論説

振替証券法制に関するユニドロア条約

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Ⅰ．はじめに

株券や社債券等の投資有価証券の電子化が各国で進展しつつある。国によっては，有価証券という券面を廃止せずに，中央預託機関（一般にCSD〔central securities depository〕と呼ばれる）に預託して不動化した状態で処理をすることにとどまっている国もあるが，いずれにせよ，投資有価証券については金融機関や証券会社等の口座管理機関（後述）を通じて証券の保有がなされ（間接保有状態あるいは階層保有状態と呼ぶことが多い），そのうえで譲渡取引や担保取引等の取引がなされるのが，今日の主要国における共通の姿である。

2009年10月9日に，こうした間接保有・階層保有状態のもとでなされる証券の保有および譲渡取引・担保取引等について，私法レベルでの各国法の調整を目的とする条約が私法統一国際協会（ユニドロア）（UNIDROIT：International Institute for the Unification of Private Law）において策定された（この条約の正式名称は「UNIDROIT Convention on Substantive Rules for Intermediated Securities」，略称は「Geneva Securities Convention」）[1)]。本稿では，この条約をユニドロア振

1) 本条約のテキストと本条約策定過程における関連資料等のほとんどすべては公開されており，ユニドロアのウェブサイトからダウンロードにより入手可能である。一般情報は，http://www.unidroit.org 参照。本条約の正文と外交会議の資料等は，http://www.unidroit.org/english/conventions/2009intermediatedsecurities/main.htm 参照。外交会議までの関係資料等は，http://www.unidroit.org/english/conventions/2009intermediatedsecurities/study78-archive-e.htm（以上につき、2010年8月18日最終検索）参照。

替証券条約あるいは本条約と呼ぶこととする。

筆者は，この条約の策定作業に参加する機会を得たが，策定作業の途中の時点で，別稿において，この条約策定作業の概況を紹介する機会を得た[2]。このたび，条約が成立したため，本稿では，本条約についてその概要を紹介し，日本の法制との関係でのごく簡単なコメントをすることとしたい。

なお，本稿では，間接保有・階層保有（以下「階層保有」という）状態にある場合における中央預託機関を「振替機関」または「CSD」，その下に参加者として位置する金融機関や証券会社等を「口座管理機関」（intermediary），口座管理機関に顧客として口座を保有する者を「口座名義人」（account holder）（口座管理機関を含む）と呼ぶこととする。また，口座への増額あるいは減額の記載または記録を「記帳」と呼ぶこととする（株式等の場合には通常は数の増加または減少として記帳されるが，本稿では増額または減額記帳という用語を用いる）。そして，口座名義人等が有するあるいは有しうる当該投資有価証券上の権利を表現する適切な言葉が思い浮かばないため，本稿では漠然と証券あるいは証券の権利等と表現する。すなわち，たとえば，日本における最下位の口座名義人の権利（株式・社債等），アメリカ法にいう「セキュリティ・エンタイトルメント（security entitlement）」やイギリスの制度における信託受益権などを，本稿では，振替証券あるいは振替証券の権利等と表現する[3]。

Ⅱ．本条約の経緯など

1　経緯

ユニドロアでは，2002年に本プロジェクト（当時の名称は「間接保有証券実質法調整プロジェクト（Harmonised Substantive Rules regarding Intermediated Securities）」）が開始した[4]。すなわち，2002年9月から個人の資格で参加したメンバーからなる「スタディ・グループ」の会合が5回開催された。その研究成果に基づいて，2005年5月から4回の政府専門家委員会（Committee of Governmental Experts）の会合が開催された。その審議の成果を受けて，2008年9月と2009年10月に外交会議が開催され，上述したように，2009年10月9日に本条約が採択された。その後，2010年2月に条約テキストの最終版が公表された。この条約については，その公式注釈（Official Commentary）の草案が2009年10月の外交会議に先立って公表されたが[5]，条約が成立したため，その後，公式注釈の最終版の作成作業が進められており，公式注釈の最終版は2011年の春までに公表される予定となっている。

2　本条約の目的とアプローチ

本条約の目的は，階層保有状態において保有される投資有価証券についての譲渡取引や担保取引が国境を越えて行われる場合に生じうる法的不確実性を取り除き，それによりスムーズな譲渡取引や担保取引がなされることを可能とするような私法面でのルールの調整をはかることにあるとされている。そして，本条約策定過程（以下「本プロジェクト」と呼ぶことがある）における基本的な視点として，各国のシステムのそれ自体としての健全性（internal soundness）と他国のシステムとの共存性（compatibility）の二つがあげられている。このような視点があげられるに至った重要な前提として，本プロジェクトで

2) 神田秀樹「間接保有証券に関するユニドロア条約策定作業の状況」江頭憲治郎還暦『企業法の理論（下）』569頁（商事法務，2007）。

3) 本稿では各国の制度については述べない。たとえば，森下哲朗「国際証券決済法制の展開と課題」上智法学論集47巻3号214頁（2004）を参照。

4) 関連資料は，前掲注1)のウェブサイトから入手できる。

5) *Draft Official Commentary on the UNIDROIT Convention on Substantive Rules for Intermediated Securities*（2009）（前掲注1)のウェブサイトから入手できる）。

は「機能的アプローチ」を採用することとした点がある。その意味は，各国がその法制度のもとで関係者の権利義務等をどのように構成するかは大きく分かれているため，それらを調整することをめざすのではなく，各国の制度のもとで譲渡取引等が行われる場合について，その経済的効果あるいは法的ルールがもたらす「結果」に着目し，国際的な投資証券の流通等についての法的不確実性を減少させるためにはどのような機能が確保されるべきかという視点から本プロジェクトを遂行するという意味である（本プロジェクトではこれを「functional approach」と呼んできた）[6]。

Ⅲ．本条約の概観

本条約は，口座管理機関によって保有される株式・社債等の投資有価証券（以下「振替証券」と呼ぶ）に適用される（本条約 1 条, 9 条等。以下，本条約の条文は条文番号だけで引用する）。国際取引だけでなく，国内取引にも適用される（2 条）。本条約がカバーする範囲は，振替証券の保有および譲渡・担保取引である。振替証券の保有および譲渡取引・担保取引の局面と関連する一部局面を除いて，いわゆる会社法の領域に属する分野である振替証券の保有者（株主や社債権者等）と発行会社との関係については原則として対象外である（8 条・9 条等）。日本法でいえば，社債，株式等の振替に関する法律（以下「振替法」と呼ぶ）がカバーする範囲の一部ということになる。

本条約は各国法の最小限度の調整を目指したため，多くの事項について非条約法（non-Convention law）（1 条 m 号）（締約国における本条約以外の法）に具体的な規律をゆだねたり，非条約法が存在することを前提とした規定を多く設けている。また，多くの事項について，いわゆる宣言（declaration）によるオプトアウトが認められている。

振替証券の譲渡および担保差入れは，証券口座への記帳によって第三者に対する対抗要件を具備するのが原則である（11 条）。このほかに，締約国は，宣言をすることにより，記帳を伴わない方法での振替証券の担保差入れ等を認めることもできる（12 条）。たとえば，現行法制のもとで，アメリカ等では，口座名義人（設定者）・口座管理機関・債権者（担保権者）の三者間の合意による担保権設定および第三者対抗要件具備を認めており（債権者の「支配（control）」取得による担保権設定），また，口座名義人（設定者）・口座管理機関の二者間の合意による口座管理機関が担保権者となる担保権設定も認められている。

振替証券の善意取得（本条約では無知の（innocent）取得者による取得という表現を用いている）も一定の要件のもとで認められ（18 条），競合する権利者間の優劣関係についても対抗要件具備の前後によることを原則とするルールが置かれている（19 条。なお 20 条）。

これらのほか，口座管理機関の口座名義人に対する基本的な義務（10 条・15 条・24 条等）および証券が口座の記帳に不足するような場合に口座管理機関が倒産したような場合の損失分担に関するルール（26 条）や，いわゆる上位差押え（upper-tier attachment）（口座名義人の債権者がその直接の口座管理機関よりも上位のレベルで（たとえば上位の口座管理機関に対する権利について）差押えをすること）の原則禁止（22 条）等が定められている。

最後に，振替証券の担保取引については，EU の金融担保指令 [7] を範として詳細なルールが設けられているが（31 条～ 38 条），これらについては宣言による全部または一部のオプトアウトが認められている。

なお，本条約の内容は，基本的には，日本の振替法と整合的なものであると考えられる。

6) 前掲注 1) のウェブサイト参照。

7) *Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements*, OJ L168, 27.6.2002, 43-50.

Ⅳ．本条約の内容

1　全体の構成

本条約は，前文のほか，用語の定義と条約の適用範囲等を定めた第1章（1条～8条），口座名義人の権利を定めた第2章（9条・10条），振替証券の移転を定めた第3章（11条～20条），階層保有制度の健全性を定めた第4章（21条～30条），担保取引についての特則を定めた第5章（31条～38条），経過規定を定めた第6章（39条）および最終規定（雑則）を定めた第7章（40条～48条）から構成されている。

以下では，これらのうちで主要な部分と考えられる第1章から第4章までの内容のポイントを紹介し，必要に応じて日本の法制との関係についてのごく簡単なコメントを付すこととする。

2　第1章：用語の定義と条約の適用範囲等

1条は，本条約で用いられる用語の定義を定めた規定であるが，用語の定義は1条のほかにも置かれていることに留意する必要がある（たとえば，17条，22条2項，31条3項など）。

2条は，本条約は純粋な国内取引にも適用されることを明らかにした規定である。

3条は，「宣言」の適用関係を明らかにした規定である。法廷地の国際私法により本条約の締約国である国の法が準拠法とされた場合には，本条約とともにその国がした宣言が適用されると定めている。

4条は，本条約の解釈原理を定めた規定で，他の国際条約にも通常置かれる規定である。

5条は，本条約の適用範囲を，規制を受けた口座管理機関と中央銀行が管理する証券口座に限定することを締約国に認めた規定である。たとえば，日本のように，口座管理機関が登録制である場合には，登録を受けていない者がした取引には本条約を適用しないという選択肢が認められる。

6条は，CSDや中央銀行等について，本条約はあくまで階層保有に直接関連する側面に適用されるものであり，証券の発行者との関係での業務には適用されないことを明らかにした規定である。

7条は，いわゆる「透明制度」を有する国についての特別規定である。透明制度とは，北欧諸国・ブラジル・中国等で採用されている制度で，いろいろなタイプのものがあるが，ひとことでいえば，口座管理機関とCSDの両方が口座名義人の口座を管理し，両者における口座はリンクされて管理されているような証券保有制度である[8)]。本条約の基本思想は，一般には，ある口座についてその口座を管理する口座管理機関は1つであるが（「関連口座管理機関（relevant intermediary）」という），透明制度を有する諸国のために，本条は，関連口座管理機関の機能の一部を他者が遂行する旨の宣言をすることを認めている。その場合には，本条約の関連口座管理機関に関する規定は当該他者に適用されることになる。

8条は，証券の発行者との関係を定めた一般規定である。29条2項の場合を除いて，本条約は口座名義人と発行者との関係には影響を及ぼさない（1項）。また，本条約は発行者が誰を株主・社債権者等と取り扱うかという側面については適用されない（2項）。これらは通常は会社法と呼ばれる分野で規律される問題であるが，本条約は証券の物権的な保有ないし移転の側面を扱う条約である。

3　第2章：口座名義人の権利

9条は，振替証券の口座名義人が有する権利を定めたものである。各国の異なる制度をカバーするために複雑な規定ぶりになってい

8）詳細は，*Report of the Transparent Systems Working Group (UNIDROIT 2007 - Study LXXVIII - Doc. 8)*（2007）（http://www.unidroit.org/english/documents/2007/study78/s-78-088-e.pdf）参照。

る。1項が権利のリストである。a号は株式や社債といった中身，b号は権利を処分（譲渡・担保差入れ）する権利，c号は他の口座管理機関を通じて保有する権利，d号はその他非条約法で認められる権利である。なお，a号の権利は最下位の口座名義人はつねに有するが，それ以外の口座名義人が有するかどうかは非条約法による。日本の振替法のもとでは，最下位の口座名義人のみがこの権利を有する。2項は，1項の権利は原則として第三者に対しても有効であると定める一方で，a号の権利は口座管理機関または発行者に対して，b号およびc号の権利は口座管理機関に対してだけ行使できることを定めている。3項は，担保権のような制限的権利の場合についての規定である。

10条は，口座管理機関の義務を定めた規定である。1項は，口座管理機関は，口座名義人が9条1項の権利を行使することができるよう，適切な措置をとる義務を負うと規定する。2項は，口座管理機関の義務のリストを掲げた規定である。2項は2009年10月の外交会議で急きょ追加されたため，必ずしもすべての義務を列挙した規定にはなっておらず，また他の規定の書きぶり（たとえば7条2項c号）と表現が必ずしも整合的にはなっていないが，2項は他の条文と異なる特別なことを定めた趣旨ではない。なお，3項は，口座管理機関は他の口座管理機関に口座の開設を求めることまでの義務を当然に負うものではないことを規定している。

4　第3章：振替証券の移転

第3章は，日本の概念でいえば，物権変動の方法を定めた規定である。具体的には譲渡取引と担保取引ということになるが，担保権以外の制限的権利も認めている。

11条は，口座への減額記帳と増額記帳による譲渡等を定める。口座への増額記帳により振替証券あるいはその担保権等が取得される（11条1項・4項）。それ以上の手続的な要件を要することなく，その譲渡等は第三者対抗要件を備える（11条2項・4項）。「effective against third parties」という表現は，日本でいえば対第三者対抗要件を具備するという意味である。同様に，口座への減額記帳により振替証券が譲渡されあるいはその担保権の設定等がされる（11条3項4項）（上位概念として処分（disposition）という用語が用いられている）。なお，処分については15条の適用があり，処分と取得については16条の適用がある（後述）。また，5項は，本条約はネット・ベースでの処理に影響を及ぼすものではないことを念のために規定している。

12条は，宣言により，担保権その他の制限的権利の付与を認めた規定である。典型的には，締約国は，宣言をすることにより，口座名義人（設定者）・口座管理機関・債権者（担保権者）の三者間の合意による担保権設定および第三者対抗要件具備や(債権者の「支配（control)」取得による担保権設定)，付記帳（designating entry）による担保権設定および第三者対抗要件具備が認められる。また，口座名義人（設定者）・口座管理機関の二者間の合意による口座管理機関が担保権者となる担保権設定も認められる。なお，こうした法制を有しない国が本条の宣言をすると，国内法（非条約法）の改正をしなくても本条約により本条に定めた（そして宣言をした）方法による担保権設定等が認められることになる（12条5項柱書参照）。

13条は，11条と12条に定める方法以外の方法での譲渡等も非条約法が認めれば認められることを定めた規定である。なお，非条約法の定める方法によって設定された担保権は12条の方法により設定された担保権より劣後するのが原則である（19条2項）。

14条は，その1項で，11条と12条に定める方法により第三者対抗要件を満たした物権変動は倒産手続においても原則として有効であることを定めた規定である。日本の表現でいえば倒産管財人にも対抗できるということである。ただし，このことは，倒産法における特別な優先権（いわゆる財団債権など），否認権，個別の権利行使停止などには影響を与えない（そうした倒産法の特別規定が適用される）（2項）。なお，関連口座管理機関が倒産した場合には本条ではなく21条が適用

される（3項）。また，非条約法による物権変動の場合についても同様である（4項）。

15条は，1項で，処分（上記参照）には口座管理機関が権限を有することを要する旨を定めた規定である。ただし，無権限の処分がなされた場合の効果は，本条約は定めず，非条約法による（2項）。

16条は，記帳（減額記帳，増額記帳，付記帳）の有効性は非条約法による旨を定めた規定である。ただし，18条（善意取得等）のほうが優先適用される。なお，有効性という場合，撤回ないし取消しうることや条件付の場合も広く含まれる。

17条は，第3章における若干の用語の定義を定めた規定である。とくに，知りうべき場合（ought to know）を定義したb号と主体が組織（法人等）である場合における知りまたは知りうべき場合を定義したc号が重要である。

18条は，基本的には日本でいう善意取得を定めた規定である。1項と2項に分けて規律されている。1項では，振替証券の善意（無知(innocent)）（知りまたは知りうべきであった場合以外）の取得者は，振替証券を善意取得するだけでなく不法行為責任等も負わないことが定められている。2項は，先行する記帳に瑕疵があった場合でも後続の取得者は善意であれば振替証券を善意取得することを定めているが，5項により証券決済システムの規則で別段の規定があればそれに従うとされている点で1項の場合と異なる。なお，1項と2項の善意取得は有償の取得者についてだけ適用されるが（3項），各国が善意取得の要件を緩めることは認められる（4項）。18条は善意取得の規定であるので，担保権等の優劣関係には影響を与えない（6項）。18条が日本の現行法と異なるかどうかは議論の余地があるが，有償の点を除いて，実質において差はないように思われる。

19条は，12条または13条に定める方法によって設定された担保権等の競合する振替証券の権利間の優劣関係を定めた規定である(1項)。12条の方法で設定された権利は原則として13条の方法で設定された権利に優先する（2項）。12条の方法で設定された権利の間では基本的にはその優劣は第三者対抗要件が具備された時間的先後による（3項）。そのほか，細かな例外等があるが（4項以下），ここでは省略する。

20条は，1項で，口座管理機関が口座名義人の振替証券を12条または13条に定める方法で処分した場合について，原則として本条約は規定を置かないと定めるが，例外として，2項で，12条の方法で処分した場合において，担保権等の権利を取得した者が善意(知りまたは知りうべきであった場合以外)であった場合にかぎって，その者が優先すると定めている。2項の規律は，日本の現行法のもとでの規律と整合的であるように思われる。

5　第4章：階層保有制度の健全性

21条は，14条の特別規定であり，1項は，関連口座管理機関が倒産した場合でも，11条または12条に定める方法で対第三者対抗要件を満たした振替証券にかかる権利は倒産手続のもとでも原則として有効であることを定めた規定である。日本でいえば，振替証券の保有者についていえばその取戻権を規定したものということができる。ただし，このことは，倒産法における否認権や個別の権利行使停止などには影響を与えない（そうした倒産法の特別規定が適用される）（2項）。14条との違いは，倒産法における特別優先権についての言及がないことである（上記参照）。なお，非条約法による物権変動の場合についても同様である（3項）。

22条は，いわゆる上位差押え（upper-tier attachment）の禁止を定めた規定である（1項2項）。上位差押えとは，口座名義人の債権者がその直接の口座管理機関よりも上位のレベルで（たとえば上位の口座管理機関に対する権利について）差押えをすることである。ただし，透明制度（上記）の国に配慮して，宣言により一部例外が認められる(3項)。

23条は，1項で，口座管理機関は振替証券の処理に関しては口座名義人以外の者の指図には従う義務を負わないことを定めた規定である。ただし，例外が2項で定められている。

24条は，口座管理機関の振替証券または

その記帳（以下「振替証券」という）の保有義務を定めた規定である。口座管理機関は，振替証券の種類ごとに，口座名義人の口座に記帳した振替証券の総額に相当する振替証券を自ら上位の口座管理機関の口座に保有しなければならない（1項）。なお，自己のために保有する振替証券について自己が口座を管理する制度を採用する国では（日本はこれには該当しないと思われる），その分も上位口座管理機関の口座に保有しなければならない（1項b号参照）。この義務の具体的な履行方法は柔軟であり，2項で列挙されている。なお，3項は，1項の違反があった場合には口座管理機関に対して非条約法の認める期限内に是正措置をとることを要求する。4項については省略する。

25条は，1項で，24条で口座管理機関が上位口座管理機関の口座に保有する振替証券は，その口座名義人（以下「顧客」という）に割り当てられると定める。2項は，そのような振替証券は口座管理機関の債権者の債権等の責任財産とならないことを定めている。これらは倒産手続においても適用される（6項）。顧客への具体的な割当て（帰属）のしかたは非条約法等で決まる（3項・4項）。5項は，宣言により，口座管理機関が自己のために上位口座管理機関の口座に保有する振替証券については，顧客に帰属しないこととすることが認められる。日本の現在の法制はそうなっているため，かりにもし日本が本条約を批准する場合には，本項による宣言をすることになると考えられる。

26条は，口座管理機関が倒産した場合において，25条で顧客に帰属する振替証券が不足するような場合における損失分担を定めた規定である。原則は按分するが（2項），証券決済システム等に別段の定めがある場合はそれに従う（3項）。

27条は，証券決済システムの運営者または参加者が倒産した場合についての特別規定であるが，ここでは省略する。

28条は，口座管理機関の義務と責任を定めた規定である。1項と2項は口座管理機関の義務に関する規定であり，本条約の定める口座管理機関の義務は非条約法（およびそのもとでの口座契約や証券決済システムの規則など）で具体的に定められ，それに従っていれば本条約上も義務違反にはならないと定めている。3項と4項は口座管理機関の責任に関する規定である。責任は非条約法等にゆだねられるが（3項），故意または重過失がある場合の責任を免除することは認められない（4項）。

29条と30条は発行者に関係する規定であって，別の章とすべき規定であるともいえるが，章の数を増やすのは複雑になるため，第4章の末尾に置くこととされた。

29条は，1項で，締約国は，上場証券等について，階層保有制度を認め，かつ，9条に定める権利の行使を確保しなければならないと定めている。ただし，すべての上場証券について階層保有を認めなければならないわけではなく，階層保有の対象となるか否かは証券の発行要項による（1項後段）。2項は，そのような証券について，議決権等の不統一行使が認められるべきことを定めた規定であるが，行使の際の条件には本条約は干渉しない。

30条は，相殺についての規定であり，階層保有状態以外の状態であれば相殺可能な場合には階層保有状態であっても相殺可能であると定めている。

Ⅴ．むすび

本稿では，階層保有状態のもとでなされる投資有価証券の保有および譲渡取引等に関し，私法レベルでの各国法の調整を目的として成立したユニドロア振替証券条約について，その経緯と内容のポイントを簡単に紹介した。本条約の内容は，基本的には，日本の現行法と整合的なものであると考えられる。換言すれば，本条約の策定過程は日本の制度を世界に向けて発信する場でもあったということができる。ただ，いずれにせよ，ユニドロア振替証券条約が成立した今日，それを契機として，日本においても必要に応じてより一層洗練された制度の整備へ向けた検討が行われていくことが望まれる。

（かんだ・ひでき）

〈参考〉

UNIDROIT CONVENTION ON SUBSTANTIVE RULES FOR INTERMEDIATED SECURITIES

Geneva, 9 October 2009

UNIDROIT CONVENTION ON SUBSTANTIVE RULES FOR INTERMEDIATED SECURITIES

THE STATES SIGNATORY TO THIS CONVENTION,

CONSCIOUS of the growth and development of global capital markets and recognising the benefits of holding securities, or interests in securities, through intermediaries in increasing the liquidity of modern securities markets,

RECOGNISING the need to protect persons that acquire or otherwise hold intermediated securities,

AWARE of the importance of reducing legal risk, systemic risk and associated costs in relation to domestic and cross-border transactions involving intermediated securities so as to facilitate the flow of capital and access to capital markets,

MINDFUL of the need to enhance the international compatibility of legal systems as well as the soundness of domestic and international rules relating to intermediated securities,

DESIRING to establish a common legal framework for the holding and disposition of intermediated securities,

BELIEVING that a functional approach in the formulation of rules to accommodate the various legal traditions involved would best serve the purposes of this Convention,

HAVING due regard for non-Convention law in matters not determined by this Convention,

EMPHASISING the importance of the integrity of a securities issue in a global environment for intermediated holding in order to ensure the exercise of investors' rights and enhance their protection,

EMPHASISING that this Convention is not intended to harmonise or otherwise affect insolvency law except to the extent necessary to provide for the effectiveness of rights and interests governed by this Convention,

RECOGNISING that this Convention does not limit or otherwise affect the powers of Contracting States to regulate, supervise or oversee the holding and disposition of intermediated securities or any other matters expressly covered by the Convention, except in so far as such regulation, supervision or oversight would contravene the provisions of this Convention,

MINDFUL of the importance of the role of intermediaries in the application of this Convention and the need of Contracting States to regulate, supervise or oversee their activities,

HAVE AGREED upon the following provisions:

CHAPTER I – DEFINITIONS, SPHERE OF APPLICATION AND INTERPRETATION

Article 1
Definitions

In this Convention:

(a) "securities" means any shares, bonds or other financial instruments or financial assets (other than cash) which are capable of being credited to a securities account and of being acquired and disposed of in accordance with the provisions of this Convention;

(b) "intermediated securities" means securities credited to a securities account or rights or interests in securities resulting from the credit of securities to a securities account;

(c) "securities account" means an account maintained by an intermediary to which securities may be credited or debited;

(d) "intermediary" means a person (including a central securities depository) who in the course of a business or other regular activity maintains securities accounts for others or both for others and for its own account and is acting in that capacity;

(e) "account holder" means a person in whose name an intermediary maintains a securities account, whether that person is acting for its own account or for others (including in the capacity of intermediary);

(f) "account agreement" means, in relation to a securities account, the agreement between the account holder and the relevant intermediary governing the securities account;

(g) "relevant intermediary" means, in relation to a securities account, the intermediary that maintains that securities account for the account holder;

(h) "insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the debtor are subject to control or supervision by a court or other competent authority for the purpose of reorganisation or liquidation;

(i) "insolvency administrator" means a person (including a debtor in possession if applicable) authorised to administer an insolvency proceeding, including one authorised on an interim basis;

(j) securities are "of the same description" as other securities if they are issued by the same issuer and:

(i) they are of the same class of shares or stock; or

(ii) in the case of securities other than shares or stock, they are of the same currency and denomination and are treated as forming part of the same issue;

(k) "control agreement" means an agreement in relation to intermediated securities between an account holder, the relevant intermediary and another person or, if so provided by the non-Convention law, between an account holder and the relevant intermediary or between an account holder and another person of which the relevant intermediary receives notice, which includes either or both of the following provisions:

(i) that the relevant intermediary is not permitted to comply with any instructions given by the account holder in relation to the intermediated securities to which the agreement relates without the consent of that other person;

(ii) that the relevant intermediary is obliged to comply with any instructions given by that other person in relation to the intermediated securities to which the agreement relates in such circumstances and as to such matters as may be provided by the agreement, without any further consent of the account holder;

(l) "designating entry" means an entry in a securities account made in favour of a person (including the relevant intermediary) other than the account holder in relation to intermediated securities, which, under the account agreement, a control agreement, the uniform rules of a securities settlement system or the non-Convention law, has either or both of the following effects:

(i) that the relevant intermediary is not permitted to comply with any instructions given

by the account holder in relation to the intermediated securities as to which the entry is made without the consent of that person;

(ii) that the relevant intermediary is obliged to comply with any instructions given by that person in relation to the intermediated securities as to which the entry is made in such circumstances and as to such matters as may be provided by the account agreement, a control agreement or the uniform rules of a securities settlement system, without any further consent of the account holder;

(m) "non-Convention law" means the law in force in the Contracting State referred to in Article 2, other than the provisions of this Convention;

(n) "securities settlement system" means a system that:

(i) settles, or clears and settles, securities transactions;

(ii) is operated by a central bank or central banks or is subject to regulation, supervision or oversight by a governmental or public authority in relation to its rules; and

(iii) has been identified as a securities settlement system in a declaration made by the Contracting State the law of which governs the system on the ground of the reduction of risk to the stability of the financial system;

(o) "securities clearing system" means a system that:

(i) clears, but does not settle, securities transactions through a central counterparty or otherwise;

(ii) is operated by a central bank or central banks or is subject to regulation, supervision or oversight by a governmental or public authority in relation to its rules; and

(iii) has been identified as a securities clearing system in a declaration made by the Contracting State the law of which governs the system on the ground of the reduction of risk to the stability of the financial system;

(p) "uniform rules" means, in relation to a securities settlement system or securities clearing system, rules of that system (including system rules constituted by the non-Convention law) which are common to the participants or to a class of participants and are publicly accessible.

Article 2
Sphere of application

This Convention applies whenever:

(a) the applicable conflict of laws rules designate the law in force in a Contracting State as the applicable law; or

(b) the circumstances do not lead to the application of any law other than the law in force in a Contracting State.

Article 3
Applicability of declarations

If the law of the forum State is not the applicable law, the forum State shall apply the Convention and the declarations, if any, made by the Contracting State the law of which applies, and without regard to the declarations, if any, made by the forum State.

Article 4
Principles of interpretation

In the implementation, interpretation and application of this Convention, regard is to be had to its purposes, the general principles on which it is based, its international character and the need to promote uniformity and predictability in its application.

Article 5
Central bank and regulated intermediaries

A Contracting State may declare that this Convention shall apply only to securities accounts maintained by:

(a) intermediaries falling within such categories as may be described in the declaration, which are subject to authorisation, regulation, supervi-

sion or oversight by a government or public authority in relation to the activity of maintaining securities accounts; or

(b) a central bank.

Article 6
Excluded functions

This Convention does not apply to the functions of creation, recording or reconciliation of securities, vis-à-vis the issuer of those securities, by a person such as a central securities depository, central bank, transfer agent or registrar.

Article 7
Performance of functions of intermediaries by other persons

1. A Contracting State may declare that under its non-Convention law a person other than the relevant intermediary is responsible for the performance of a function or functions (but not all functions) of the relevant intermediary under this Convention, either generally or in relation to intermediated securities, or securities accounts, of any category or description.

2. A declaration under this Article shall:

(a) specify, if applicable, the relevant category or description of intermediated securities or securities accounts;

(b) identify, by name or description:

(i) the relevant intermediary;

(ii) the parties to the account agreement; and

(iii) the person or persons other than the relevant intermediary who is or are responsible as described in paragraph 1; and

(c) specify, in relation to each such person:

(i) the functions for which such person is so responsible;

(ii) the provisions of this Convention that apply to such person, including whether Article 9, Article 10, Article 15 or Article 23 applies to such person; and

(iii) if applicable, the relevant category or description of intermediated securities or securities accounts.

3. Unless otherwise provided in this Convention, if a declaration under this Article applies, references in any provision in this Convention to an intermediary or the relevant intermediary are to the person or persons responsible for performing the function to which that provision applies.

Article 8
Relationship with issuers

1. Subject to Article 29(2), this Convention does not affect any right of the account holder against the issuer of the securities.

2. This Convention does not determine whom the issuer is required to recognise as the shareholder, bondholder or other person entitled to receive and exercise the rights attached to the securities or to recognise for any other purpose.

