

28 novembre / 28 November 2002

**RESUMÉ DES RÉACTIONS AU DOC. PRÉL. No 17 : « LE PROJET ACTUEL DE
CONVENTION ASSURE-T-IL CONVENABLEMENT QUE L'INTERMÉDIAIRE
PERTINENT (PRIMA) EST IDENTIQUE POUR TOUS LES TRANSFERTS DE TITRES
DÉTENUS AUPRÈS D'UN INTERMÉDIAIRE DONNÉ OU UNE DISPOSITION
PARTICULIÈRE EST-ELLE NÉCESSAIRE POUR PARVENIR À CE RÉSULTAT ? »**

soumis par le Bureau Permanent

* * *

**SUMMARY OF REACTIONS TO PREL. DOC. No. 17: "DOES THE CURRENT DRAFT
OF THE CONVENTION ADEQUATELY ENSURE THAT THE RELEVANT
INTERMEDIARY (i.e. PRIMA) IS THE SAME FOR ALL DISPOSITIONS OF
SECURITIES HELD WITH A PARTICULAR INTERMEDIARY, OR IS THERE A NEED
FOR A SPECIFIC PROVISION TO ACHIEVE THIS?"**

submitted by the Permanent Bureau

*Document préliminaire No 18ter du 28 novembre 2002
à l'intention de la Session diplomatique sur les titres intermédiés*

*Preliminary Document No 18ter of 28 November 2002
for the attention of the Diplomatic Session on indirectly held securities*

RESUMÉ DES RÉACTIONS AU DOC. PRÉL. No 17 : « LE PROJET ACTUEL DE CONVENTION ASSURE-T-IL CONVENABLEMENT QUE L'INTERMÉDIAIRE PERTINENT (PRIMA) EST IDENTIQUE POUR TOUS LES TRANSFERTS DE TITRES DÉTENUS AUPRÈS D'UN INTERMÉDIAIRE DONNÉ OU UNE DISPOSITION PARTICULIÈRE EST-ELLE NÉCESSAIRE POUR PARVENIR À CE RÉSULTAT ? »

soumis par le Bureau Permanent

* * *

SUMMARY OF REACTIONS TO PREL. DOC. No. 17: "DOES THE CURRENT DRAFT OF THE CONVENTION ADEQUATELY ENSURE THAT THE RELEVANT INTERMEDIARY (i.e. PRIMA) IS THE SAME FOR ALL DISPOSITIONS OF SECURITIES HELD WITH A PARTICULAR INTERMEDIARY, OR IS THERE A NEED FOR A SPECIFIC PROVISION TO ACHIEVE THIS?"

submitted by the Permanent Bureau

*Document préliminaire No 18ter du 28 novembre 2002
à l'intention de la Session diplomatique sur les titres intermédiés*

*Preliminary Document No 18ter of 28 November 2002
for the attention of the Diplomatic Session on indirectly held securities*

SUMMARY OF REACTIONS TO PREL. DOC. NO. 17

DOES THE CURRENT DRAFT OF THE CONVENTION ADEQUATELY ENSURE THAT THE RELEVANT INTERMEDIARY (i.e. PRIMA) IS THE SAME FOR ALL DISPOSITIONS OF SECURITIES HELD WITH A PARTICULAR INTERMEDIARY, OR IS THERE A NEED FOR A SPECIFIC PROVISION TO ACHIEVE THIS?

Introduction:

This document reflects the reactions received to the suggestion in Prel. Doc. No. 17 regarding the question of whether the current draft of the Convention adequately ensures that the relevant intermediary (*i.e.* PRIMA) is the same for all dispositions of securities held with a particular intermediary, or whether there is a need for a specific provision to achieve this.

Parties approving Prel. Doc. No. 17:

The following parties have indicated that they believe it is *not* necessary to insert a specific provision to ensure that the relevant intermediary is the same for all dispositions of securities and that this result already follows from the current draft provisions of the Convention. They agree with the conclusion that it is enough to address this question in the Explanatory Report with examples (as suggested in Prel. Doc. No. 17).

Member States:

- Argentina
- Australia
- Canada¹

¹ However, the Canadian delegation expressed concern that Prel. Doc. No. 17 could be misinterpreted as meaning that multiple PRIMAs cannot occur. Their comments state that the examples provided in Prel. Doc. No. 17 are correct, but that the discussion does not identify all the issues regarding the possibility of multiple PRIMAs. The Canadian delegation explains as follows:

"In Example 1, there is no issue of multiple PRIMAs because the transaction involves only one account holder - French Company. Although there are technically two accounts, there is probably only one account agreement between French Company and Belgian Bank and PRIMA would be determined by reference to that agreement.

In Example 2, however, the example seems to overlook the fact that, while London Bank is the relevant intermediary for both the transferor and transferee, the transaction involves two separate accounts. If we assume that London Bank is a "global intermediary" with operations around the world, then it is reasonable to contemplate that London Bank's account agreement with German Company could validly specify German law, and that its proprietary account agreement validly specifies United Kingdom law. In those circumstances, German law applies to the debit and United Kingdom law applies to the credit. The same possibility occurs in Example 3.

By not dealing explicitly with the possibility of PRIMA applying different law to separate accounts maintained by a single intermediary, the examples in Prel. Doc. No. 17 may be misinterpreted as suggesting that this cannot occur. That may cause confusion.

- Finland
- Mexico
- United States

Observers:

- Fédération Bancaire de l'Union européenne (but see below the suggestion to address additional examples in the Explanatory Report)

Interested parties not qualifying as observers:

- Bundesverband deutscher Banken [Association of German Banks] (but see below the suggestion to address additional examples in the Explanatory Report)
- Monte Titoli

Suggested additional examples:

An intermediary holds securities on its own behalf and pledges these to a third party. In accordance with Example 2, Figure C, (London Bank) and Example 3, Figure D (London Broker), the securities are credited to both the securities account which the intermediary maintains for itself and to the intermediary's securities account for its own holdings ("proprietary") with the ICSD. Who is the relevant intermediary for pledging these securities to a third party if pledging is effected by marking the securities account as a pledged account?

- Bundesverband deutscher Banken
- Fédération Bancaire de l'Union européenne

The Canadian delegation is of the view that these multiple PRIMAs are manageable. Where they arise, it is the responsibility of the intermediary to ensure that the situation in Example 2, where the debit is invalid under German law but the credit is valid under United Kingdom law, does not occur. If this situation does occur, the intermediary is liable to both account holders. It is our position that any intermediary who operates in multiple jurisdictions and maintains accounts governed by different laws must be presumed to recognize these issues and protect itself.

Parties *not* approving Prel. Doc. No. 17:

So far no Member State or observer has indicated that it is necessary to insert a specific provision to ensure that the relevant intermediary is the same for all dispositions of securities, whether the disposition is in the form of a security interest, transfer of title by way of security or outright transfer.