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**Item No. 6 on the agenda: Draft Convention on Substantive Rules regarding
Intermediated Securities**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Progress report</i>
<i>Action to be taken</i>	<i>See para. 4 below</i>
<i>Mandate</i>	<i>Work Programme 2006-2008</i>
<i>Priority level</i>	<i>High</i>
<i>Status</i>	<i>On target for completion in 2009</i>
<i>Related documents</i>	<i>Annual Report 2008 (C.D. (88) 2)</i>

BACKGROUND

1. The UNIDROIT draft Convention on Substantive Rules regarding Intermediated Securities was the subject of the first session of a diplomatic Conference which took place in Geneva from 1-12 September 2008. The outcome of that session is recorded in the *Annual Report 2008*. For the Resolutions adopted during the first session, see the *Annexe* to this document. A second, final session of the diplomatic Conference will be held in Geneva in October 2009.

2. The Secretariat is currently engaged in carrying out the work following from the first session of the diplomatic Conference and in organising the final session of the Conference. In particular, the Secretariat:

- has issued the text of the draft Convention and of the Final Act adopted by the first session of the diplomatic Conference upon a 30-day revision period (see CONF. 11 – Docs. 48 Rev. and 47 Rev.);
- has completed the transcripts of the first session of the diplomatic Conference, which are used as informal working documents for drafting the draft Official Commentary on the draft Convention;

- is currently working on the draft Official Commentary, which will be circulated to negotiating States and participating observers three months before the final session of the diplomatic Conference. The Secretariat's tasks are to draft parts of the Official Commentary, to co-ordinate the work of external authors, to edit the entire text and ensure its overall consistency, and to translate the English version into French. The Secretariat carries out its work in close co-operation with the Chairperson of the Drafting Committee (editor-in-chief), the other external authors and a supervisory Steering Committee consisting of the Chairperson of the Commission of the Whole, the Chairperson of the Drafting Committee, the Chairperson of the Final Clauses Committee, the Chairperson of the Credentials Committee, the Co-Chairpersons of the Committee on Emerging Market Issues, Follow-up Work and Implementation, the Chairperson of the Working Group on Insolvency and the Co-Chairpersons of the Working Group on Settlement and Clearing Systems and the UNIDROIT Secretariat;
- has started the practical preparations for the final session of the diplomatic Conference in close co-operation with the Government of Switzerland;
- will co-ordinate the work of a 'Filtering Committee' which will consider requests for revision of the text of the draft Convention before the final session of the diplomatic Conference;
- will co-ordinate the work in respect of comments submitted by States and observers in relation to the draft Official Commentary which will be circulated before the final session of the diplomatic Conference;
- will, after the final session of the diplomatic Conference, co-ordinate the work relating to the finalisation of the Official Commentary in close co-operation with external authors and the Steering Committee.

3. As far as outreach is concerned, the Nigerian Securities and Exchange Commission has invited the Secretariat to take part in a seminar in Abuja on UNIDROIT capital market projects, their significance in a Nigerian and West African context, and on issues relating to the Nigerian financial infrastructure. The seminar intends to further develop capital markets knowledge among practitioners, government, central bank and SEC officials, academics, etc. The seminar will take place in Abuja from 7-9 May 2009. In addition to an impressive number of Nigerian experts, ECOWAS, ISDA and hopefully also the African Development Bank will participate in the seminar. The Secretariat will be represented by former UNIDROIT Secretary General, Mr Herbert Kronke, and Mr Thomas Keijser.

ACTION TO BE TAKEN

4. *The Governing Council is invited to take note of the ongoing work of the Secretariat and to support the latter's efforts to facilitate, in close operation with the Government of Switzerland, the holding of a successful final session of the diplomatic Conference for the adoption of the draft Convention.*

ANNEXE

Resolutions No. 1 and No. 2

adopted at the first session of the diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities (part of CONF. 11 – Doc. 47 Rev.)

