
Uniform Law Conference of Canada

Briefing Note – Working Group to draft *Uniform Act to implement the Hague Securities Convention*

Context

In 2003, the ULCC requested that the Canadian Securities Administrators (CSA) authorize the CSA Task Force to prepare a uniform implementing legislation for the *2002 Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary* (Hague Securities Convention) once the Explanatory Report for the Hague Convention was finalized. The CSA Chairs approved this request.

At the August 2004 Annual meeting, it was noted that the Explanatory Report was not yet completed. It was finally completed in December 2004.

In late April 2005, the mandate and funding for the CSA Task Force were renewed to the end of March 2006. The Task Force will continue work on the USTA and work with the ULCC to draft implementing legislation for the Hague Securities Convention.

There is considerable momentum to implement the USTA promptly. Government representatives and experts are continuing to examine the USTA and related implementation issues. That review process has yet to consider in detail the conflict of law provisions of the USTA.

Mandate

The mandate of the Working Group is to draft in both official languages (1) a uniform act to enact the *Hague Convention on the Law Applicable to Certain Rights in respect of Securities Held with an Intermediary* in domestic law, (2) Commentaries on each provision to the act and (3) a Report which describes the Convention and the methodology followed to enact it, including an assessment as to any options available to the jurisdictions under the Uniform Act.

The Hague Securities Convention

Canada actively participated in the negotiations of the *Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary*. The Convention was finalized and adopted during the Diplomatic Session held from December 2 to 12, 2002 in The Hague.

This Convention will enable financial market participants in the global market to ascertain readily and unequivocally which law will govern the proprietary aspects

of transfers and pledges of interests in respect of securities held through indirect holding systems. This Convention is intended to provide certainty and predictability on a limited but crucial aspect of such transactions.

The Explanatory Report to the Convention is available at :

http://www.hcch.net/index_en.php?act=publications.details&pid=2955&dtid=3

Working Group

Members of the USTA Working Group, CSA Task Force, Members of the Canadian delegation as well as FPT representatives will form part of the Working Group.

Next steps

- Working Group to convene by conference call twice a month starting October 2005.
- Timing will be affected by the government representatives and experts examination of the USTA and related implementation issues. There are significant cross-issues between the Act to implement the *Hague Securities Convention* and the USTA. Practically, the Commentaries and Report for discussion must refer to relevant provisions of the USTA.
- Follow the developments with regards to the implementation of the USTA in jurisdictions.
- Present the draft Uniform Act to implement the *Hague Securities Convention* and Commentaries and Report for discussion and adoption at the ULCC Annual Meeting in August 2006 or 2007.

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