INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT CONVENTION ON SUBSTANTIVE RULES REGARDING INTERMEDIATED SECURITIES
Third session
Rome, 6/15 November 2006

UNIDROIT 2006
Study LXXVIII – Doc. 52
Original: English
October 2006

COMMENTS BY GOVERNMENTS AND INTERNATIONAL ORGANISATIONS

(Comments by the Government of the Russian Federation)

1. The definitions of "securities" and of "securities account" contain cross references ("securities" means financial instruments which are capable of being credited to a securities account; "securities account" means an account to which securities may be credited or debited) and as a result, they form a circle. Therefore, the above-mentioned definitions should be made precise.

2. Article 2 of the draft Convention provides that the rules of the Convention apply where the conflict of law designates the law of a Contracting State. However, the conflict of law is used only, where the relations contain a foreign element, thus the Convention will be applicable to this kind of relations. Yet, the application of the Convention to the relations where there are no foreign elements is doubtful.

Still for the purpose of the harmonisation of regulation of the relations concerning the intermediated securities, it is necessary that the Convention can be also applied to relations that do not contain any foreign elements.

It should be taken in consideration that the legal system of the Russian Federation as well as legal systems of other countries is based on a monistic approach to the correlation of international and national law. Article 15 of the Constitution of the Russian Federation provides that international treaties and agreements of the Russian Federation shall be a component part of its legal system, which means that if the Convention is ratified its rules should be applied directly. However, its direct application for regulation of relations that have no foreign elements is almost impossible because the terms and legal conceptions used in the draft Convention are unknown to the Russian law. Thus for implementation of the Convention into the Russian legal system Russian laws and others regulations have to be modified.

3. Although Article 3 of the draft Convention refers to "the general principles on which it is based" it does not contain the above-mentioned "general principles". We hold it reasonable to enumerate these principles directly in the preamble of the Convention, for example.

4. Article 4

1) A possibility of a gratuitous grant of a security interest does not exist in some jurisdiction. That is why we propose to add in Article 7(2) the following words: "if a gratuitous grant of a security interest is provided for the domestic non-Convention law"

2) It should be taken in consideration that the inheritance does not imply "acquisition". In this case only the owner of the securities account changes.

3) The rigidity of Article 7(4) in definition of time when an organization is deemed to be informed of the existence of an adverse claim (from the time when it is or ought reasonably to have been brought to the attention of the individual conducting that transaction) is doubtful. In Russian law the moment of receiving of information by an organisation is not connected to receiving of it by a specific person of that organisation. Therefore, the method of definition of time when an organisation is deemed to be informed of the existence of an adverse claim should be left at the discretion of national law.

5. The title of Article 12 should be supplemented with the words "of intermediary".

6. Article 14 only applies to a set-off in case of in an insolvency proceeding in respect of the issuer. However, the Russian law also permits a set-off in other cases such as failure of the issuer to perform his obligation in respect of intermediated securities. Thus we consider reasonable to extend Article 14 to all the cases of set-off between the account holder and the issuer.