CHAPTER II – RIGHTS OF THE ACCOUNT HOLDER

Article 9
Intermediated securities

1. The credit of securities to a securities account confers on the account holder:

(a) the right to receive and exercise any rights attached to the securities, including dividends, other distributions and voting rights:

(i) if the account holder is not an intermediary or is an intermediary acting for its own account; and

(ii) in any other case, if so provided by the non-Convention law;

(b) the right to effect a disposition under Article 11 or grant an interest under Article 12;

(c) the right, by instructions to the relevant intermediary, to cause the securities to be held otherwise than through a securities account, to the extent permitted by the applicable law, the terms

of the securities and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system;

(d) unless otherwise provided in this Convention, such other rights, including rights and interests in securities, as may be conferred by the non-Convention law.

2. Unless otherwise provided in this Convention:

(a) the rights referred to in paragraph 1 are effective against third parties;

(b) the rights referred to in paragraph 1(a) may be exercised against the relevant intermediary or the issuer of the securities, or both, in accordance with this Convention, the terms of the securities and the applicable law;

(c) the rights referred to in paragraph 1(b) and 1(c) may be exercised only against the relevant intermediary.

3. If an account holder has acquired a security interest, or a limited interest other than a security interest, by credit of securities to its securities account under Article 11(4), the non-Convention law determines any limits on the rights described in paragraph 1 of this Article.

Article 10
Measures to enable the exercise of rights

1. An intermediary must take appropriate measures to enable its account holders to receive and exercise the rights specified in Article 9(1).

2. An intermediary must, at least:

(a) protect securities credited to a securities account, as provided in Article 24;

(b) allocate securities or intermediated securities to the rights of its account holders so as to be unavailable to its creditors, as provided in Article 25;

(c) give effect to any instructions given by the account holder or other authorised person, as provided by the non-Convention law, the account agreement or the uniform rules of a securities settlement system;

(d) not dispose of securities credited to a securities account without authorisation, as provided in Article 15;

(e) regularly pass on to account holders information relating to intermediated securities, including information necessary for account holders to exercise rights, if provided by the non-Convention law, the account agreement or the uniform rules of a securities settlement system; and

(f) regularly pass on to account holders dividends and other distributions received in relation to intermediated securities, if provided by the non-Convention law, the account agreement or the uniform rules of a securities settlement system.

3. This Convention does not require the relevant intermediary to establish a securities account with another intermediary or to take any action that is not within its power.

CHAPTER III – TRANSFER OF INTERMEDIATED SECURITIES

Article 11
Acquisition and disposition by debit and credit

1. Subject to Article 16, intermediated securities are acquired by an account holder by the credit of securities to that account holder's securities account.

2. No further step is necessary, or may be required by the non-Convention law or any other rule of law applicable in an insolvency proceeding, to render the acquisition of intermediated securities effective against third parties.

3. Subject to Articles 15 and 16, intermediated securities are disposed of by an account holder by the debit of securities to that account holder's se-

curities account.

4. A security interest, or a limited interest other than a security interest, in intermediated securities may be acquired and disposed of by debit and credit of securities to securities accounts under this Article.

5. Nothing in this Convention limits the effectiveness of debits and credits to securities accounts which are effected on a net basis in relation to securities of the same description.

Article 12
Acquisition and disposition by other methods

1. Subject to Article 16, an account holder grants an interest in intermediated securities, including a security interest or a limited interest other than a security interest, to another person if:

(a) the account holder enters into an agreement with or in favour of that person; and

(b) one of the conditions specified in paragraph 3 applies and the relevant Contracting State has made a declaration in relation to that condition under paragraph 5.

2. No further step is necessary, or may be required by the non-Convention law or any other rule of law applicable in an insolvency proceeding, to render the interest effective against third parties.

3. The conditions referred to in paragraph 1(b) are as follows:

(a) the person to whom the interest is granted is the relevant intermediary;

(b) a designating entry in favour of that person has been made;

(c) a control agreement in favour of that person applies.

4. An interest in intermediated securities may be granted under this Article so as to be effective against third parties:

(a) in relation to a securities account (and such an interest extends to all intermediated securities from time to time standing to the credit of the relevant securities account);

(b) in relation to a specified category, quantity, proportion or value of the intermediated securities from time to time standing to the credit of a securities account.

5. A Contracting State may declare that under its law:

(a) the condition specified in any one or more of the sub-paragraphs of paragraph 3 is sufficient to render an interest effective against third parties;

(b) this Article shall not apply in relation to interests in intermediated securities granted by or to parties falling within such categories as may be specified in the declaration;

(c) paragraph 4, or either sub-paragraph of paragraph 4, does not apply;

(d) paragraph 4(b) applies with such modifications as may be specified in the declaration.

6. A declaration in relation to paragraph 3(b) shall specify whether a designating entry has the effect described in Article 1(l)(i) or Article 1(l)(ii) or both.

7. A declaration in relation to paragraph 3(c) shall specify whether a control agreement must include the provision described in Article 1(k)(i) or Article 1(k)(ii) or both.

8. The applicable law determines in what circumstances a non-consensual security interest in intermediated securities may arise and become effective against third parties.

Article 13
Acquisition and disposition under non-Convention law

This Convention does not preclude any method provided by the non-Convention law for:

(a) the acquisition or disposition of intermedi-

ated securities or of an interest in intermediated securities; or

(b) the creation of an interest in intermediated securities and for making such an interest effective against third parties,

other than the methods provided by Articles 11 and 12.

Article 14
Effectiveness in insolvency

1. Rights and interests that have become effective against third parties under Article 11 or Article 12 are effective against the insolvency administrator and creditors in any insolvency proceeding.

2. Paragraph 1 does not affect the application of any substantive or procedural rule of law applicable by virtue of an insolvency proceeding, such as any rule relating to:

(a) the ranking of categories of claims;

(b) the avoidance of a transaction as a preference or a transfer in fraud of creditors; or

(c) the enforcement of rights to property that is under the control or supervision of the insolvency administrator.

3. Paragraph 1 does not apply to the rights and interests to which Article 21(1) applies.

4. Nothing in this Convention impairs the effectiveness of an interest in intermediated securities against the insolvency administrator and creditors in any insolvency proceeding if that interest has become effective by any method referred to in Article 13.

Article 15
Unauthorised dispositions

1. An intermediary may make a debit of securities to a securities account, make or remove a designating entry or otherwise dispose of intermediated securities only if it is authorised to do so:

(a) in relation to a debit, by the account holder and, if applicable, the person to whom an interest in the relevant intermediated securities has been granted under Article 12;

(b) in relation to a designating entry, by the account holder;

(c) in relation to the removal of a designating entry, by the person in whose favour the designating entry has been made;

(d) in relation to any other disposition, by the account holder and, if applicable, the person to whom an interest in the relevant intermediated securities has been granted under Article 12; or

(e) by the non-Convention law.

2. The non-Convention law and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system determine the consequences of: an unauthorised debit; an unauthorised removal of a designating entry; subject to Article 18(2), an unauthorised designating entry; or any other unauthorised disposition.

Article 16
Invalidity, reversal and conditions

Subject to Article 18, the non-Convention law and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system determine whether and in what circumstances a debit, credit, designating entry or removal of a designating entry is invalid, is liable to be reversed or may be subject to a condition, and the consequences thereof.

Article 17
Terms used in Chapter III

In this Chapter:

(a) "acquirer" means:

(i) an account holder to whose securities account securities are credited; or

(ii) a person to whom an interest in intermediated securities is granted under

Article 12;

(b) in determining whether a person ought to know of an interest or fact:

(i) the determination must take into account the characteristics and requirements of securities markets, including the intermediated holding system; and

(ii) the person is under no general duty of inquiry or investigation;

(c) an organisation actually knows or ought to know of an interest or fact from the time when the interest or fact is or ought reasonably to have been brought to the attention of the individual responsible for the matter to which the interest or fact is relevant;

(d) "defective entry" means a credit of securities or designating entry that is invalid or liable to be reversed, including a conditional credit or designating entry that becomes invalid or liable to be reversed by reason of the operation or non-fulfilment of the condition;

(e) "relevant time" means the time that a credit is made or the time referred to in Article 19(3).

