

09:45-11:00 - Panel 7 - Marly

***“The New International Legal Framework
on Securities in relation with EU initiatives
and UNIDROIT”***

PARIS
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The New International Legal Framework on Securities

in relation with EU Initiatives and UNIDROIT

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- International efforts towards harmonisation
- Conflict of law issues
- Unidroit
- EU Legal Certainty
- Dematerialisation in France
- Better regulation in the EU

International efforts towards harmonisation of substantive rules regarding dematerialised securities

- IOSCO-BIS (November 2001) – 19 recommendations for Securities Settlement Systems
 - Recommendations refer to:
 - The need for a sound legal framework for Securities Settlement Systems
 - The imperative of protecting customer securities against the intermediary's insolvency
- G30 Plan of Actions (January 2001)
 - Pointed to:
 - The Hague Convention as a first step towards resolving legal uncertainty in respect of conflict of law issues
 - Substantive law issues which needed to be addressed
- Giovannini Report (April 2003)
 - Insufficiencies in legal framework for clearing and settlement are among the serious obstacles towards integration of EU financial markets
 - The EU Collateral Directive has removed a number of obstacles
 - The absence of common framework for the treatment of ownership in securities remained
 - Therefore, there is a need for the EU Securities Account Certainty Project

Conflict of law issues

- EU Directives:
 - Collateral Directive
 - Finality Directive

The place where the securities account is maintained.

- The Hague Securities Convention:

The law agreed in the account agreement subject to certain conditions being met including:

- that the intermediary has an office engaged in a business of monitoring securities accounts or of administering payments or corporate actions related to securities;
- or has some other regular activities of maintaining securities accounts there.

UNIDROIT an international organisation

- with 59 member states
- representing the various legal systems throughout the world

is proposing to address those substantive law issues at the global level

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- Status: Preliminary Draft Convention on Substantive Rules regarding Intermediated Securities

- Study group convened in September 2002 – preparation of preliminary draft convention
- A meeting of governmental experts convened in May 2005 – new draft proposed
- A second meeting of governmental experts convened in March 2006
- A third meeting scheduled for November 2006

- Approach:

- functional approach
- compatibility – ability to interconnect

- Issues:

- upper tier attachment prohibition
- transfer through credits and debits to a securities account
- creation and realisation of collateral
- protection of good faith acquisition
- priorities
- loss allocations
- finality
- protection against insolvent intermediary
- duties of intermediary

EU Legal Certainty Project

- The Giovannini reports recommended lifting a number of barriers which were affecting the efficient operation of EU securities markets
- On April 28, 2004, the EU Commission published a report on securities settlement advocating the creation of a Legal Certainty Group, the purpose of which was to analyse in the EU:
 - nature of rights of investors in respect of intermediated securities;
 - transfer of those rights;
 - finality of book entries of securities;
 - treatment of upper tier attachment;
 - protection of investors in case of insolvency of intermediaries;
 - rules regarding location of securities;
 - good faith acquisition by third parties.

The Legal Certainty Group:

- was designated in January 2005 – 35 experts from 25 member states;
- meets on several occasions;
- Members of the group answered a questionnaire related to issues in 25 member States.

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- Proposing recommendations to the EU Commissions the following core issues are considered:

- Issue one: scope;
- Issue two: legal effects of book entry;
- Issue three: corporate actions and voting rights;
- Issue four: recognition of status of derivative holdings;
- Issue five: transfer requirements;
- Issue six: moment of transfer;
- Issue seven: priority rules;
- Issue eight: issuer's freedom to choose location of securities
- Issue nine: protection from account provider's insolvency

French dematerialisation rules – Proposals for an update

- Mandatory dematerialisation of securities was introduced in France 20 years ago
- Core principles retained by French dematerialisation rules:
 - root of ownership in company law;
 - securities credited to a securities account are tradable by transfer from one securities account to the other;
 - maintenance of traditional principles:
 - bearer securities
 - registered securities
 - protection of investor within the framework of securities account-keeping as a regulated industry;
 - pledge over dematerialised securities through a pledge of the securities account;
 - protection of investors against insolvency of the intermediary.

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- The above principle makes the French securities dematerialisation system Unidroit compatible

- Property right – transfer by credit-debit
- Pledge over securities account
- Protection against the bankruptcy of the intermediary
- Upper-tier attachment
- Shortfalls

- Paris Europlace proposals:

- Improve coherence and readability
- Improve legal certainty
 - Through strengthening of property right – credit of securities constitutes evidence of ownership
 - Protection of *bona fide* purchasers
 - Securities issued under foreign law – credited to a securities account benefit from the same legal effect as domestic securities so credited

EU Better regulation agenda

- White paper on Financial Services Policy (2005-2010): simplification, codification and clarification:
 - Carrying out of sectoral and cross-sectoral consistency checks
 - Ensure coherence of terminology and effect

- Paris Europlace suggested approach:
 - Methodology:
 - Paris Europlace welcomes the EU Transparency objective
 - Drafting:
 - simplification;
 - Lamfalussy process, a critical approach;
 - Material rules / conflict of law rules – clear distribution to be made
 - Priority on sector rules – less emphasis on general rules
 - Consultations - deadlines
 - Working language
 - Concepts: to be used so as to accommodate civil law and common law

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