RESOLUTION No.° 1

relating to the State of Work and Further Proceedings for the Adoption of the draft Convention on Substantive Rules regarding Intermediated Securities

THE CONFERENCE,

HAVING ADVANCED the work aimed at the finalisation of the draft Convention in a satisfactory manner;

RECOGNISING that the substantial problem areas identified prior to this Conference as being of significant importance and in need of a widely shared solution (good faith acquisition, insolvency, securities settlement systems) have been successfully resolved;

MINDFUL that the Conference has successfully accomplished the policy choices regarding intermediated securities and that the second reading of the draft Convention has been completed;

RECOGNISING the particular complexity of this instrument stemming from the functional approach, the many interfaces between uniform law and non-harmonised law, and its subject matter;

MINDFUL of a number of delegations' desire to have made available a first draft of the Official Commentary on the Convention to be prepared in accordance with Resolution No. 2 prior to its adoption with a view to deepening their understanding of the draft text as agreed at the outcome of the first session of the Conference;

RESOLVES:

TO EXPRESS its gratitude to the Government of the Swiss Confederation for having generously hosted this Conference and for indicating its willingness to host a brief final session of the diplomatic Conference for the finalisation and adoption of the draft Convention on a date not later than September 2009;

TO REQUEST that invitations to that final session of the Conference be sent out no later than March 2009;

TO REQUEST that the first draft of the Official Commentary prepared in accordance with Resolution No. 2 be circulated to all negotiating Governments and observers no later than three months prior to the opening of the final session of the Conference;

TO INVITE delegations and observers to submit any request to amend the text of the draft Convention no later than six weeks prior to the opening of the final session, indicating significant problems capable of preventing the Convention from working properly;

TO REQUEST the Chairperson of the Drafting Committee, not more than three members of the Drafting Committee to be appointed by him, the Chairperson of the Commission of the Whole, the Chairperson of the Final Clauses Committee, the Chairperson of the Credentials Committee, the Co-

Chairpersons of the Committee on Emerging Market Issues, Follow-up Work and Implementation, the Chairperson of the Working Group on Insolvency and the Co-Chairpersons of the Working Group on Settlement and Clearing Systems, in close co-operation with the UNIDROIT Secretariat, to examine the aforementioned requests for amendment and the reasons given and to provide the Conference with recommendations as to whether the submissions requesting amendments meet the aforementioned test, it being understood that such recommendations are not binding; and

TO INVITE all delegations and observers to attend the final session of the Conference no later than September 2009 with a view to finalising and adopting the Convention on the closing date.

RESOLUTION No. 2

relating to the Official Commentary on the Convention

THE CONFERENCE,

HAVING COMPLETED the second reading of the draft Convention on Substantive Rules regarding Intermediated Securities;

CONSCIOUS of the need for an Official Commentary on this text as an aid for those called upon to work with this instrument;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

MINDFUL that the Explanatory Report (CONF. 11 – Doc. 4) provides a sound starting point for the further development of this Official Commentary;

RESOLVES:

TO REQUEST the preparation of a draft Official Commentary on this text by the Chairperson of the Drafting Committee, in close co-operation with no more than three members of the Drafting Committee, the Chairperson of the Commission of the Whole, the Chairperson of the Final Clauses Committee, the Chairperson of the Credentials Committee, the Co-Chairpersons of the Committee on Emerging Market Issues, Follow-up Work and Implementation, the Chairperson of the Working Group on Insolvency and the Co-Chairpersons of the Working Group on Settlement and Clearing Systems, as well as with the UNIDROIT Secretariat;

TO REQUEST that such draft containing policy choices and relevant matters considered by the Conference to be addressed by the Official Commentary be circulated by the UNIDROIT Secretariat to all negotiating States and participating observers no later than three months before the final session of the diplomatic Conference inviting comments thereon;

TO EXPRESS ITS FIRM WISH that UNIDROIT provide sufficient resources to effectively support the drawing up of the Official Commentary; and

TO REQUEST that a revised final version of the Official Commentary be transmitted by the UNIDROIT Secretariat to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference.