

# **Transfers of Investment Securities (Tiered Holding System) - Project Update 1999**

**1999 Winnipeg, MB**

**TRANSFERS OF INVESTMENT SECURITIES (TIERED HOLDING SYSTEM)**

**PROJECT UPDATE**

**Eric Spink**

**Vice-Chair, Alberta Securities Commission**

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[1] The purpose of this report is to provide an update on the status of this project. This report will not address technical details of the proposed reforms but will concentrate on more general issues of process. As explained below, this report is being prepared in the midst of considerable activity in the project, so I anticipate being able to provide some news on current developments when I present this subject in Winnipeg.

[2] The Uniform Law Conference of Canada ("ULCC") undertook this project in 1993, based on a Report by the Alberta Law Reform Institute. The objective was to develop uniform provincial legislation governing transfers and secured transactions involving investment securities, to be harmonized with the then-pending revisions to Article 8 of the Uniform Commercial Code ("Rev8"). Rev8 was completed in 1994. In October of 1995, a ULC Production Committee was formed, chaired by Mr. Thomas Marley, Vice President of the Canadian Depository for Securities, Limited. In April of 1997, the Production Committee issued its Report, which was approved by the ULCC that same year. The Report basically says that the Production Committee found no major policy obstacles to adapting Rev8 to the Canadian context, and recommended that we proceed immediately to develop a uniform provincial *Securities Transfer Act* with the same scope as Rev8. The Report also recognized the need for harmonized federal legislation, which would be developed after the provincial legislation.

[3] A peculiar problem facing this project is the fact that most of the existing provisions governing securities transfers are located in corporate statutes. The Production Committee's Report recommended that these provisions be removed from corporate statutes and located in separate statutes, however, that recommendation did not resolve the practical problem: what government department will sponsor and administer the new legislation? In response to this problem, I made a proposal to the Chairs of the various provincial securities commissions through the Canadian Securities Administrators ("CSA"), and in January of 1998 the Chairs established a CSA Task Force comprised of myself and Daniel Laurion, Head of the Commissioners' Office with the Commission des valeurs mobilières du Québec

("CVMQ"). The basic objective of the Task Force was to work towards the development of reformed legislation in co-operation with the ULCC and consistent with the recommendations in the Production Committee's Report. The key element was that the Securities Commissions also agreed to sponsor, administer and maintain the reformed legislation.

[4] The CSA understands that the subject matter of this project is properly characterized as commercial law. The CSA, as securities regulators, have a significant interest in the project because Canadian securities markets depend very heavily upon this particular area of commercial law and, as stated in the ULCC Production Committee Report: "the proposed reforms are essential to maintaining the global competitiveness of Canada's securities markets". The CSA's role in this project stems from the immediate need for a strong sponsor and the lack of any viable alternative. Optimally, the reformed legislation will eventually become a part of the ULCC's proposed Canadian Commercial Law Framework, and the CSA will remain involved as a primary consultant to the ongoing administration and any future revisions of the legislation.

[5] In the spring of 1998, the ULCC Production Committee published a draft *Uniform Investment Holding and Transfer Act* ("UIHTA") prepared by one member of the Production Committee, Mr. Bradley Crawford, Q.C.

[6] The ULCC passed the following resolution at their 1998 annual Conference:

**RESOLVED**

1. That the Canadian Securities Administrators and Mr. Eric Spink be requested to prepare a draft *Uniform Securities Transfer Act* and commentaries.
2. That the Act and commentaries be circulated broadly for comments, as a joint project of the Uniform Law Conference and the Canadian Securities Administrators.
3. That a draft Act and commentaries that reflect comments received in the consultations be submitted for consideration of the 1999 Conference.

On October 9, 1998, the CSA Chairs formally agreed to the ULCC request, and approved a proposal by the CSA Task Force to use a consortium of legislative counsel representing Alberta, BC, Ontario and Quebec to draft the legislation. The general instructions to legislative counsel were to prepare a draft *Act* suitable for provincial enactment in accordance with the Report of the ULCC Production Committee.

[7] The more specific instructions were that legislative counsel should address the following priorities, in this order:

(a) The final product must be implementable in each province without amendment. This assumes uniformity in the common law provinces, and as close-to-uniformity-as-possible in Quebec having regard to Quebec's civil code requirements.

(b) The final product should be as uniform and harmonious as possible with Rev8.

