DOWNLOAD PDF HAGUE SECURITIES CONVENTION

Chapter 1 : Hague Securities Convention to Enter Into Effect in the United States | Shearman & Sterling

The Convention on the law applicable to certain rights in respect of securities held with an intermediary, or Hague Securities Convention is an international multilateral treaty intended to remove, globally, legal uncertainties for cross-border securities transactions.

What effect does the Hague Securities Convention have on perfection by filing? Posted on March 31st, Authors: However, the Convention may affect perfection of a lien by filing, including the place where the security interest or other lien implementation document must be filed. Under the Hague Convention, in a Multi-unit State such as the United States, where the governing law of the jurisdiction chosen in the account agreement requires that the law of a different location governs perfection by public filing, the law of that other location will apply, so long as it is another territorial unit of the same Multi-unit State. Hague Securities Convention, Art. The question of where to file is one that must be carefully considered in each case. A few examples may assist in clarifying this point: A borrower located in New Jersey offers its stock in Unilever, a Dutch company, to secure a loan. Its securities account is with an intermediary located in New York, and the account agreement specifies that New York law governs. Thus, the lien should be filed in New Jersey. Under the Hague Convention, the same result is reached; New York law applies based on the choice-of-law provision in the account agreement, which is enforced because the intermediary has a Qualifying Office in the United States. A same facts as Example 1, except the borrower is organized under German law. German law does not generally require a filing for protection. Under the Convention, New York law governs pursuant to the intermediary account agreement, and because the District of Columbia is another territorial unit of the same Multi-unit State i. Same facts as Example 2, except now the borrower is an Ontario, Canada corporation with its main office in Toronto. Accordingly, the filing of the security interest must be made with the Secretary of the State of New York. Important Take-Away Review the choice of law provision in every account agreement with intermediaries and make certain: Hutcheon and Jeremy I. Silberman , Members of the Firm. Please feel free to contact Peter at or email pdhutcheon nmmlaw.

Chapter 2 : Hague Securities Convention - Wikipedia

(Concluded 5 July) The States signatory to the present Convention, Aware of the urgent practical need in a large and growing global financial market to provide legal certainty and predictability as to the law applicable to securities that are now commonly held through clearing and settlement systems or other intermediaries.

The choice-of-law rules for the perfection and priority of a security interest in security entitlements in securities credited to a securities account are set forth in Articles 8 and 9 of the Uniform Commercial Code UCC , particularly UCC Sections and The Convention provides choice-of-law rules for the perfection and priority of a security interest in security entitlements in securities credited to a securities account that will preempt the choice-of-law rules in Articles 8 and 9 to a large extent. Although in most instances the outcome under the choice-of-law rules of the Convention will be the same as under Articles 8 and 9, there are some differences. These differences matter not only for new transactions but also for existing ones to which the Convention also will apply on its effective date. The only countries other than the United States to have adopted the Convention so far are Mauritius and Switzerland. Nevertheless, the Convention will become effective in the United States on April 1, â€”even for secured transactions where there is no connection with Mauritius, Switzerland, or any country that adopts the Convention in the future. The Convention does not provide choice-of-law rules for the perfection or priority of a security interest in directly held securities. Perfection and priority will be determined by the substantive law of the jurisdiction whose law governs the account agreement between the securities intermediary and the entitlement holder. The account agreement may, however, provide that the issues governed by Article 2 1 of the Convention be determined by the law of a different jurisdiction. The Article 2 1 issues include the applicable law to determine the perfection and priority of a security interest in security entitlements in securities credited to a securities account. The first is that the chosen law in the account agreement, or the law otherwise specified in the account agreement to govern the Article 2 1 issues, must be that of a jurisdiction in which the securities intermediary has an office that deals in securitiesâ€”whether or not the securities are the collateral in question. If the chosen law is that of a US state, the Qualifying Office test is satisfied if the securities intermediary maintains an office in any US state. Delaware substantive law would govern perfection by filing even though the general choice-of-law rule of the Convention otherwise points to New York substantive law. Existing Secured Transactions So, assuming that the Qualifying Office test is met, under what circumstances will the choice-of-law result under the Convention be different than under Articles 8 and 9 for existing transactions in which a security interest is granted in security entitlements in securities credited to a securities account? Three situations come to mind: Perfection is by control, but the chosen law in the account agreement is that of a non-UCC jurisdiction. In this situation, it would likely be necessary for the secured party to obtain perfection and priority of the security interest under the substantive law of the jurisdiction whose law governs the account agreement, or to amend the agreement to specify that the law of a UCC jurisdiction will govern the issues referred to in Article 2 1 of the Convention. To be sure, a special transition rule of the Convention preserves the effect of the choice-of-law rules under the law governing a pre-effective date account agreement if the choice-of-law rules of that jurisdiction would point to the law of another jurisdiction for the issues covered by Article 2 1 of the Convention as a result of express language contained in the account agreement. However, this special transition rule applies only if the choice-of-law rules of the jurisdiction whose law governs the pre-effective date account agreement point to the law of the other jurisdiction. Perfection is by filing, and the chosen law in the account agreement is that of a non-UCC jurisdiction. It will be necessary for the secured party in this situation to perfect the security interestâ€”whether by filing if available or otherwiseâ€”and obtain priority of the security interest under the substantive law of the non-UCC jurisdiction. For example, if the account agreement is governed by English law, the entitlement holder is a Delaware corporation, and perfection of the security interest is claimed by filing in Delaware, then, absent the account agreement being amended, perfection and priority of a security interest in security entitlements in securities credited to the securities account would be governed by English substantive law, even though under Articles 8 and 9, perfection by

filing would be governed by Delaware substantive law. In this case, it will be necessary for the secured party to perfect the security interest by filing and obtain priority under the substantive law of the chosen UCC jurisdiction. This is the case even though perfection and priority may have already been achieved under the substantive law of the foreign jurisdiction. For example, if the account agreement is governed by New York law, the entitlement holder is located as determined under UCC Section in Ontario, Canada, and perfection of the security interest is claimed by a filing in Ontario, it would be necessary for the secured party to perfect its security interest under New York substantive law, presumably by the filing of a financing statement in New York. This is the case even though the filing of a financing statement in New York is not otherwise effective under Articles 8 and 9. New Secured Transactions For new transactions being planned now or entered into on or after April 1, , a secured party will need to bear in mind the choice-of-law rules of the Convention. Other Sources of Information on the Convention There is much more that can be said about the Convention. It covers choice-of-law issues that go beyond security interests in security entitlements in securities credited to a securities account, and there are other nuances as well. The Convention itself and an explanatory report on the provisions of the Convention are available on the website of the Hague Conference on Private International Law. Furthermore, the Permanent Editorial Board for the Uniform Commercial Code has published a draft report on the Convention, which is available on the website of the American Law Institute. Contacts If you have any questions or would like more information on the issues discussed in this LawFlash, please contact any of the following Morgan Lewis lawyers:

Chapter 3 : HCCH | Explanatory Report on the Hague Securities Convention

The "securities intermediary's jurisdiction" and the "bank's jurisdiction" are the [State of New York], and the law applicable to all the issues in Article 2(1) of the Hague Securities Convention is the law in force in the [State of New York].

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Chapter 4 : Hague Conventionâ€™s Impact On Secured Transactions - Law

The State of [X] is the securities intermediary's jurisdiction for purposes of the Uniform Commercial Code, and the law in force in the State of [X] is applicable to all issues specified in Article 2(1) of the Hague Securities Convention.

