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978-1-107-02347-5 - Intermediated Securities: The Impact of the Geneva Securities Convention and the Future European Legislation

Edited by Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz

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## INTERMEDIATED SECURITIES

### The Impact of the Geneva Securities Convention and the Future European Legislation

In today's financial markets, investors no longer hold securities physically. Instead, securities such as shares or bonds are mostly held through intermediaries and transferred by way of book-entries on securities accounts. However, there are some remarkable conceptual differences between the various jurisdictions with regard to the legal treatment of intermediated securities. It is widely agreed that this patchwork creates considerable legal risks, especially in cross-border situations. Two initiatives are well advanced to reduce these risks. In 2009, the UNIDROIT Convention on Substantive Rules for Intermediated Securities (the 'Geneva Securities Convention') was adopted, aiming at harmonisation on the international level. At the regional level, the EU Commission is running a legislative project to achieve harmonisation. This book compares both initiatives and analyses their impact on the securities laws of selected European jurisdictions.

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PIERRE-HENRI CONAC, ULRICH SEGNA  
AND LUC THÉVENOZ



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CONTENTS

<i>List of contributors</i>	page	xiii
<i>Preface</i>	xxi	
<i>Table of legislation</i>	xxiv	
<i>Table of international instruments</i>	xxxiii	
<b>PART I: The Geneva Securities Convention and the future EU legislation in comparison</b>		
1	The Geneva Securities Convention: objectives, history, and guiding principles	3
LUC THÉVENOZ		
1.1	Money, securities and the intermediary holding system	3
1.2	New risks, new legal issues	6
1.3	The governing law issue	9
1.4	A brief history of the Geneva Securities Convention	12
1.5	Objectives and guiding principles of the Convention	16
1.6	The ongoing EU harmonisation process	19
2	Market needs as paradigm – breaking up the thinking on EU securities law	22
PHILIPP PAECH		
2.1	Introduction	22
2.2	Mind the gap – between domestic thinking and legal reality	27
2.2.1	Some notes on market practice	28
2.2.2	Insular substantive law – an ideal world	30
2.2.3	The financial market is not an island unto itself	35
2.2.4	The problem driven beyond private international law	36
2.2.4.1	PRIMA and tiered holding structures	36
2.2.4.2	Incompatibility and domestic flaws	39
2.3	Risk, cost and the legislative mandate	41
2.3.1	Difficulties in quantifying risk and cost	42
2.3.2	Model for splitting excess cost	43

2.4	Functionality <i>vs</i> conceptuality – or the risk of perpetuating the problem	45
2.4.1	Market needs as drivers of the legal concept of securities	46
2.4.2	Property, intermediation and stretched expectations	48
2.4.3	Sense and non-sense of the direct/indirect divide	50
2.4.4	PRIMA and property	51
2.4.5	Stripping sheep’s clothing and the 28th regime	53
2.4.5.1	The remit of the functional approach	53
2.4.5.2	Functionality, uniform law and the 28th regime	55
2.5	Conclusion	60
3	The proposed EU legislation on securities holding	65
	HABIB MOTANI	
3.1	Functional approach	66
3.2	Regulatory context and scope of application	68
3.3	Acquisitions and disposals	73
3.4	Securities in books of intermediary to match securities held	75
3.5	Variation by contract	77
3.5.1	Rights conferred by securities	78
3.5.2	Legal effectiveness and conditions	79
3.5.3	Priority of interests	79
3.5.4	Facilitating exercise of rights	80
3.5.5	Exercise of rights by the account provider	81
3.6	Risk allocation	81
3.7	Insolvency	85
3.8	Prohibition of cross-border discrimination	87
3.9	Conclusion	89
4	Rights of the account holder relating to securities credited to its securities account	90
	PHILIPPE DUPONT	
4.1	Introduction	90
4.2	Account holders and intermediaries	92
4.3	Rights attached to the securities	94
4.3.1	Nature of the rights	94
4.3.2	Beneficiary	95
4.3.3	Exercise of rights	96
4.3.4	Obligations of intermediaries	97
4.3.5	Relationship with corporate law	98
4.4	Right to dispose of the securities	99
4.4.1	Right	99
4.4.2	Exercise restrictions	99

