



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS FOR
THE PREPARATION OF A DRAFT CONVENTION ON
SUBSTANTIVE RULES REGARDING INTERMEDIATED
SECURITIES
Fourth session
Rome, 21/25 May 2007**

UNIDROIT 2007
Study LXXVIII – Doc. 79
Original: English
May 2007

**COMMENTS BY GOVERNMENTS
AND INTERNATIONAL ORGANISATIONS**

(submitted by the Government of the Republic of Latvia)

1. The wording of Article 1(b) of the draft Convention "or rights or interests in securities resulting from the credit of securities to a securities account" do not possess any legal importance, it should be deleted. Under Article 5 of the draft Convention the credit of securities to a securities account confers on the account holder ownership rights, including the right to receive and exercise the rights attached to the securities and in particular dividends as set forth in Article 5(1)(a).
2. It is necessary to provide a more precise formulation for application of the wording of Article 6(1) "*to establish a securities account with another intermediary*", i.e., does this provision imply that an intermediary may not prevent a client from establishing an account with another intermediary, thus, the wording "to take any action" would also apply to the provision "*to establish a securities account with another intermediary*"?
3. We should draw attention to the fact that Article 18 of the draft Convention is inconsistent with the rights conferred to Latvian courts and their decisions. Section 203(5) of the Civil Procedure Law stipulates that a judgment that has come into lawful effect shall have the force of law, it is compulsory and may be executed throughout the territory of the State, and it may be set aside only in cases, and in accordance with procedures, prescribed by law. However, the current wording of Article 18(1) and 18(2) stipulates that an intermediary is neither bound nor entitled to give effect to any instructions given by any person other than that account holder.
4. It is necessary to elaborate Article 19 of the draft Convention by specifying that in cases when the holding of securities is performed by using services of several intermediaries and an entry of the securities is made not only in an account of the account holder with the respective intermediary but also in nominal securities accounts held by this intermediary with some other intermediary, liability for the shortfall of the amount of securities lies with the intermediary in whose account such shortfall has been established, i.e., the intermediary whose actual balance of securities is less than the amount of securities credited to securities accounts.

5. Articles 29, 22 and 23 of the draft Convention do not provide for a clear definition of "operator" – which persons are referred to as "operators"? A definition of the term "operator" should be considered.

6. Article 22 of the draft Convention should be elaborated. We deem it unacceptable that in case of any insolvency proceedings in respect of an intermediary liability for situations when the aggregate number of securities held by an intermediary is less than the amount of securities of that description credited to securities accounts lies with the account holders (intermediary's clients).

7. In view of the fact that the term "operator" lacks a definition, it is also unclear to which persons Article 22(3) (which intermediaries are regarded as operators - the wording "*where the intermediary is the operator of a securities settlement system*") should be applied and in which cases compensation of the shortfall of securities should be provided under the procedure stipulated in the relevant "rules of the system" in order to clearly formulate in which cases the rules of Article 22(3) should be applied.

8. We should draw attention to the fact that the provision of Article 24(1) permitting securities traded on an exchange or regulated market to be held otherwise than through securities accounts established with an intermediary is inconsistent with the Latvian legislation. We consider it necessary to provide a more precise formulation of circumstances when voting rights stipulated in Article 24(2) of the draft Convention are exercised.

9. We consider it necessary to provide a solution for the problem situation identified in respect of consistency of the applicable legal acts – the draft Convention and the Shareholder's Rights Directive due to a collision of Article 5 of the draft Convention and provisions contained in Article 1(1)(a) of the above Directive.

We also draw attention to the fact that the types of companies stipulated in the Directive delegations of the EU States should reach an agreement in what way non-Convention law limits the scope of the Convention.