

Special Issue on the preliminary draft UNIDROIT Convention on Securities held with an Intermediary

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Traditional key legal concepts regarding the holding, transfer and pledge of investment securities were generally similar in most jurisdictions. In particular the holder of an investment security was generally regarded as full proprietor. However, considerable amendments to these concepts were necessary to adapt to modern market practices, in particular the holding and disposition of investment securities through chains of intermediaries like banks or brokers. These were made in an uncoordinated manner in different jurisdictions. Today, as a result, the law governing the holding and transfer of securities differs considerably between countries and different solutions to this modern form of holding and through intermediaries are applied. The basic models are the property-, the trust- and the entitlement concepts. Because of this "patchwork" of concepts, the legal risk in the area of holding and disposition of investment securities, in particular with respect to cross-border situations, is particularly high.

An important step towards the appropriate solution to this situation has been proposed by UNIDROIT in late 2004 with the submission of the preliminary draft Convention regarding Securities Held with an Intermediary

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