The context[edit] "Dematerialisation" and the development of "intermediated securities"[edit] As for the Hague Securities Convention , the Geneva Securities Convention concerns only securities that are not traded under a paper form. The move towards " dematerialization " started partially in the United States in the late sixties, and has been generalised in France during the eighties, followed by the rest of Europe during the years Today, only the United States and the United Kingdom, due to more ancient and more extended infrastructures, maintain a substantial minority of securities under a paper form. The dematerialisation of securities incurs that most securities, even though they are sometimes characterised as "bearer securities", do not take any more the form of paper forms held at home by the investor or deposited in a vault with a bank. Instead of this, these securities take the form of a credit, that is to say a simple book entry written on an account statement characterised as "securities account". Either directly with the issuer, in its own books "dematerialised securities in pure registered form" , or, more often, with an intermediary, which in most countries must be licensed in order to open securities accounts to its clients. When it is "maintained" by an intermediary, the security is characterised, either as "simply registered dematerialised security" where the name of the final investor is known by the issuer, or as "bearer dematerialised security", where the name of the investor is not known by the issuer. In the latter case, the final investor will be able to participate to shareholder or bondholder General Meetings organised by the issuer only if it gets from the intermediary a certificate providing that it is the right shareholder or bondholder. The distinction between "substantive right" and "intrinsic right"[edit] The Unidroit convention focuses on the harmonisation of the sole rules governing "substantive rights", as opposed to "intrinsic rights". This distinction characterises "intrinsic rights" as the rights stemming from the issue of the security voting rights, perception of dividends, Making it short, "intrinsic rights" focus the content, whereas "substantive rights" focus on the external envelop constituted by the security. The Geneva Securities Convention, is thus limited to the external aspect of the security, that is to say the way securities are handled, in particular in case of acquisition purchase, securities borrowing, receiving a collateral on securities and in case of disposition sell, security lending, constitution of a collateral on the security. This distinction is ancient and draws back to the time where foreign investors used to repatriate paper securities subscribed with issuers incorporated under a different constituency. The title transfer of these securities whether as a final transfer, or as a collateral outside their constituency of origin could therefore be submitted to a law different from the law of the issuer: Indeed, certain proprietary aspects concerning securities are governed in too different ways by the negotiating states. This is in particular the case of what is considered to be the "heart of proprietary law", that is to say the question whether an investor that has "deposited" a security with an intermediary continues to exercise on such deposited security a right in rem or if its right is transformed, as from the deposit, into a simple claim. Such distinction, academic based more than case law-based, is not so important in usual times, but becomes crucial when an insolvency procedure is open against the intermediary. In countries where the second interpretation prevails the US and, to a certain extent the recourse to trust deposits in common law countries , the investor would only dispose of a right of claim, that will oblige him, except when the contrary is specified, to share with other creditors of the insolvent intermediary the product of the winding up of the intermediary in prorate of the value of the security. Although one is not aware of any case law precedent where a common law court pushed this interpretation until its ultimate consequence, Unidroit has chosen to remain neutral concerning any characterisation of the ownership regime. This neutral approach is defined by Unidroit as the "functional approach", since it focuses only on certain functions of the "ownership regime", in opposition to the "conceptual approach" which covers all proprietary aspects. The four matters covered by the Unidroit Convention[edit] Accordingly, the Unidroit Convention tackles only matters located at the periphery of the right of ownership: The rights of the investor with respect to the intermediary[edit] The rights of the investor with respect to the intermediary retained by

the Unidroit Convention are three: These rights of the investor constitute an enforceable minimum between the signatory States, which could be enriched by national provisions, covering, for example, certain aspects of the core of the arrangement of property of the securities, such as the right to "rivindicate" the securities in the event of bankruptcy of the intermediary. Moreover, this limitation of the registration methods is supplemented by rules limiting the possibilities of reversal of these book entries even in the event of bankruptcy "effectiveness". This obligation of exact "reporting" exact, also known under the name of "control of integrity" is intended to limit the risks of artificial creation of securities by simple erroneous entries. Indeed, except rare exceptions, any chain of dematerialised securities contains at least four degrees: In each subscription of a new security, each one of these actors forwards the security to the immediate lower level by a debit of its account and a credit of the account of its correspondent. Within a cross-border framework, i. According to their position in the chain, these additional intermediaries can be described respectively as "home custodian" intermediary of the same nationality than the CSD of the issuer , the "regional custodian" intermediary specialised in shunting between "home custodian" and "global custodian" and finally the "global custodian", the latter generally confounded with the final intermediary. This downward process related to the subscription requires, an exact replication of the debits and of the credits of the securities between each link of the intermediation chain. In other words, whenever an intermediary credits the account of its customer, it must itself ask to its own intermediary that it has accordingly debited its own account opened with it. This obligation "of integrity" also applies to the horizontal registration processes, when the security is yielded on the secondary market or, to the ascending processes, when the security is sub-deposited by the final intermediary with another intermediary. This latter profession is known under the name of " prime broker ". Here too, the obligation of "integrity "or of" "exact reporting" of the debits and of the credits applies to each level of the holding chain of the securities, in such manner that no security can be credited at the same time on two different accounts. This obligation of "integrity" imposed by Unidroit constitutes a minimum which, can be enriched in the jurisdiction of each signatory State, by more complete provisions, such as the obligation of simultaneous debit and credit for in each link of the holding chain or the obligation of centralised "reporting" enabling the CSD of the issuer to be kept informed of any debit and credit and to proceed regularly "reconciliations" in order to check that there are no more securities in movement than securities actually issued function known under the name of "control of waterproofness of the issuance" or "notary function". Furthermore, these provisions impose the signatory States to allow their constitution and their execution in a simplified form. The critics addressed to the Unidroit Convention[edit] The critics addressed to the Unidroit Convention stem mainly from the inner circle of the negotiators of this Convention. Like all the diplomatic conferences of Unidroit, negotiators were composed of delegations from the participating States as well as of non-governmental organisations. One could thus observe during the "diplomatic" conferences of and of a strong mobilisation of the Anglo-Saxon delegations for a "functional-contractual" approach and conversely a mobilisation of several Member States of the European Union for a "functional-systemic" approach France, Germany, Italy and Spain. Switzerland and the European Commission, for their part, contributed to facilitating the adoption of a compromise text. The final version of the Unidroit Convention gives thus seemingly reason to the partisans of the systemic-functional approach, while making prevail, in practice, the functional-contractual approach supported by the Anglo-Saxon negotiators. A contractual approach of American inspiration[edit] The functional approach led by Unidroit supposed total neutrality with respect to property rights. However, insofar as property right concerning securities no longer exists strictly speaking in the United States, not referring to property rights in the Unidroit convention is equivalent to referring to the contractual rights that have substituted to it in the United States. This Article 8, actually a text of about thirty pages, [8] has undergone an important recasting in Since , Article 8 of the UCC considers that the majority of the dematerialised securities that are registered on an account with intermediaries are only reflections of their respective initial issue registered by the two American central securities depositories , respectively the Depository Trust Company DTC for the securities issued by corporates and the Federal reserve for the securities issued by the Treasury Department. Each one of these links is composed respectively of an account provider or intermediary and of an account holder the latter being itself, except for the final investor, account

provider of another account holder located at the lower link. The rights created through these links, are purely contractual claims: The combination of these reduced substantive rights and of these variable intrinsic rights is characterised by article 8 of the UCC as a " beneficial interest ". This decomposition of the rights organised by Article 8 of the UCC results in preventing the investor to rivindicate the security in case of bankruptcy of the account provider, that is to say the possibility to claim the security as its own asset, without being obliged to share it at its prorate value with the other creditors of the account provider. As a consequence, it also prevents the investor, to assert its securities at the upper level of the holding chain, either up to the DTC or up to a sub-custodian. Such a "security entitlement", unlike a normal ownership right, is no longer enforceable "erga omnes" to any person supposed to have the security in its custody. The "security entitlement" is a mere relative right, therefore a contractual right. Furthermore, this re-characterisation of the proprietary right into a simple contractual right enables the account provider, to "re-use" the security without necessarily being obliged to ask for the authorisation of the investor, in particular within the framework of temporary operations such as security lending , option to repurchase , buy to sell back or repurchase agreement. Nevertheless, the generalised practice of characterising the deposit as a " trust " at every tier of the holding chain prevents the holder of an account maintained by a British intermediary characterised as "trustee" to assert its securities at a level upper to its account provider. In the latter case the beneficiary of the trust agreement, becomes itself a "beneficial owner" with no possibility to reflect this ownership in its balance sheet. This situation leads in practice to the same effects as the "contractualisation" of the "substantive" rights incurred in the US by Article 8 of the UCC. Accordingly, the United Kingdom and most other countries of Common law felt no difficulty of being brought into line with the American contractual approach. Several negotiating States had in particular asked: On the one hand that the issuer of a foreign security are not required to adapt theirs " corporate actions " dividends or interests, notices convening to General meetings, etc. These countries won the case on certain aspects of the first request, with the last sentence of Article Nevertheless, for the remainder, signatory States will have to compel their transmitters to recognise as intrinsic right holders, persons which, under the law of the issuer, would have been regarded as shareholders or bondholders. Admittedly, in practice, the US legislation envisages procedures enabling the genuine investor to obtain a "mandate" " proxy " from their respective final intermediary in order to exercise the rights to vote on behalf of the latter. Nevertheless, the international recognition of such a US practice consisting in reversing the burden of the proof of the "titularity" of the voting rights has a considerable impact on the actual exercise of the voting rights in General meetings of large non US issuers that have recently broaden their capital to foreign investors. The majority of the negotiating States asked, in particular, that the provisions concerning book-entry securities do not call into question the rank of guarantees constituted on securities in the event of an insolvency affecting an account provider. Signatory States should be able to determine the rank of the guarantees, which is an essential element of differentiation of the various insolvency laws in the World. But the "contractualisation" of the substantive law of securities incurred by the Unidroit convention results, within the context of a bankruptcy affecting the constituent of a Guarantee, in making ineffective "title transfer guarantees", which, so far, in the countries, where these are recognised, escape the perimeter of the bankruptcy of their constituent. This contradiction between the provisions concerning the book-entries and the methods of constitution of guarantees shows the limits of the "contractual-functional" approach. The absence of a safe systemic vision[edit] The so-called "functional" approach which was the principal factor in the Unidroit work from the beginning of the s presents the merit having clarified the concepts related to intermediated stockholding. In particular, the functional approach made it possible to refine the distinction between "intrinsic right" right of the content and "substantive right" right of the container. The functional approach also made it possible to outline, inside "substantive right", a distinction between "right of book-entries" and "property right" or "rights in rem". However, while voluntarily ruling out the aspects relating to property rights, the authors of the Unidroit Convention did not content themselves to draft a convention limited to the sole book-entry aspects. Contractualising the relationship between account holders and account providers, while discarding any possibility for the final investor to rivindicate the securities, the authors of the Unidroit Convention, at the end, reproduced the American model of property of securities resulting from the reform of Article 8 of the

American Uniform Commercial Code. This exercise illustrates the difficulty for the authors of international conventions of producing a perfectly neutral text. A truly balanced approach would probably have consisted in reintroducing in the substantive law governing securities certain aspects of the law of the country of the issuer. This method, known under the name of "look-through approach", would thus have allowed that, in the event of bankruptcy of an American intermediary, American investors holding securities issued by European issuers would have the possibility to rivindicate these securities by following the rivindication procedures provided under the legislation of the latter. However, one must also acknowledge that the result would probably also have been greater complexity, the administrator of an intermediary in bankruptcy being obliged to apply different procedures for recovery depending on the country of issue of the securities. The Unidroit Convention, adopted without enthusiasm on 9 October , might be signed, as for the Hague Convention, only by the United States, Switzerland and some other third country such as Mauritius or Bangladesh. On the other hand, as a model law, it could inspire the legislative reforms of numerous emerging countries, such as China, Brazil, India and Russia, or even the European Union, [14] in spite of a fierce resistance from the issuer side.