(c) Legislative counsel should use the best ideas and resources available to achieve priorities a) and b). This includes consulting with the drafters of Rev8 and the freedom to use any amount of the draft UIHTA prepared by Mr. Crawford.

[8] The CSA Chairs agreed that all drafts be prepared using a two-column format with draft provisions in one column and explanatory comments, cross-references, etc., in the second column. It was also agreed that the first consultation draft be distributed to everyone on a mailing list prepared by the ULCC Production Committee, and to any other interested parties. The CSA will also publish a notice in the various commission bulletins and make the draft available on one or more websites.

[9] The CSA Chairs also expressed their commitment to use "every effort to implement a uniform/harmonized Securities Transfer Act approved by the CSA and ULCC".

[10] Since then, we have been working on setting up the consortium of legislative counsel. We now have legislative counsel representing BC, Alberta and Ontario, and an arrangement whereby Daniel Laurion will serve as Quebec's representative in the drafting consortium. The CVMQ will then deal directly with legislative counsel in Quebec. This arrangement is seen as the most efficient method for Quebec to address issues raised by the necessary consideration of their Civil Code in the establishment of harmonized dispositions. Although the original plan was to have the direct participation of legislative counsel from Quebec, this change should not impede our work in any way. In fact, it appears that Mr. Laurion's contribution to the consortium may be enhanced by his ability to concentrate more on general harmonization and commercial-law policy issues which are relevant to every province.

[11] Tom Marley made some useful suggestions about what would be the most appropriate background material, and also provided the names of federal government contacts with Industry Canada and the Department of Finance. A substantial package of background material was sent to all the legislative counsel and the federal contacts in November and December of 1998. A similar package was subsequently sent to Professor R.C.C. Cuming of the University of Saskatchewan, who chairs the Legislation Committee of the Canadian Conference on Personal Property Security Law.

[12] In February of 1999, it became apparent that there were some outstanding policy issues that should be addressed by the ULCC Production Committee before drafting could commence. Substantial materials were prepared and distributed in relation to these issues in preparation for a meeting of the Production Committee in Toronto on March 30, 1999. Many of the policy issues arose out of Mr. Crawford's draft UIHTA and the analysis of those issues proved to be a valuable exercise. My memo to the Production Committee indicates that "[Mr. Crawford's] work demonstrates a lot of careful thought and we should acknowledge the very important contribution the draft makes to our process by elevating our analysis of the issues". At the meeting on March 30, the Production Committee finalized its position on all the policy issues and a memo summarizing those points was distributed to the drafting consortium. Key decisions included:

(a) the consortium of legislative counsel should have the freedom to use whatever language they prefer, whether it be patterned on Rev8 or existing Canadian legislation, or new language, as the case may be;

(b) the second column of the consultation draft should contain extensive cross- references and clear explanations, and that certain provisions, especially those with changes, should be flagged for comment;

(c) only a two-column consultation draft, intended for implementation, will enable effective consultation with stakeholders on this project;

(d) after extensive discussion of the application of reformed legislation to specific investment products, it was decided that we should aim for the same scope as Rev8; and

(e) the consortium is invited to meet with the Production Committee or to consult with individual members at any time they wish during the drafting process.

[13] The Canadian Conference on Personal Property Security Law met in St. John's, Newfoundland on June 20, 1999. Professor Cuming reports:

The Legislation Committee of CCPPSL met in St. John's and agreed to assume the task of reviewing the secured transactions provision of the draft Uniform Securities Transfer Act when it becomes available. It was the view of the Committee that, ultimately, these provision should be included in the Model Personal Property Security Act. However, it was recognized that, for the time being, the substance and not the locus of the provisions should be the focus of attention.

[14] It is difficult to provide a meaningful report on the activities of the drafting consortium at this time because we are literally in the middle of our work. The drafting consortium has had to deal with scheduling difficulties caused by local demands upon each individual. The CSA Task Force views its top priority as the quality of the final product and we made a conscious decision that we should not compromise that by imposing arbitrary deadlines on the consortium. The consortium agreed to have one legislative counsel, Mr. Richard Larson of Alberta, prepare a preliminary draft. I have just received that draft, but have not reviewed it in any detail. The next stage will be two-day meeting to consider the preliminary draft, at which time we will determine the next steps to be taken. The intended product is the comprehensive, two-column consultation draft, as described above.

[15] I hope to be in a position to report more fully on the consortium's progress at the Conference in August.