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Item No. 6 on the agenda: Transactions on transnational and connected capital markets -
(b) Principles and Rules Capable of Enhancing Trading in Securities in Emerging Markets

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Examination of steps to develop a future legislative Guide on principles and rules capable of enhancing trading in securities in emerging markets</i>
<i>Action to be taken</i>	<i>Take note of the measures proposed by the Secretariat</i>
<i>Mandate</i>	<i>Work Programme 2011-2013</i>
<i>Priority level</i>	<i>Medium/low</i>
<i>Related document</i>	<i>Annual Report 2013 (C.D. (92) 2)</i>

MANDATE

1. The Governing Council will recall that, following the completion of work to adopt the Intermediated Securities Convention, and in light of the Governing Council's repeated affirmation of the importance it attached to the subject (see C.D. (88) 17, § 59), the UNIDROIT General Assembly, at its 65th session 2009, decided to include work on a "legislative guide containing principles and rules capable of enhancing securities trading in emerging markets" in the current UNIDROIT Work Programme (A.G. (65) 10, §§ 18 et 26).

2. At the close of its 89th session in 2010, the Council took note of the steps which the Secretariat was planning to take with a view to preparing a future Legislative Guide containing principles and rules capable of enhancing trading in emerging markets. In light of the Secretariat's work load, and considering current projects and projects proposed for the 2011-2013 triennial period, the Council decided that work on the Legislative Guide would be given medium / low priority. This decision was confirmed by the General Assembly at its 67th session in December 2010 (cf. UNIDROIT 2010 – A.G. (67) 9 rev., Annex III).

STATUS OF THE PROJECT

3. The Governing Council will recall that the preparation of a Legislative Guide containing principles and rules capable of enhancing trading in emerging markets is being discussed within the *Committee on Emerging Markets Issues, Follow-Up and Implementation* (the Committee),¹ established at the final session of the diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities held, under the auspices of the UNIDROIT, at the invitation of the Government of Switzerland, in Geneva, from 5 to 9 October 2009.

4. As a first stage towards the development of a Legislative Guide, the UNIDROIT Secretariat approached a consultant to prepare an "Accession Kit" intended to advise countries ratifying the Geneva Securities Convention on how best to incorporate the Convention and integrate it into their domestic legal systems (cf. UNIDROIT 2010 – C.D.(89)5 (b)). In fact, the complexity of the subject-matter covered by the Geneva Securities Convention, and the delicate balance between uniform rules and domestic law, prompted the Secretariat to provide guidance as to the relationship between the Convention rules and domestic law in the Contracting States, and make suggestions on how to tackle issues not dealt with in the Convention or which Contracting States are free to deal with in their own way. The Secretariat felt that this could help to generate a discussion of all the other legal aspects involved in establishing an up-to-date financial market and thus provide the groundwork for the enlarged Legislative Guide containing Principles and Rules capable of enhancing trading in securities in emerging markets.

5. The possible scope of a future Legislative Guide containing Principles and Rules capable of enhancing trading in securities in emerging markets was discussed at the first and second post-conference meetings of the Committee (Rome, 6-8 September 2010 and Rio de Janeiro, 27-28 March 2012). Participants in the Committee meetings stressed the importance of formulating reference principles in a Legislative Guide that would focus on private law aspects, but also indicated, in light of the Colloquia that had preceded the meetings, that some of the issues that had been discussed concerned areas in which UNIDROIT had not yet done any work, and that given the complexity of the subject matter, the Secretariat should work together with a large number of experts and other Organisations. The Secretariat indicated moreover that the future Guide would not be a uniform law text, but simply a document setting out various options. The Guide would present fairly detailed indications on a number of issues as to the options available in implementing the recommendations prepared by IOSCO and other entities. The starting-point for this exercise would be those areas of the law which, although related to the 2009 Geneva Securities Convention, were not directly or wholly addressed by this instrument. At its 91st session (2012), the Governing Council welcomed such a proposal.

6. The Secretariat is currently consulting with an informal working group² set up in Rio de Janeiro and outside experts on the subjects that might be developed in the future Legislative Guide and the methodology to be used for the work. The working group will report back to the Committee at its next session which will be held in an emerging country, probably early November 2013.

¹ The Committee on Emerging Markets Issues and Implementation is co-chaired by Mr Alexander Pinheiro dos Santos (Brazil) and Ms Niu Wenjie (China). Members are: South Africa, Argentina, Cameroon, Chile, United States of America, France, Greece, India, Japan, Nigeria, Republic of Korea and the European Union. Indonesia, the European Central Bank, the Hague Conference on Private International Law, European Issuers and the Trade Association for the Emerging Markets have been granted observer status.

² The working group is chaired by Switzerland and made up of the following States: Brazil, China, France, Japan, Nigeria, the Russian Federation, South Africa, Switzerland and the United States of America.

7. In light of the strong interest of the government of the country willing to organise the third meeting of the Committee, currently not member of the Committee, and offer to host the meeting, the Secretariat has asked the current members, keeping in step with the intent of the diplomatic Conference that the Committee be open-ended, to extend an invitation to that country to participate as a full member, moving forward. The members of the Committee have unanimously accepted such proposal.

8. The third meeting of the Committee is scheduled to take place early November following the usual format, i.e. a one or two day Colloquium to discuss securities trading in emerging countries and a two-day meeting to discuss current (Legislative Guide) and future work of UNIDROIT on securities trading in emerging markets. The general theme for the Colloquium could be "The Regulatory Framework for Intermediated Securities in Emerging Markets – the Role of National Law and the Geneva Convention".

ACTION TO BE TAKEN

9. *The Secretariat invites the Council to take note of the measures proposed to prepare a future Legislative Guide containing Principles and Rules capable of enhancing trading in emerging financial markets.*