4.5	Right to hold securities other than through a securities account	100
4.5.1	Principle	100
4.5.2	Exception	101
4.6	Restrictions on the rights of the account holder	103
4.7	Conclusion	103
5	Rights of the investor	105
PIERRE-HENRI CONAC		
5.1	Introduction	105
5.2	Determination of the ‘investor’: beyond the scope of the Convention and the EU legislation	108
5.2.1	The lack of ‘investor’ determination by the Convention and the EU legislation	108
5.2.1.1	The limited scope of the Convention and the EU legislation	109
5.2.1.2	Determination of the ‘investor’ decided by national law	112
5.2.2	Distinction between the ‘investor’ and the terms used in the Convention and the EU legislation	113
5.2.2.1	Distinction between ‘investor’ and ‘account holder’	113
5.2.2.2	The ‘nominee’	118
5.3	The exercise of rights of the ‘investor’ under the Convention and the EU legislation	121
5.3.1	The rights of an investor as an ‘account holder’	121
5.3.1.1	Rights flowing downstream from the issuer to the account holder	122
5.3.1.2	Rights exercised upstream by the account holder towards the issuer	125
5.3.2	The rights of an investor through a ‘nominee’	125
5.3.2.1	The recognition of the nominee	126
5.3.2.2	The possibility of conditions set up by national laws	131
5.4	Conclusion	132
6	Transfer of intermediated securities	135
LUC THÉVENOZ		
6.1	Introduction	135
6.2	Methods for acquisition and disposition	138
6.2.1	Debits and credits	138
6.2.2	Choice among other methods	141
6.2.3	Designating entry (or earmarking)	142
6.2.4	Control agreement	143

viii	CONTENTS
	6.2.5 Agreement with and for the benefit of the relevant intermediary 144
	6.3 Rights and interests transferred 145
	6.4 Effectiveness 147
	6.5 Innocent acquisition 150
	6.6 Priority 153
	6.7 Harmonisation and the non-Convention law 157
7	The truth about shortfall of intermediated securities – perspectives under the Geneva Securities Convention, United States law, and the future EU legislation 160
	CHARLES W. MOONEY, JR.
	7.1 Introduction 160
	7.2 Causes of shortfall: the good, the bad, and the ugly 162
	7.3 Shortfall under the Geneva Securities Convention, US law (as the non-Convention law), and the draft European principles 163
	7.3.1 Past as prologue 163
	7.3.2 The Convention approach 164
	7.3.3 The US approach: application of the Convention with US law as the non-Convention law 165
	7.3.3.1 Protection of account holders from shortfall under US law 165
	7.3.3.2 Compliance with US law as compliance with the Convention 182
	7.3.3.3 Epilogue: US law on banks and voting rights 186
	7.3.4 The draft European legislation approach 188
	7.4 Conclusion 190
8	The concept of integrity in securities holding systems 193
	HUBERT DE VAUPLANE AND JEAN-PIERRE YON
	8.1 Introduction 193
	8.2 What is integrity? 195
	8.2.1 Integrity is based on arithmetic equality . . . 196
	8.2.2 . . . and an exclusive right 197
	8.2.3 . . . but is not a universal concept 198
	8.2.4 Integrity according to the Geneva Securities Convention 199
	8.2.5 Integrity in European law 200
	8.2.6 What purpose does integrity serve? 202
	8.2.7 (Over-)abundance of securities 203
	8.3 How to implement this integrity? 204
	8.3.1 Segregation of assets 204
	8.3.1.1 French law 204