Article 18
Acquisition by an innocent person

1. Unless an acquirer actually knows or ought to know, at the relevant time, that another person has an interest in securities or intermediated securities and that the credit to the securities account of the acquirer, designating entry or interest granted to the acquirer violates the rights of that other person in relation to its interest:

(a) the right or interest of the acquirer is not subject to the interest of that other person;

(b) the acquirer is not liable to that other person; and

(c) the credit, designating entry or interest granted is not rendered invalid, ineffective against third parties or liable to be reversed on the ground that the credit, designating entry or interest granted violates the rights of that other person.

2. Unless an acquirer actually knows or ought to know, at the relevant time, of an earlier defective entry:

(a) the credit, designating entry or interest is not rendered invalid, ineffective against third parties or liable to be reversed as a result of that defective entry; and

(b) the acquirer is not liable to anyone who would benefit from the invalidity or reversal of that defective entry.

3. Paragraphs 1 and 2 do not apply to an acquisition of intermediated securities, other than the grant of a security interest, made by way of gift or otherwise gratuitously.

4. If an acquirer is not protected by paragraph 1 or paragraph 2, the applicable law determines the rights and liabilities, if any, of the acquirer.

5. To the extent permitted by the non-Convention law, paragraph 2 is subject to any provision of the uniform rules of a securities settlement system or of the account agreement.

6. This Article does not modify the priorities determined by Article 19 or Article 20(2).

Article 19
Priority among competing interests

1. This Article determines priority between interests in the same intermediated securities which become effective against third parties under Article 12 or Article 13.

2. Subject to paragraph 5 and Article 20, interests that become effective against third parties under Article 12 have priority over any interest that becomes effective against third parties by any other method provided by the non-Convention law.

3. Interests that become effective against third parties under Article 12 rank among themselves according to the time of occurrence of the following events:

(a) if the relevant intermediary is itself the holder of the interest and the interest is effective against third parties under Article 12(3)(a), when the agreement granting the interest is entered into;

(b) when a designating entry is made;

(c) when a control agreement is entered into or, if the relevant intermediary is not a party to the control agreement, when the relevant intermediary receives notice of it.

4. If an intermediary has an interest that has become effective against third parties under Article 12 and makes a designating entry or enters into a control agreement with the consequence that an interest of another person becomes effective against third parties, the interest of that other person has priority over the interest of the intermediary unless that other person and the intermediary expressly agree otherwise.

5. A non-consensual security interest in intermediated securities arising under the applicable law has such priority as is afforded to it by that law.
As between persons entitled to any interests referred to in paragraphs 2, 3 and 4 and, to the extent permitted by the applicable law, paragraph 5, the priorities provided by this Article may be varied by agreement between those persons, but any such agreement does not affect third parties.

6. A Contracting State may declare that under its non-Convention law, subject to paragraph 4, an interest granted by a designating entry has priority over any interest granted by any other method provided by Article 12.

Article 20
Priority of interests granted by an intermediary

1. Except as provided by paragraph 2, this Convention does not determine the priority or the relative rights and interests between the rights of account holders of an intermediary and interests granted by that intermediary so as to be effective against third parties under Article 12 or Article 13.

2. An interest in intermediated securities granted by an intermediary so as to become effective against third parties under Article 12 has priority over the rights of account holders of that intermediary unless, at the relevant time, the person to whom the interest is granted actually knows or ought to know that the interest granted violates the rights of one or more account holders.

CHAPTER IV – INTEGRITY OF THE INTERMEDIATED HOLDING SYSTEM

Article 21
Effectiveness in the insolvency of the relevant intermediary

1. Rights and interests of account holders of a relevant intermediary that have become effective against third parties under Article 11 and interests granted by such account holders that have become effective under Article 12 are effective against the insolvency administrator and creditors in any insolvency proceeding in relation to the relevant intermediary or in relation to any other person responsible for the performance of a function of the relevant intermediary under Article 7.

2. Paragraph 1 does not affect:

(a) any rule of law applicable in the insolvency proceeding relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or

(b) any rule of procedure relating to the enforcement of rights to property that is under the control or supervision of the insolvency administrator.

3. Nothing in this Article impairs the effectiveness of an interest in intermediated securities against the insolvency administrator and creditors in any insolvency proceeding referred to in paragraph 1,

if that interest has become effective by any method referred to in Article 13.

Article 22
Prohibition of upper-tier attachment

1. Subject to paragraph 3, no attachment of intermediated securities of an account holder shall be made against, or so as to affect:

(a) a securities account of any person other than that account holder;

(b) the issuer of any securities credited to a securities account of that account holder; or

(c) a person other than the account holder and the relevant intermediary.

2. In this Article "attachment of intermediated securities of an account holder" means any judicial, administrative or other act or process to freeze, restrict or impound intermediated securities of that account holder in order to enforce or satisfy a judgment, award or other judicial, arbitral, administrative or other decision or in order to ensure the availability of such intermediated securities to enforce or satisfy any future judgment, award or decision.

3. A Contracting State may declare that under its non-Convention law an attachment of intermediated securities of an account holder made against or so as to affect a person other than the relevant intermediary has effect also against the relevant intermediary. Any such declaration shall identify that other person by name or description and shall specify the time at which such an attachment becomes effective against the relevant intermediary.

Article 23
Instructions to the intermediary

1. An intermediary is neither bound nor entitled to give effect to any instructions in relation to intermediated securities of an account holder given by any person other than that account holder.
Paragraph 1 is subject to:

(a) the provisions of the account agreement, any other agreement between the intermediary and the account holder or any other agreement entered into by the intermediary with the consent of the account holder;

(b) the rights of any person (including the intermediary) who holds an interest that has become effective against third parties under Article 12;

(c) subject to Article 22, any judgment, award, order or decision of a court, tribunal or other judicial or administrative authority of competent jurisdiction;

(d) any applicable provision of the non-Convention law; and

(e) if the intermediary is the operator of a securities settlement system, the uniform rules of that system.

Article 24
Holding or availability of sufficient securities

1. An intermediary must, for each description of securities, hold or have available securities and intermediated securities of an aggregate number or amount equal to the aggregate number or amount of securities of that description credited to:

(a) securities accounts that it maintains for its account holders other than itself; and

(b) if applicable, securities accounts that it maintains for itself.

2. An intermediary may comply with paragraph 1 by:

(a) procuring that securities are held on the register of the issuer in the name, or for the account, of its account holders;

(b) holding securities as the registered holder on the register of the issuer;

(c) possession of certificates or other documents of title;

(d) holding intermediated securities with another intermediary; or

(e) any other appropriate method.

3. If at any time the requirements of paragraph 1 are not complied with, the intermediary must within the time permitted by the non-Convention law take such action as is necessary to ensure compliance with those requirements.
4. This Article does not affect any provision of the non-Convention law, or, to the extent permitted by the non-Convention law, any provision of the uniform rules of a securities settlement system or of the account agreement, relating to the method of complying with the requirements of this Article or the allocation of the cost of ensuring compliance with those requirements or otherwise relating to the consequences of failure to comply with those requirements.

Article 25
Allocation of securities to account holders' rights

1. Securities and intermediated securities of each description held by an intermediary as described in Article 24(2) shall be allocated to the rights of the account holders of that intermediary, other than itself, to the extent necessary to ensure compliance with Article 24(1)(a).

2. Subject to Article 20, securities and intermediated securities allocated under paragraph 1 shall not form part of the property of the intermediary available for distribution among or realisation for the benefit of creditors of the intermediary.

3. The allocation required by paragraph 1 shall be effected by the non-Convention law and, to the extent required or permitted by the non-Convention law, by arrangements made by the relevant intermediary.

