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Item No. 6 on the agenda: Transactions on transnational and connected capital markets -
**(a) UNIDROIT Convention on Substantive Rules regarding Intermediated Securities:
Follow-up work and promotion**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Completion of Official Commentary on the UNIDROIT Convention on Substantive Rules regarding Intermediated Securities and proposal for its promotion and follow-up activities</i>
<i>Action to be taken</i>	<i>See paragraph 8, below</i>
<i>Mandate</i>	<i>Work Programme 2006-2010</i>
<i>Priority level</i>	<i>High</i>
<i>Status</i>	<i>On target</i>
<i>Related documents</i>	<i>Annual Report 2009 (C.D. (89) 2), pp. 13 and 14.</i>

STATUS OF THE PROJECT

1. The UNIDROIT Convention on Substantive Rules for Intermediated Securities (referred to hereafter as “the Geneva Securities Convention”) was adopted at the Final session of the final session of the diplomatic Conference to Adopt a Convention on Substantive Rules regarding Intermediated Securities (Geneva, 5-9 October 2009).

2. The text of the Convention and of the Resolutions adopted by the Conference was subject to verification by the Secretariat of the Conference under the authority of the President of the Conference within a period of 120 days from the date of adoption as to the linguistic changes required to make the texts in the two official languages consistent with one another. At the end of this period those texts became authentic and can be found on the UNIDROIT website. ¹

¹ Convention: <http://www.unidroit.org/english/conventions/2009intermediatedsecurities/convention.pdf>
Final Act: <http://www.unidroit.org/english/conventions/2009intermediatedsecurities/finalact.pdf>

FINALISATION OF THE OFFICIAL COMMENTARY

3. In its Resolution No. 2, adopted at the closing of the final session, the diplomatic Conference:

"1. *REQUESTS* the finalisation of the Official Commentary on the Convention by the Chairperson of the Drafting Committee, in close co-operation with no more than three members of the Drafting Committee as well as with the UNIDROIT Secretariat;

2. *REQUESTS* a Steering Committee consisting of the Vice-Presidents elected at the final session of the diplomatic Conference, 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, the Co-Chairpersons of the Working Group on Settlement and Clearing Systems and the members of the Drafting Committee, to co-ordinate the work on the Official Commentary, to take into account the comments made by all negotiating States and participating observers and resolve any issue arising in this process;

3. *REQUESTS* that the final version of the Official Commentary, reflecting 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 10 months after the final session of the diplomatic Conference inviting comments thereon within four months upon its circulation;

4. *EXPRESSES ITS FIRM WISH* that UNIDROIT provide sufficient resources to effectively support the finalisation of the Official Commentary; and

5. *REQUESTS* 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."

4. Following that request, the Secretariat, in consultation with the Chairman and three members of the Drafting Committee, started preparing the necessary revisions and additions to the draft Official Commentary so as to reflect policy choices and relevant matters considered by the Conference to be addressed by the Official Commentary. The work is proceeding expeditiously and it is expected that materials will be share with the Steering Committee by Mid-April or May 2010. The Secretariat expects that the revised draft Official Commentary will be circulated to all negotiating States and participating observers by the first week of August 2010, at the latest, that is, within the time limits set by the diplomatic Conference.

5. Assuming that no comments are made which would require significant amendments or restructuring of the revised draft Official Commentary, the Secretariat envisages that the revised final version of the Official Commentary could be issued within the first quarter of 2011.

PROMOTION OF THE GENEVA CONVENTION

6. In its Resolution No. 3, adopted at the closing of the final session, the Diplomatic Conference:

“1. *REQUESTS* that UNIDROIT, in its capacity as Depositary of the Convention, make all appropriate efforts, having regard to available resources, to organise activities such as meetings, conferences and seminars with a view to promoting awareness and understanding of the Convention and assessing its continued effectiveness in light of relevant contemporary developments in market circumstances and trends in market regulation, and also with a view to encouraging the Convention's early entry into force and its signature, ratification, acceptance, approval and accession by States and Regional Economic Integration Organisations;

2. *REQUESTS* that UNIDROIT, in undertaking such activities, make all reasonable efforts to ensure that the activities are open to participation by Contracting States, the States, Regional Economic Integration Organisations and Observers participating in the Conference, Member States of UNIDROIT, and other States, organisations and entities as may be appropriate;

3. *INVITES* the Member States of UNIDROIT, and the States, Regional Economic Integration Organisations and Observers participating in the Conference, and in particular the States represented on the Committee on Emerging Markets Issues, Follow-Up and Implementation, to cooperate with UNIDROIT in organising such activities; and

4. *EXPRESSES* its understanding that, following the entry into force of the Convention, UNIDROIT will, in fulfilment of Article 47 of the Convention, take all reasonable steps in light of available resources to convene Evaluation Meetings in principle every 24 months as the circumstances warrant, and in particular so as to review the practical operation of the Convention, and that the convening of such Evaluation Meetings should not preclude UNIDROIT from also undertaking other activities to support improved awareness and understanding of the Convention.”

7. The Secretariat intends to convene a meeting of the States and observers represented on the Committee on Emerging Markets Issues, Follow-Up and Implementation² in Rome during the third quarter of 2010 to examine the reception given to the Geneva Securities Convention in the various countries and consider concrete proposals for its promotion. The Secretariat would use the occasion of such a meeting to also consider the scope of the work to be carried out toward the formulation of a legislative guide on principles and rules capable of enhancing trading in securities in emerging markets (see document C.D. (89) 5(b)).

ACTION TO BE TAKEN

8. *The Secretariat would invite the Council to take note of the progress made in the revision of the draft Official Commentary to the Geneva Securities Convention and of the proposals by the Secretariat to promote the Convention.*

² The Committee on Emerging Markets Issues, Follow-up and Implementation is co-chaired by Mr Alexandre Pinheiro dos Santos (Brazil) and Ms Niu Wenjie (China). Members are: Argentina, Cameroon, Chile, France, Greece, India, Japan, Nigeria, Republic of Korea, South Africa, United States of America and the European Union. Indonesia, the European Central Bank, European Issuers, the Hague Conference on Private International Law and the Trade Association for the Emerging Markets have been admitted as observers.