CONTENTS ix

8.3.1.2	Convention	206	
8.3.1.3	Position of the Legal Certainty Group (LCG)	207	
8.3.2	The principle of double entry accounting or ‘no credit without debit’	209	
8.3.2.1	Key features	209	
8.3.2.2	Convention	209	
8.3.2.3	Position of the Legal Certainty Group	210	
8.4	Conclusion	212	
 <b>PART II: Impact on securities laws of selected European jurisdictions 215</b>			
9	Intermediated securities under Belgian law: assessing the impact of the Geneva Securities Convention on the regulatory environment	217	
MICHEL TISON AND LIENTJE VAN DEN STEEN			
9.1	Introduction	217	
9.2	The legal framework for intermediated securities in Belgian law	217	
9.2.1	Fragmented regimes but harmonised in substance	217	
9.2.2	The nature of investors’ rights on securities held in an account with an intermediary	221	
9.2.3	Lower-tier level: transactions with dematerialised or immobilised securities	222	
9.2.3.1	Transfer of securities	222	
9.2.3.2	Incidents in the transaction chain	222	
9.2.4	Upper-tier level: protection of client securities	224	
9.2.4.1	Segregation of accounts and prohibition of upper-tier attachment	224	
9.2.4.2	Client protection against insolvency of the financial intermediary or the CSD	225	
9.2.5	Investors’ rights vis-à-vis the issuer	228	
9.3	The impact of the Geneva Securities Convention on Belgian law	229	
9.3.1	Scope of the UNIDROIT intermediated securities regime	229	
9.3.2	The nature of the investors’ rights on securities held in an account with an intermediary	230	
9.3.3	Transfer of intermediated securities	231	
9.3.4	Treatment of upper-tier attachment	233	
9.3.5	Protection against insolvency of the financial intermediary	233	
9.3.6	Investors’ rights vis-à-vis the issuer	235	
9.4	Private international law rules in Belgium	235	
9.5	Conclusion	237	

10	The Geneva Securities Convention, the future European legislation, and their impact on French securities laws	240
	PHILIPPE LANGLET	
10.1	Introduction	240
10.2	Pro rata sharing of securities loss in case of bankruptcy of the account provider	241
10.2.1	Under the future EU legislation and the Convention	241
10.2.2	Under French law	243
10.3	How could the uncertain definition of the owner of securities lead to an unfair result at the banks' expense?	244
10.3.1	Madoff clawback procedure	244
10.3.2	The bundle of rights concept in the Convention and the future EU legislation is not compatible with French law	245
10.4	Conclusion	246
11	The Geneva Securities Convention, the future European legislation, and their impact on German law	248
	ULRICH SEGNA	
11.1	Introduction	248
11.2	The co-ownership concept and its main problems	251
11.2.1	Main characteristics	251
11.2.2	Main problems	254
11.3	The impact of the Geneva Securities Convention	257
11.3.1	Functional approach	257
11.3.2	Rights of the account holder (Article 9)	258
11.3.3	Transfer of intermediated securities (Article 11)	260
11.4	European legislation on legal certainty of securities holding and dispositions	261
11.4.1	Functional approach	262
11.4.2	Rights of the account holder	263
11.4.3	Methods for acquisition and disposition	264
11.5	Conclusion	266
12	The Geneva Securities Convention: a Spanish perspective	269
	FRANCISCO GARCIMARTÍN	
12.1	Introduction	269
12.2	Outline of the Spanish system	270

CONTENTS xi

12.2.1	Spanish securities held directly in the Spanish CSD or in a participant in the Spanish CSD	270
12.2.1.1	Point of departure	270
12.2.1.2	Architecture: CSD and its participants as central registry	273
12.2.1.3	Consequences	274
12.2.1.4	A system of direct proprietary rights	275
12.2.1.5	Credits and debits	276
12.2.1.6	Liability	278
12.3	The Convention: conceptual framework	279
12.3.1	Contractual rights	279
12.3.2	Proprietary rights	280
12.3.3	Corporate rights	280
12.4	The Convention: selected issues	281
12.4.1	General comment	281
12.4.2	Acquisition of securities: credits	281
12.4.3	Transfers of securities: debit, credit and title	283
13	The Geneva Securities Convention and the Swiss intermediated securities law reform	288
HANS KUHN		
13.1	Introduction	288
13.2	History and policy objective of Switzerland's securities law reform	289
13.2.1	Key legal concepts under previous law	289
13.2.2	History and policy objectives of FISA	291
13.3	Key concepts of FISA compared with the Convention	293
13.3.1	Form, terminology and structure	293
13.3.2	Intermediated securities	294
13.3.3	Protection of the integrity of intermediated holding system	296
13.3.4	Disposition of intermediated securities	297
13.3.4.1	General	297
13.3.4.2	Valid underlying contract?	298
13.3.4.3	Methods for the disposition of intermediated securities	299
13.3.4.4	Transferor's power to dispose or transferee's good faith	303
13.3.5	Priorities	305
13.3.6	Security interests in intermediated securities	306
13.4	FISA's cross-border dimension	307
13.5	Conclusions	308

