Article 46**

11. The Committee proposes that the title and text of Article 46 be deleted and replaced by the following text, which should be located in Chapter I of the Convention:

*"Article 2 bis*  
Applicability of declarations

If the law of the forum State is not the applicable law, the forum State shall apply the Convention as modified by the declarations, if any, made by the State the law of which applies, and without regard to the declarations, if any, made by the forum State."

12. The Committee considers that the proposed text clarifies the policy intent of this article as described by the Committee in its report to the First session (CONF. 11 – Doc. 40). The Committee also considers that as this article deals with a substantive issue it should not be located in the Final Provisions, and considers that its co-location in relation to Article 2 would assist in clarifying the meaning of the article.

#### **Article 47**

13. The Committee proposes that Article 47 be deleted in light of proposed amendments to Article 45, which include provisions dealing with the withdrawal of declarations.

#### **Article 49(1)**

14. The Committee proposes that Article 49(1) be amended as follows:

"Not later than The Depository will convene not less than once every 24 months after the entry into force of the Convention, and in principle every 24 months thereafter as the circumstances require, the Depository shall convene an Evaluation Meeting, to which will be invited the Contracting States, the States and Observers participating to the Geneva Conference, the member States of UNIDROIT as well as other invited Observers "

15. The Committee considers that this amendment, which would require the first Evaluation Meeting to be convened within 2 years of the date of the entry into force of the Convention and thereafter as the circumstances require (in principle, every 24 months), would ensure that such meetings, which could also serve to promote ratifications and accessions to the Convention and to consider any issues related to the rate of ratifications and accessions, will be held with sufficient frequency so as to enable the Convention to be considered in light of current market developments.

- END -

**ATTACHMENT 1**  
**FINAL PROVISIONS INCORPORATING AMENDMENTS PROPOSED BY THE**  
**FINAL CLAUSES COMMITTEE**

**CHAPTER VII – FINAL PROVISIONS**

*Article 40*

*Signature, ratification, acceptance, approval or accession*

1. This Convention shall be open for signature in Geneva on [9 October 2009] by States participating in the diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities held at Geneva from 1 September 2008 to 12 September 2008 and from 5 October 2009 to [9] October 2009. After [9 October 2009] this Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome, and at such other places as the Depositary may determine, until it enters into force in accordance with Article 42.
2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Convention may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

*Article 41*

*Regional Economic Integration Organisations*

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly and formally notify the Depositary in writing of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph
3. Any reference to a "Contracting State", "Contracting States", "State Party" or "States Parties" in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

*Article 42*  
*Entry into force*

1. This Convention enters into force on the first day of the month following the expiration of six months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession between the States which have deposited such instruments.
2. For each State that ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

*Article 43*  
*Territorial units*

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, make an initial declaration that this Convention is to extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.
2. Any such initial declaration is to be formally notified in writing to the Depository and shall state expressly the territorial units to which this Convention applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.
4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. In relation to a Contracting State with two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, any reference to the law in force in a Contracting State or to the law of a Contracting State shall be construed as referring to the law in force in the relevant territorial unit.

*Article 44*  
*Reservations*

No reservations may be made to this Convention.

*Article 45*  
*Declarations*

1. Declarations authorised by the provisions of the Convention, other than the initial declaration provided for in Article 43(1), may be made at any time.

2. Declarations, and confirmations of declarations, are to be made in writing and formally notified to the Depositary.

3. A declaration made by a Contracting State prior to the entry into force of the Convention for that State shall take effect simultaneously with the entry into force of the Convention for the State concerned. A declaration of which the Depositary receives formal notification after such entry into force shall take effect on the first day of the month following the expiration of six months after the date of its receipt by the Depositary. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

4. A Contracting State that makes a declaration under this Convention may modify or withdraw it at any time by a notification in writing formally notified to the Depositary. The modification or withdrawal shall take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Depositary.

5. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no declaration, modification or withdrawal of a declaration had been made, in respect of all rights and interests arising prior to the effective date of such declaration, or modification or withdrawal of a declaration

*[Article 46  
Applicability of declarations]*

[Reformulated, renumbered as Article 2 *bis* and located in Chapter I],

*[Article 47  
Withdrawal of declarations]*

[deleted]

*Article [48]  
Denunciations*

1. Any State Party may denounce this Convention by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that denunciation to take effect is specified in the notification, it shall take effect upon the expiration of such period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciation had been made, in respect of all rights, interests and obligations arising prior to the effective date of any such denunciation.

*Article [49]*

*Evaluation meetings, revision Conferences and related matters*

1. Not later than 24 months after the entry into force of the Convention, and in principle every 24 months thereafter as the circumstances require, the Depositary shall convene an Evaluation Meeting, to which will be invited the Contracting States, the States and Observers participating to the Geneva Conference, the member States of UNIDROIT as well as other invited Observers.
2. The Agenda of the Evaluation Meeting may include the following matters:
  - (a) the implementation and operation of the Convention;
  - (b) whether any modification to the Convention or to the Official Commentary is desirable.
3. The Depositary will take due account of the results of the Evaluation Meeting and, if appropriate, may convene a diplomatic Conference.
4. The amendments adopted by the diplomatic Conference referred to in paragraph 3 will enter into force on such a date as will be determined by the Conference in respect of Contracting States who ratify, approve or accept these amendments.
5. After the entry into force of the amendments referred to in the paragraph 4, the States who will ratify, approve or accede to the Convention will accede to its text as modified by these amendments.

*Article [50]*

*Depositary and its functions*

1. Instruments of ratification, acceptance, approval or accession shall be deposited with UNIDROIT, which is hereby designated the Depositary.
2. The Depositary shall:
  - (a) inform all Contracting States of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - (ii) the date of entry into force of this Convention;
    - (iii) each declaration made in accordance with this Convention, together with the date thereof;
    - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
    - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
  - (b) transmit certified true copies of this Convention to all Contracting States;
  - (c) perform such other functions customary for depositaries.



IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Geneva, on [ ... ], in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.

– END –