Chapter 5 : Hague Securities Convention | legal definition of Hague Securities Convention by racedaydvl.c

The Hague Securities Convention is an international multilateral treaty intended to remove, globally, legal uncertainties for cross-border securities transactions. [1] The Convention was drafted under the auspices of the Hague Conference on Private International Law, which has been working to harmonize international private law since

The reforms, though largely beneficial, have created an alarming level of uncertainty as to the question of "what law applies" in cross-border securities transactions. The development of a global agreed-upon method of determining the legal regime governing any such transactions lagged behind market practice, leaving financial markets with significant legal risk. The problem stems from the fact that intermediaries exist between an investor and the company which issues a particular security. Historically, many jurisdictions attempted to apply the traditional, but now arguably outdated, lex rei sitae test to securities held with intermediaries, by "looking through" the tiers of intermediaries to the laws of one or more of: That directive has been adopted by a number of states. On 23 June , the European Council asked the European Commission to assess and clarify four legal issues, namely: The EC assessment found that three of the issues pose no major difficulty. The Commission therefore recommended that the European Community and Member States now sign the Convention, and that the Settlement Finality Directive be amended so that securities settlement systems are governed by one Convention law only. Switzerland , which is a European nation that is not part of the European Community and which therefore does not have to wait for agreement among all member states to be reached, has already signed the Convention. Japan Strong support for Japan joining the Convention has been expressed in Japanese legal circles. The next two years of negotiations and meetings were spent determining an appropriate forumulation of the language of the convention, and which PRIMA concepts to accept and which to reject. At the end of the negotiations, the idea that the place of the relevant intermediary was the place to focus on was unanimously rejected in lieu of the approach described below. The fundamental issue during negotiations was to determine a test that would accurately locate the one jurisdiction for any set of circumstances that would be the jurisdiction whose law would apply. The result of the analysis was that for financial institutions with many offices, it is often not possible to point to one particular location. Delegates concluded that a test that tried to actually locate a particular securities account would result in an unacceptable level of impossibility or uncertainty. Over time a new approach was developed: Main rule The main rule of the Convention can be summarised as follows: The first step is to look to the law expressly agreed between the account holder and its immediate relevant intermediary in the account agreement. If no such express designation is made, but the parties have expressly agreed on the law to govern the account agreement, then the governing law shall govern the issues under the Convention. The second step is to apply the "qualifying office" test. Art 4 2 contains a "black list" of activities, each of which by itself is not sufficient to constitute maintenance of securities accounts. Where the previous rule does not provide a result, and a written account agreement exists which "expressly and unambiguously" states that the relevant intermediary entered into the account agreement through a particular office, the applicable law is the law of the location of that office, provided the "qualifying office" test is fulfilled. Article 5 2 and 3: These provide a fallback where Art 5 1 provides no answer. Under these provisions, the applicable law is determined with reference to the place of incorporation or organisation of the relevant intermediary, or its principal place of business. Advertisements Multi-unit states Where the primary rule in Art 4 leads to the law of a territorial unit of a multi-unit state such as Canada or Australia , Art 12 indicates that the applicable law can be the law of a territorial unit specified in the account agreement provided that the relevant intermediary has a qualifying office somewhere in the multi-unit state. Relevant intermediary as collateral taker In Art 4 3 , the Convention expressly provides that it applies in the specific case where an account holder: Other issues Other issues governed by the Convention include:

Chapter 6 : Hague Securities Conventionâ€™s Impact on Secured Transactions Choice-of-Law Rules

The Hague Securities Convention is intended to resolve uncertainties in determining which countries' laws should be applied which had developed as secured transactions evolved and grew more complex.