Cambridge University Press  
978-1-107-02347-5 - Intermediated Securities: The Impact of the Geneva Securities  
Convention and the Future European Legislation  
Edited by Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz  
Frontmatter  
[More information](#)

---

xii	CONTENTS
Appendix	317
UNIDROIT Convention on Substantive Rules for Intermediated Securities	319
EU Consultation Document ‘Legislation on Legal Certainty of Securities Holding and Dispositions’	350
Index	395

Cambridge University Press

978-1-107-02347-5 - Intermediated Securities: The Impact of the Geneva Securities Convention and the Future European Legislation

Edited by Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz

Frontmatter

[More information](#)

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Frontmatter

[More information](#)

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Frontmatter

[More information](#)

## LIST OF CONTRIBUTORS

xv

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Frontmatter

[More information](#)

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Frontmatter

[More information](#)

## LIST OF CONTRIBUTORS

xvii

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Frontmatter

[More information](#)

xviii

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Convention and the Future European Legislation  
Edited by Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz  
Frontmatter  
[More information](#)

---

LIST OF CONTRIBUTORS

xix

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---

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Frontmatter

[More information](#)

---

## PREFACE

In today's financial markets, investors no longer hold their investment securities in physical form. Instead, securities such as shares or bonds are mostly held through intermediaries and transferred by way of electronic book-entries on securities accounts. In its simplest form, an intermediated holding system may be understood as a three-tier pyramid: the investors ('ultimate account holders') are at the bottom, with their securities credited to securities accounts maintained by their intermediaries. The intermediaries, in turn, hold their securities on a book-entry basis with the top-tier intermediary, normally a Central Securities Depository (CSD). Especially in cross-border relationships, this multi-tiered structure can build up to four, five or more levels. However, regardless of the number of levels, all intermediated holding systems have it in common that no certificates circulate, and that the securities are transferred only by making debits and credits to securities accounts. Increasingly, certificated securities are being replaced by fully dematerialised securities.

Nevertheless, there are remarkable conceptual differences between the various jurisdictions with regard to the legal treatment of intermediated securities, reflecting the variety of legal traditions and market practices. It is widely agreed that this patchwork of legal rules creates obstacles to the efficiency and safety of securities transactions, especially in cross-border situations. Several projects have been developed, both at the international and at the European levels, to reduce the legal risks inherent in the cross-border settlement of securities transactions by harmonising the legal framework for intermediated securities. On 9 October 2009, a Diplomatic Conference held in Geneva adopted the UNIDROIT Convention on Substantive Rules for Intermediated Securities (in short, the Geneva Securities Convention). At the same time, the European Commission was preparing a draft Directive on legal certainty of securities holding and dispositions (Securities Law Directive – SLD), which was expected to cover both substantive law and conflicts of laws.

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Frontmatter

[More information](#)

This development was the reason for Pierre-Henri Conac and Ulrich Segna from the Faculty of Law, Economics and Finance of the University of Luxembourg, and Luc Thévenoz from the Centre for Banking and Financial Law of the University of Geneva, to organise an international conference entitled ‘Intermediated Securities – The Geneva Securities Convention, the European Securities Law Directive and their Impact on Securities Laws of selected European Jurisdictions’. This conference was held in Luxembourg on 23 and 24 September 2010, at the Luxembourg Chamber of Commerce. It featured fourteen distinguished speakers, both academics and legal practitioners, and attracted 150 participants, mainly from European countries, but also from the United States and India.

