



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS
FOR THE PREPARATION OF A DRAFT CONVENTION ON
SUBSTANTIVE RULES REGARDING INTERMEDIATED
SECURITIES**

**INFORMAL WORKING GROUP ON ARTICLE 14 OF THE
DRAFT CONVENTION**

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Informal Working Group on Article 14 of the draft Convention
Comments on the questionnaire concerning acquisition by an innocent person
(submitted by the Danish delegation)

The Danish delegation would like to make the following comments on the questionnaire:

(a) On the situation of your national law

1. *Special provision.* *Does your legal system have a special rule on “innocent/good faith acquisition” for book entry securities?*

Yes.

1.b *If the answer is yes,*

(i) What is the standard of care chosen, a general clause (e.g., “reasonable commercial standards”) or a more rigorous one (e.g. collusion, actual knowledge, wilful blindness, gross negligence, etc.)?

The Danish Securities Trading Act, Section 66(2), provides for a special rule on good faith acquisition for book entry securities. However, the provision gives no legal definition of 'good faith' and only reflects the general standard on good faith, which is based on the principle of fault: A transferee is not in good faith if he knows of a competing claim, or if it is due to negligence on his part that he does not know of the competing claim. 'Negligence' is not defined by law but is left to the interpretation of the courts.

A supplementary provision in the Securities Trading Act, Section 69, provides that a transferee in good faith may not be met with any objections as to the validity of the transfer agreement, except for the objection that the agreement is void because of forgery or duress under threat of violence.

(ii) *What are the situations contemplated by the special rule (protection vis-à-vis an adverse claim, protection vis-à-vis a defective entry, etc.)?*

The Danish rule on good faith acquisition ensures the protection of an account holder in good faith vis-à-vis any adverse claim – no matter whether resulting from violation of a third party's rights or a defective entry – as long as the rights or interest of the good faith acquirer have been effectively entered in the securities account in question (entry/registration being the method of perfection).

(iii) *Does it contain a special provision for organisations? If so, please describe.*

No, Danish law does not contain a special provision regarding organisations; it is a specific case by case assessment whether an organisation "knows of an interest or fact". The rules on general authority apply.

2. Case law. *In your country or abroad, are you aware of any real cases in which the "good-faith/innocent acquirer clause" has been applied in relation to intermediated securities? If so, please summarise (if possible).*

We are not aware that there is any relevant case law on the good faith clause in relation to book entry securities.

(b) On Article 14 of the Convention

4. Article 14: current text

4.a *Do you agree with the description of Article 14 of the Draft Convention made in this paper (supra para. n° 2)? If not, please elaborate your answer.*

Yes, we agree with the description in para. 3.

4.b *Leaving aside the standard of care issue, do you have any problems with the current text of that provision, e.g.: (i) as to the differences between the situations described in paragraph 1 and 2, including the reference to article 10 and the special provisions of SSS and account agreements (which are referred to in the second paragraph but not in the first paragraph), (ii) the definition of "defective entry", (iii) the special rule for organisations, (iv) the relationship of Article 14 with other provisions of the Convention, etc.? Please elaborate your answer.*

We do not have any problems with the current text of art. 14.

5. Standard of care: theoretical approaches

5.a *Do you agree with the description of the possible approaches to the "innocent/good faith acquirer issue" made in this paper (supra para. n° 5-6)? Can you think of other solutions? If so, please describe them.*

Yes, we agree. We are not aware of other solutions.

5.b *Do you agree with the summary of the pros and cons of each approach made in this paper? Can you think of other arguments? If so, please describe them.*

We agree with the summary of the pros and cons of each approach.

5.c *In particular, which approach do you consider more adequate to the world of electronic book-entries? Which one do you consider more neutral and functional?*

We consider a harmonised standard or clause in the Convention to be the most adequate in the field of electronic book-entries. The rule could be a safe harbour rule.

5.d *Are you aware of international instruments that, on the acquisition of assets, contain a rule for innocent/bona fide purchaser?*

No.