New test[edit] The first Special Commission of the Convention met at The Hague in January to consider the appropriate conflict of laws rule. The next two years of negotiations and meetings were spent determining an appropriate formulation of the language of the convention, and which PRIMA concepts to accept and which to reject. At the end of the negotiations, the idea that the place of the relevant intermediary was the place to focus on was unanimously rejected in lieu of the approach described below. The fundamental issue during negotiations was to determine a test that would accurately locate the one jurisdiction for any set of circumstances that would be the jurisdiction whose law would apply. The result of the analysis was that for financial institutions with many offices, it is often not possible to point to one particular location. Delegates concluded that a test that tried to actually locate a particular securities account would result in an unacceptable level of impossibility or uncertainty. Over time a new approach was developed: Main rule[edit] The main rule of the Convention can be summarised as follows: The first step is to look to the law expressly agreed between the account holder and its immediate relevant intermediary in the account agreement. If no such express designation is made, but the parties have expressly agreed on the law to govern the account agreement, then the governing law shall govern the issues under the Convention. The second step is to apply the "qualifying office" test. Art 4 2 contains a "black list" of activities, each of which by itself is not sufficient to constitute maintenance of securities accounts. Where the previous rule does not provide a result, and a written account agreement exists which "expressly and unambiguously" states that the relevant intermediary entered into the account agreement through a particular office, the applicable law is the law of the location of that office, provided the "qualifying office" test is fulfilled. Article 5 2 and 3: These provide a fallback where Art 5 1 provides no answer. Under these provisions, the applicable law is determined with reference to the place of incorporation or organisation of the relevant intermediary, or its principal place of business. Multi-unit states[edit] Where the primary rule in Art 4 leads to the law of a territorial unit of a multi-unit state such as Canada or Australia , Art 12 indicates that the applicable law can be the law of a territorial unit specified in the account agreement provided that the relevant intermediary has a qualifying office somewhere in the multi-unit state. Relevant intermediary as collateral taker[edit] In Art 4 3 , the Convention expressly provides that it applies in the specific case where an account holder: Holds interests in securities through an intermediary; and Pledges or transfers title to securities held with an intermediary to that particular inventory. Other issues governed by the Convention include: Issues of priority between competing dispositions; The requirements for the realisation of such an interest; and The duties of an intermediary to competing claimants to an interest in securities held with the intermediary. Other related international conventions[edit] In , Unidroit started a negotiation process with a view to harmonise the material aspects of intermediated securities. The purpose is to achieve a further step towards legal integration of securities markets, that consist not only in identifying the applicable law, but also in harmonising some parts of the legislation of the signatory States. These negotiations eventually reached the adoption, in October , of the Unidroit convention on substantive rules for intermediated securities also known as the Geneva Securities Convention. Hague Conference on Private International Law. Retrieved 11 August Proposal for a Council Decision concerning the signing of the Hague Convention on the Law applicable to certain rights in respect of securities held with an intermediary". Retrieved 9 February

Chapter 7 : Geneva Securities Convention - Wikipedia

Hague Securities Convention means The Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (Concluded 5 July), which became effective in the United States of America on April 1,