The purpose of the conference was to compare the Geneva Securities Convention and the future EU Securities Law Directive, in order to analyse how and to what extent these instruments would impact on the securities laws of selected European jurisdictions. Following this concept, the first part of the conference dealt with the functional approach underlying these instruments and with several key issues of the harmonisation process, such as the rights of the account holder, the rights of the investor, the transfer of intermediated securities, intermediated securities as collateral, and the integrity of the intermediated holding system. In the second part of the conference, legal experts from various European countries gave an overview of the legal framework for intermediated securities of their respective home countries and examined whether the implementation of the Geneva Securities Convention and the future EU Directive would bring with it the necessity to amend national law, perhaps substantially.

The extremely positive response to the Luxembourg conference, and the major importance of the policy issues discussed during the conference for the smooth development and the internationalisation of securities markets, were the main motivation for the organisers to publish a conference volume. It provides additional perspectives on a number of issues, and should be read as a complement to the Official Commentary of the Geneva Securities Convention published in May 2012.

Regarding the future European legislation, no formal proposal has yet been adopted by the European Commission. As things currently stand, it is not even clear whether the instrument should be a directive, a regulation or a mere recommendation. For this reason, the authors of this book have substantially relied on the last published document, i.e. the Consultation Document of November 2010.

We believe that this book is relevant for policy makers, for legal practitioners, as well as for academics. We hope that it will contribute to a

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Edited by Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz

Frontmatter

[More information](#)

---

PREFACE

xxiii

better understanding of the Geneva Securities Convention and inform the European debate about a more extensive harmonisation of the law of intermediated securities, ensuring the acceptability and the success of both initiatives.

We express our deep appreciation to all who have contributed to this book or to the conference. We want to include José Angelo Estrella Faria, Secretary-General of UNIDROIT, for his participation and support, as well as Garth Hall and Christian Deprez for their valuable assistance in preparing this publication.

*Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz  
Luxemburg and Geneva, February 2013*

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Convention and the Future European Legislation  
Edited by Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz  
Frontmatter  
[More information](#)

TABLE OF LEGISLATION

Belgium

Civil Code  
    Art. 2279   223–4, 232, 237

Code of Private International Law  
    Art. 91   235  
    Art. 94   235

Companies Code  
    Art. 462   235  
    Art. 468 para. 2   222  
    Art. 468 para. 5   221, 223  
    Art. 471   221  
    Art. 471 para. 1   227  
    Art. 471 para. 2   226  
    Art. 471 para. 3   226  
    Art. 471 para. 5   226  
    Art. 472   224  
    Art. 475*bis*   224  
    Art. 536 para. 2   229

Law of 2 January 1991 on the public debt securities   218

Law of 22 July 1991 on commercial paper and certificates of deposit   218

Law of 6 April 1995 on the supervision of investment firms  
    Art. 77*bis*   226, 231

Law of 22 February 1998 on the statute of the National Bank of Belgium  
    Art. 36/24 para. 1   228  
    Art. 36/26   228

Law of 28 April 1999  
    Art. 3 para. 5   223  
    Art. 8 para. 2   236

Law of 2 August 2002 on financial supervision  
    Art. 26 para. 8   231  
    Art. 28*bis*   219

Law of 15 December 2004 on financial collateral  
    Art. 17   236



TABLE OF LEGISLATION

XXV

Law of 14 November 2005 223–4  
Law of 14 December 2005 220  
Law of 2 June 2010 226  
Royal Decree No. 62 of 10 November 1967 7, 219–20  
    Art. 2 para. 3 221, 223  
    Art. 4 235  
    Art. 6 222  
    Art. 11 224  
    Art. 12 para. 2 227  
    Art. 13 221  
    Art. 13 para. 2 226  
    Art. 13 para. 3 226  
    Art. 13 para. 4 226  
    Art. 13 para. 5 226  
    Art. 19 224  
Royal Decree of 27 January 2004 219  
Royal Decree of 16 January 2006 218  
Royal Decree of 3 June 2007  
    Art. 66 225  
    Art. 69 231  
    Art. 76 231