4. The arrangements referred to in paragraph 3 may include arrangements under which an intermediary holds securities and intermediated securities in segregated form for the benefit of:
(a) its account holders generally; or
(b) particular account holders or groups of account holders,
in such manner as to ensure that such securities and intermediated securities are allocated in accordance with paragraph 1.

5. A Contracting State may declare that, if all securities and intermediated securities held by an intermediary for its account holders, other than itself, are in segregated form under arrangements such as are referred to in paragraph 4, under its non-Convention law the allocation required by paragraph 1 applies only to those securities and intermediated securities and does not apply to securities and intermediated securities held by an intermediary for its own account.

6. This Article applies notwithstanding the commencement or continuation of an insolvency proceeding in relation to the intermediary.

Article 26
Loss sharing in case of insolvency of the intermediary

1. This Article applies in any insolvency proceeding in relation to an intermediary unless otherwise provided by any conflicting rule applicable in that proceeding.

2. If the aggregate number or amount of securities and intermediated securities of any description allocated under Article 25(1) to an account holder, a group of account holders or the intermediary's account holders generally (as the case may be) is less than the aggregate number or amount of securities of that description credited to the securities accounts of that account holder, that group of account holders or the intermediary's account holders generally, the shortfall shall be borne:
(a) if securities and intermediated securities have been allocated to a single account holder, by that account holder; and
(b) in any other case, by the account holders to whom the relevant securities have been allocated, in proportion to the respective number or amount of securities of that description credited to their

securities accounts.

3. To the extent permitted by the non-Convention law, if the intermediary is the operator of a securities settlement system and the uniform rules of the system make provision in case of a shortfall, the shortfall shall be borne in the manner so provided.

Article 27
Insolvency of system operator or participant

To the extent permitted by the law governing a system, the following provisions shall have effect notwithstanding the commencement of an insolvency proceeding in relation to the operator of that system or any participant in that system and notwithstanding any invalidation, reversal or revocation that would otherwise occur under any rule applicable in an insolvency proceeding:

(a) any provision of the uniform rules of a securities settlement system or of a securities clearing system in so far as that provision precludes the revocation of any instruction given by a participant in the system for making a disposition of intermediated securities, or for making a payment relating to an acquisition or disposition of intermediated securities, after the time at which that instruction is treated under the rules of the system as having been entered irrevocably into the system;

(b) any provision of the uniform rules of a securities settlement system in so far as that provision precludes the invalidation or reversal of a debit or credit of securities to, or a designating entry or removal of a designating entry in, a securities account that forms part of the system after the time at which that debit, credit, designating entry or removal of a designating entry is treated under the rules of the system as not liable to be reversed.

Article 28
Obligations and liability of intermediaries

1. The obligations of an intermediary under this Convention, including the manner in which an intermediary complies with its obligations, may be specified by the non-Convention law and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system.

2. If the substance of any such obligation is specified by the non-Convention law or, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system, compliance with it satisfies that obligation.

3. The liability of an intermediary in relation to its obligations is governed by the non-Convention law and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system.
An intermediary may not exclude liability for its gross negligence or wilful misconduct.

Article 29
Position of issuers of securities

1. The law of a Contracting State shall permit the holding through one or more intermediaries of securities that are permitted to be traded on an exchange or regulated market, and the effective exercise in accordance with Article 9 of the rights attached to such securities that are so held, but need not require that all such securities be issued on terms that permit them to be held through intermediaries.

2. In particular, the law of a Contracting State shall recognise the holding of such securities by a person acting in its own name on behalf of another person or other persons and shall permit such a person to exercise voting or other rights in differ-

ent ways in relation to different parts of a holding of securities of the same description; but this Convention does not determine the conditions under which such a person is authorised to exercise such rights.

Article 30
Set-off

As between an account holder that holds intermediated securities for its own account and the issuer of those securities, the fact that the account holder holds the securities through an intermediary or intermediaries shall not of itself, in any insolvency proceeding in relation to the issuer, preclude the existence or prevent the exercise of any rights of set-off which would have existed and been exercisable if the account holder had held the securities otherwise than through an intermediary.

CHAPTER V – SPECIAL PROVISIONS IN RELATION TO COLLATERAL TRANSACTIONS

Article 31
Scope of application and definitions in Chapter V

1. This Chapter applies to collateral agreements under which a collateral provider grants an interest in intermediated securities to a collateral taker in order to secure the performance of any existing, future or contingent obligations of the collateral provider or another person.

2. Nothing in this Chapter impairs any provision of the non-Convention law which provides for additional rights or powers of a collateral taker or additional obligations of a collateral provider.

3. In this Chapter:

(a) "collateral agreement" means a security collateral agreement or a title transfer collateral agreement;

(b) "security collateral agreement" means an agreement between a collateral provider and a collateral taker providing (in whatever terms) for the grant of an interest other than full ownership in intermediated securities for the purpose of securing the performance of relevant obligations;

(c) "title transfer collateral agreement" means an agreement, including an agreement providing for the sale and repurchase of securities, between a collateral provider and a collateral taker providing (in whatever terms) for the transfer of full ownership of intermediated securities by the collateral provider to the collateral taker for the purpose of securing or otherwise covering the performance of relevant obligations;

(d) "relevant obligations" means any existing, future or contingent obligations of a collateral provider or another person;

(e) "collateral securities" means intermediated securities delivered under a collateral agreement;

(f) "collateral taker" means a person to whom an interest in intermediated securities is granted under a collateral agreement;

(g) "collateral provider" means an account holder by whom an interest in intermediated securities is granted under a collateral agreement;

(h) "enforcement event" means, in relation to a collateral agreement, an event of default or other event on the occurrence of which, under the terms of that collateral agreement or by the operation of law, the collateral taker is entitled to realise the collateral securities or a close-out netting provision may be operated;

(i) "equivalent collateral" means securities of the same description as collateral securities;

(j) "close-out netting provision" means a provision of a collateral agreement, or of a set of connected agreements of which a collateral agreement forms part, under which, on the occurrence of an enforcement event, either or both of the following shall occur, or may at the election of the collateral taker occur, whether through the operation of netting or set-off or otherwise:

(i) the respective obligations of the parties are accelerated so as to be immediately due

and expressed as an obligation to pay an amount representing their estimated current value or are terminated and replaced by an obligation to pay such an amount;

(ii) an account is taken of what is due from each party to the other in relation to such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.

Article 32
Recognition of title transfer collateral agreements

The law of a Contracting State shall permit a title transfer collateral agreement to take effect in accordance with its terms.

Article 33
Enforcement

1. On the occurrence of an enforcement event:

(a) the collateral taker may realise the collateral securities delivered under a security collateral agreement by:

(i) selling them and applying the net proceeds of sale in or towards the discharge of the relevant obligations; or

(ii) appropriating the collateral securities as the collateral taker's own property and setting off their value against, or applying their value in or towards the discharge of, the relevant obligations, provided that the collateral agreement provides for realisation in this manner and specifies the basis on which collateral securities are to be valued for this purpose; or

(b) a close-out netting provision may be operated.

2. If an enforcement event occurs while any obligation of the collateral taker to deliver equivalent collateral under a collateral agreement remains outstanding, that obligation and the relevant obligations may be the subject of a close-out netting provision.

3. Collateral securities may be realised, and a close-out netting provision may be operated, under this Article:

(a) subject to any contrary provision of the collateral agreement, without any requirement that:

(i) prior notice of the intention to realise or operate the close-out netting provision shall have been given;

(ii) the terms of the realisation or the operation of the close-out netting provision be approved by any court, public officer or other person; or

(iii) the realisation be conducted by public auction or in any other prescribed manner or the close-out netting provision be operated in any prescribed manner; and

(b) notwithstanding the commencement or continuation of an insolvency proceeding in relation to the collateral provider or the collateral taker.

Article 34
Right to use collateral securities

1. If and to the extent that the terms of a security collateral agreement so provide, the collateral taker shall have the right to use and dispose of the collateral securities as if it were the owner of them (a "right of use").

