



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS
FOR THE PREPARATION OF A DRAFT CONVENTION ON
SUBSTANTIVE RULES REGARDING INTERMEDIATED
SECURITIES
INFORMAL WORKING GROUP ON INSOLVENCY-RELATED
ISSUES**

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Informal Working Group on Insolvency-related Issues
Questions and observation in respect of the Paper of the Chairman (Doc. 97)
(submitted by UNCITRAL)

Questions:

1. Does the qualification in Article 24 "to the extent permitted by the non-Convention law" include insolvency law? If it does, the drafting seems to be somewhat circular. Is paragraph 2 intended to remedy that interpretation?
2. Since Article 18 makes no reference to Article 30, but preserves rules relating to enforcement and therefore application of the stay, would the enforcement referred to in Article 30 be subject to the stay on commencement of insolvency proceedings?
3. Would a provision in an insolvency law that made an *ipso facto* clause in a security collateral agreement unenforceable against the insolvency representative, and therefore limited the ability of the collateral taker to enforce under Article 30, still apply here on the basis that it is, under Article 18(b) a rule of procedure relating to enforcement of rights and is therefore preserved?

If the types of contracts referred to in the draft Convention are financial contracts as addressed under the UNCITRAL Legislative Guide on Insolvency Law, the Guide recommends that those contracts should be exempt from the application of such a provision of the insolvency law concerning an *ipso facto* clause (recommendation 101) and that parties should be free from application of the stay to apply their security interests to obligations arising out of financial contracts (recommendation 103).

Observation:

Article 17 establishes the basic principle that the rights and interest that are effective outside of insolvency law, should be effective once insolvency proceedings commence. That is clear and is essentially consistent with the provisions of the UNCITRAL Legislative Guide, particularly recommendation 4. However, more is needed to specify the effects of insolvency on those rights and interests, which is where Article 18 and other articles that refer to insolvency are important. It is still unclear whether Article 18 is intended to provide something of a general override of insolvency law or, as the United States has indicated in its comments (Doc. 113), to essentially qualify Article 17. In any event, to the extent that that interpretation is not the common understanding, it does suggest that more explanation might be helpful.