European Union

Directive 98/26/EC (Settlement Finality) 23  
    Art. 9(2) 10, 37, 52, 236, 248  
Directive 2001/24/EC (Reorganisation of Credit Institutions)  
    Art. 24 10, 37  
Directive 2002/47/EC (Financial Collateral) 23, 68, 308  
    Art. 2(1)(c) 57  
    Art. 2(2) 57  
    Art. 3 56  
    Art. 4 56  
    Art. 5 56  
    Art. 7 56  
    Art. 8 56  
    Art. 9 52  
    Art. 9(1) 10, 37  
    Art. 9(2) 236  
Directive 2004/25/EC (Takeover Bids)  
    Art. 4(2)(e) 111  
Directive 2004/39/EC (MiFID)  
    Art. 2(1) 69

Cambridge University Press  
 978-1-107-02347-5 - Intermediated Securities: The Impact of the Geneva Securities  
 Convention and the Future European Legislation  
 Edited by Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz  
 Frontmatter  
[More information](#)

xxvi	TABLE OF LEGISLATION
Art. 2(1)(b)	70
Art. 2(1)(d)	69
Art. 2(1)(e)	70
Art. 2(1)(f)	70
Art. 2(1)(i)	70
Art. 13(7)	30, 207
Art. 13(8)	30, 207
Art. 17(3)(a) and (b)	82, 84–5
Art. 21(3)	227
Art. 21(8)	231
Annex I Section A	68, 71
Annex I Section B	68–9, 71
Directive 2006/73/EC (implementing MiFID)	69
Art. 4	227
Art. 16(1)	30, 50, 85, 207
Art. 43	231
Directive 2007/36/EC (Shareholder Rights)	
Art. 2(b)	107, 111
Art. 10(1) and (3)	111, 120
Art. 11	118
Art. 13	119–20
Art. 13(4) and (5)	111
Directive 2009/44/EC	10
Directive 2011/62/EU (Alternative Investment Fund Managers)	27
Art. 21(12)	49
Regulation (EC) 1060/2009 (Credit Rating Agencies)	26
Regulation (EU) 236/2012 (Short Selling)	26
European Commission, Legislation on Legal Certainty of Securities Holding and Dispositions, Consultation Document of November 2010	
Principle 1	66, 110, 263
Principle 1(2)	111
Principle 2	68–70, 72–3, 117–18
Principle 3	78–9, 263
Principle 3(1)	103
Principle 3(1)(a)	94
Principle 3(1)(c)	100, 101
Principle 3(4)	91
Principle 4	73–5, 75–8, 81, 86, 122, 125, 149, 152, 265
Principle 4(1)	74, 92, 122, 141, 189, 190
Principle 4(2)	77, 137, 141
Principle 4(2)(b)	76
Principle 4(2)(e)	77

Cambridge University Press  
978-1-107-02347-5 - Intermediated Securities: The Impact of the Geneva Securities  
Convention and the Future European Legislation  
Edited by Pierre-Henri Conac, Ulrich Segna and Luc Thévenoz  
Frontmatter  
[More information](#)

TABLE OF LEGISLATION

xxvii

Principle 4(3) 77, 157  
Principle 4(4) 84, 137, 141  
Principle 4(5) 74–5, 141  
Principle 5 73–5, 76–7, 79, 86, 149, 265  
Principle 5(2) 92, 147  
Principle 5(3) 141  
Principle 5(5) 98, 149  
Principle 5(7) 77  
Principle 6 85–6, 149  
Principle 7 82–5, 149  
Principle 7(1) 84, 141, 157  
Principle 7(2) 84  
Principle 7(3) 83–4  
Principle 8 82–5, 152–3  
Principle 8(1) 141  
Principle 9 74–5, 79–80  
Principle 9(1)(c) 157  
Principle 9(3) 80  
Principle 10 86–7  
Principle 10(1) 87  
Principle 10(2) 87  
Principle 13 85  
Principle 14 11, 66–8  
Principle 15 87–9, 118  
Principle 16 111, 118, 120, 130  
Principle 16(a) 118  
Principle 17 80–1, 97, 122  
Principle 17(3) 81  
Principle 18 88–9, 122  
Principle 19(6) 154  
Principle 21 68–70  
Principle 20 81, 98  
Principle 22(c) 70–1

France

Civil Code  
Art. 1300 243  
Commercial Code  
Art. L. 228–1 129  
Art. L. 225–107–1 131