2. If a collateral taker exercises a right of use, it thereby incurs an obligation to replace the collateral securities so used or disposed of (the "original collateral securities") by delivering to the collateral provider, not later than the discharge of the relevant obligations, equivalent collateral or, if the security collateral agreement provides for the delivery of other assets following the occurrence of any event relating to or affecting any securities delivered as collateral, those other assets ("replacement collateral").

3. Replacement collateral acquired or identified by the collateral taker before the relevant obliga-

tions have been fully discharged shall:

(a) in the same manner as the original collateral securities, be subject to an interest under the relevant security collateral agreement, which shall be treated as having been created at the same time as the interest in relation to the original collateral securities was created; and

(b) in all other respects be subject to the terms of the relevant security collateral agreement.

4. The exercise of a right of use shall not render invalid or unenforceable any right of the collateral taker under the relevant security collateral agreement or the non-Convention law.

Article 35
Requirements of non-Convention law relating to enforcement

Articles 33 and 34 do not affect any requirement of the non-Convention law to the effect that the realisation or valuation of collateral securities or the calculation of any obligations must be conducted in a commercially reasonable manner.

Article 36
Top-up or substitution of collateral

1. If a collateral agreement includes:

(a) an obligation to deliver additional collateral securities:

(i) in order to take account of changes in the value of the collateral delivered under the collateral agreement or in the amount of the relevant obligations;

(ii) in order to take account of any circumstances giving rise to an increase in the credit risk incurred by the collateral taker as determined by reference to objective criteria relating to the creditworthiness, financial performance or financial condition of the collateral provider or other person by whom the relevant obligations are owed; or

(iii) to the extent permitted by the non-Convention law, in any other circumstances specified in the collateral agreement; or

(b) a right to withdraw collateral securities or other assets on delivering collateral securities or other assets of substantially the same value,

the delivery of securities or other assets as described in sub-paragraphs (a) and (b) shall not be treated as invalid, reversed or declared void solely on the basis that they are delivered during a prescribed period before, or on the day of but before, the commencement of an insolvency proceeding in relation to the collateral provider, or after the relevant obligations have been incurred.

2. A Contracting State may declare that paragraph 1(a)(ii) shall not apply.

Article 37
Certain insolvency provisions disapplied

If Article 36 does not apply, a collateral agreement or the delivery of collateral securities under such agreement shall not be treated as invalid, reversed or declared void solely on the basis that the agreement is entered into or the collateral securities are delivered during a prescribed period before, or on the day of but before, the commencement of an insolvency proceeding in relation to the collateral provider.

Article 38
Declarations in relation to Chapter V

1. A Contracting State may declare that this Chapter shall not apply.

2. A Contracting State may declare that this Chapter shall not apply:

(a) in relation to collateral agreements entered into by natural persons or other persons falling within such categories as may be specified in the declaration;

(b) in relation to intermediated securities that are not permitted to be traded on an exchange or regulated market;

(c) in relation to collateral agreements that re-

late to relevant obligations falling within such categories as may be specified in the declaration.

CHAPTER VI – TRANSITIONAL PROVISION

Article 39
Priority

1. This Convention does not affect the priority of interests granted under the law in force in a Contracting State before the date on which this Convention has entered into force in relation to that Contracting State.

2. A Contracting State may declare that a pre-existing interest shall retain the priority it enjoyed before the relevant date only if, at any time before that date, the interest has become effective against third parties by satisfying a condition specified in the declaration made by that Contracting State in accordance with Article 12(5)(a).
In this Article:

(a) "pre-existing interest" means any interest, other than a non-consensual security interest, that has been granted under the law in force in a Contracting State before the date this Convention has entered into force in relation to that Contracting State, other than by a credit to a securities account;

(b) "the relevant date" means the date stated by a Contracting State in the declaration made under this Article and that date shall not be later than two years after the effective date of that declaration.

4. Article 45(5) does not apply to the declaration provided for in this Article.

CHAPTER VII – FINAL PROVISIONS

Article 40
Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Geneva on 9 October 2009 by States participating in the diplomatic Conference to adopt a Convention on Substantive Rules regarding Intermediated Securities held at Geneva from 1 September 2008 to 12 September 2008 and from 5 October 2009 to 9 October 2009 (the Geneva Conference). After 9 October 2009 this Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome, and at such other places as the Depositary may determine, until it enters into force in accordance with Article 42.
This Convention shall be subject to ratification, acceptance or approval by States that have signed it.

2. Any State that does not sign this Convention may accede to it at any time.
Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

Article 41
Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention. If the number of Contracting States is relevant in this Convention, the Regional Economic

Integration Organisation shall not count as a Contracting State in addition to its Member States that are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in relation to which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly and formally notify the Depositary in writing of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to "Contracting State", "Contracting States" or "State Party" in this Convention applies equally to a Regional Economic Integration Organisation if the context so requires.

Article 42
Entry into force

1. This Convention enters into force on the first day of the month following the expiration of six months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession between the States that have deposited such instruments.

2. For each State that ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention enters into force in relation to that State on the first day of the month following the expiration of six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 43
Territorial units

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, make an initial declaration that this Convention is to extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. Any such initial declaration is to be made in writing and formally notified to the Depositary and shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. If a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in relation to each such territorial unit, and the declarations made in relation to one territorial unit may be different from those made in relation to another territorial unit.

5. In relation to a Contracting State with two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, any reference to the law in force in a Contracting State or to the law of a Contracting State shall be construed as referring to the law in force in the relevant territorial unit.

Article 44
Reservations

No reservations may be made to this Convention.

Article 45
Declarations

1. Declarations authorised by the provisions of the Convention, other than the declaration provided for in Article 41(2) and the initial declaration pro-

vided for in Article 43(1), may be made at any time.

2. Declarations, and confirmations of declarations, are to be made in writing and formally notified to the Depositary.

3. A declaration made by a Contracting State prior to the entry into force of the Convention for that State shall take effect simultaneously with the entry into force of the Convention for the State concerned. A declaration of which the Depositary receives formal notification after such entry into force shall take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Depositary. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

4. A Contracting State that makes a declaration under this Convention may modify or withdraw it at any time by a formal notification in writing to the Depositary. The modification or withdrawal shall take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the Depositary.

5. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no declaration, modification or withdrawal of a declaration had been made, in relation to all rights and interests arising prior to the effective date of such declaration, modification or withdrawal.

Article 46
Denunciations

1. Any State Party may denounce this Convention by formal notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. If a longer period for that denunciation to take effect is specified in the notification, it shall take effect upon the expiration of such period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciation had been made, in relation to all rights, interests and obligations arising prior to the effective date of any such denunciation.

Article 47
Evaluation meetings, revision Conferences and related matters

1. Not later than 24 months after the entry into force of the Convention, and in principle every 24 months thereafter as the circumstances warrant, the Depositary shall convene an Evaluation Meeting, to which will be invited the Contracting States, the States and Observers participating in the Geneva Conference, the member States of UNIDROIT as well as other invited Observers.

2. The Agenda of the Evaluation Meeting may include the following matters:
(a) the implementation and operation of the Convention;
(b) whether any modification to this Convention or to the Official Commentary is desirable.

3. The Depositary will take due account of the results of the Evaluation Meeting and, if appropriate, may convene a diplomatic Conference.

4. The amendments adopted by the diplomatic Conference referred to in paragraph 3 will enter into force on such a date as will be determined by the Conference in relation to Contracting States that ratify, accept or approve these amendments.

5. After the entry into force of the amendments referred to in paragraph 4, the States that will rat-

ify, accept, approve or accede to this Convention will be bound by the Convention as amended.

Article 48
Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with UNIDROIT, which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) each declaration made in accordance with this Convention, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all Contracting States; and

(c) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Geneva, this ninth day of October, two thousand and nine, in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within one hundred and twenty days hereof as to the consistency of the texts with one another.