Beloff The choice-of-law rules for the perfection and priority of a security interest in security entitlements in securities credited to a securities account are set forth in Articles 8 and 9 of the Uniform Commercial Code, particularly UCC Sections and The convention provides choice-of-law rules for the perfection and priority of a security interest in security entitlements in securities credited to a securities account that will preempt the choice-of-law rules in Articles 8 and 9 to a large extent. Although in most instances the outcome under the choice-of-law rules of the convention will be the same as under Articles 8 and 9, there are some differences. These differences matter not only for new transactions but also for existing ones to which the convention also will apply on its effective date. The only countries other than the United States to have adopted the convention so far are Mauritius and Switzerland. Nevertheless, the convention will become effective in the United States on April 1, â€" even for secured transactions where there is no connection with Mauritius, Switzerland or any country that adopts the convention in the future. The convention does not provide choice-of-law rules for the perfection or priority of a security interest in directly held securities or in commodity contracts or commodity accounts. Perfection and priority will be determined by the substantive law of the jurisdiction whose law governs the account agreement between the securities intermediary and the entitlement holder. The account agreement may, however, provide that the issues governed by Article 2 1 of the convention be determined by the law of a different jurisdiction. The Article 2 1 issues include the applicable law to determine the perfection and priority of a security interest in security entitlements in securities credited to a securities account. The first is that the chosen law in the account agreement, or the law otherwise specified in the account agreement to govern the Article 2 1 issues, must be that of a jurisdiction in which the securities intermediary has an office that deals in securities â€" whether or not the securities are the collateral in question. If the chosen law is that of a U. Delaware substantive law would govern perfection by filing even though the general choice-of-law rule of the convention otherwise points to New York substantive law. Existing Secured Transactions So, assuming that the qualifying office test is met, under what circumstances will the choice-of-law result under the convention be different than under Articles 8 and 9 for existing transactions in which a security interest is granted in security entitlements in securities credited to a securities account? Three situations come to mind: Perfection is by control, but the chosen law in the account agreement is that of a non-UCC jurisdiction. In this situation, it would likely be necessary for the secured party to obtain perfection and priority of the security interest under the substantive law of the jurisdiction whose law governs the account agreement, or to amend the agreement to specify that the law of a UCC jurisdiction will govern the issues referred to in Article 2 1 of the convention. To be sure, a special transition rule of the convention preserves the effect of the choice-of-law rules under the law governing a pre-effective date account agreement if the choice-of-law rules of that jurisdiction would point to the law of another jurisdiction for the issues covered by Article 2 1 of the convention as a result of express language contained in the account agreement. However, this special transition rule applies only if the choice-of-law rules of the jurisdiction whose law governs the pre-effective date account agreement point to the law of the other jurisdiction. Perfection is by filing, and the chosen law in the account agreement is that of a non-UCC jurisdiction. It will be necessary for the secured party in this situation to perfect the security interest â€" whether by filing if available or otherwise â€" and obtain priority of the security interest under the substantive law of the non-UCC jurisdiction. For example, if the account agreement is governed by English law, the entitlement holder is a Delaware corporation, and perfection of the security interest is claimed by filing in Delaware, then, absent the account agreement being amended, perfection and priority of a security interest in security entitlements in securities credited to the securities account would be governed by English substantive law, even though under Articles 8 and 9, perfection by filing would be governed by Delaware substantive law. In this case, it will be necessary for the secured party to perfect the security interest by filing and obtain priority under the substantive law of the chosen UCC

jurisdiction. This is the case even though perfection and priority may have already been achieved under the substantive law of the foreign jurisdiction. For example, if the account agreement is governed by New York law, the entitlement holder is located as determined under UCC Section in Ontario, Canada, and perfection of the security interest is claimed by a filing in Ontario, it would be necessary for the secured party to perfect its security interest under New York substantive law, presumably by the filing of a financing statement in New York. This is the case even though the filing of a financing statement in New York is not otherwise effective under Articles 8 and 9. New Secured Transactions For new transactions being planned now or entered into on or after April 1, , a secured party will need to bear in mind the choice-of-law rules of the convention. Other Sources of Information on the Convention There is much more that can be said about the convention. It covers choice-of-law issues that go beyond security interests in security entitlements in securities credited to a securities account, and there are other nuances as well. The convention itself and an explanatory report on the provisions of the convention are available on the website of the Hague Conference on Private International Law. Furthermore, the permanent editorial board for the Uniform Commercial Code has published a draft report on the convention, which is available on the website of the American Law Institute. Smith is a partner and Alan W. The opinions expressed are those of the author s and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Chapter 8 : Hague Securities Convention : Wikis (The Full Wiki)

"securities" (as defined in Hague Securities Convention Article 1(1)(a)) credited to the Pledged Securities Account and held with the Custodian (within the meaning of "securities held with an intermediary" as.

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disposition of the securities or the securities account, or an interest in either (including an adverse claimant), is located in a different na- tion, the Convention is likely to apply.