## xxviii

## TABLE OF LEGISLATION

Art. L. 228–2 II 131  
 Art. K. 228–1 131  
 General Regulation of the Autorité des Marchés Financiers (AMF)  
 Art. 313–13 205  
 Art. 313–13–4 205  
 Art. 313–17 205  
 Art. 322–4 205  
 Monetary and Financial Code  
 Art. L-211–10 243  
 Art. 213–3 243  
 Art. 533–10–6 204

## Germany

- Civil Code (*Bürgerliches Gesetzbuch*)
  - s. 929 249, 253
  - s. 932 256
- Federal Act regulating the Management of Federal Debts of 12 July 2006 (*Bundesschuldenwesengesetz*)
  - s. 6(2) 251
- Insolvency Act (*Insolvenzordnung*)
  - s. 47 252
- Securities Deposit Act (*Depotgesetz*)
  - s. 1(3) 33
  - s. 5(4) 248
  - s. 6 248
  - s. 6(1) 251
  - s. 7(1) 254
  - s. 9a 248
  - s. 9a(3) 255
  - s. 17a 248
  - s. 22 38
  - s. 24(2) 248

## Spain

Ley del Mercado de Valores (LMV)

Art. 5–12	270
Art. 7–9	269
Art. 8	271
Art. 9	284
Art. 10 I	271
Art. 10 II	271

TABLE OF LEGISLATION

xxix

Art. 11 I 272  
Art. 70*ter*(f) 269  
Real Decreto (RD) 116/1992 269  
Art. 12.2 284  
Art. 16 272, 276  
Art. 29 et seq. 273  
Art. 32.2 276

Switzerland

Banking Act (BA)  
Art. 16 291  
Art. 37b 291  
Civil Code (CC)  
Art. 3(1) 305  
Art. 3(2) 305  
Art. 900(1) 291  
Art. 933 304  
Art. 973 304  
Art. 974(2) 298  
Code of Obligations (CO)  
Art. 62 et seq. 299  
Art. 112 302  
Art. 164 et seq. 291  
Art. 967(1) 290  
Federal Act on Debt Collection and Bankruptcy of 11 April 1989 (DEBA)  
Art. 242 290, 291  
Federal Intermediated Securities Act (FISA)  
Art. 3(1) 295  
Art. 3(2) 295  
Art. 4(1) 293  
Art. 4(2) 294  
Art. 5(b) 295, 304  
Art. 5(c) 295  
Art. 6 295  
Art. 8 295  
Art. 11 294, 297  
Art. 11(1) 297  
Art. 11(2) 297  
Art. 11(3) 297  
Art. 13(1) 295  
Art. 15(2) 299

## TABLE OF LEGISLATION

Art. 17 297  
 Art. 17(1) 297  
 Art. 17(2) 297  
 Art. 19(1) 297  
 Art. 19(2) 297  
 Art. 21 306  
 Art. 22 304  
 Art. 24 304  
 Art. 24(1) 299  
 Art. 24(1)(a) 300, 303  
 Art. 24(1)(b) 300  
 Art. 24(2) 300  
 Art. 25 298, 299, 301, 303, 304, 306  
 Art. 25(1) 301, 302, 305  
 Art. 25(3) 298, 301  
 Art. 26 299, 303, 305, 306  
 Art. 26(2) 303  
 Art. 27 299, 301  
 Art. 27(1)(a) 301  
 Art. 27(1)(b) 301, 303  
 Art. 27(1)(c) 301  
 Art. 28 301  
 Art. 28(1)(a) 301  
 Art. 28(1)(b) 301  
 Art. 29 304, 305  
 Art. 29(1)(a) 304  
 Art. 30 305, 306  
 Art. 30(1) 305  
 Art. 30(2) 305  
 Art. 30(3) 305, 306  
 Art. 31 306  
 Art. 32 306

Private International Law Act (PILA)  
 Art. 108 308

Stock Exchange Act (SESTA)  
 Art. 2(a) 290

Uncertificated Securities Regulations 1995	31
Uncertificated Securities Regulations 2001	31