



HOW LEGAL CERTAINTY ADVICE INTERCONNECTS WITH LOCAL LAW

Conference of the 23 October 2008
On the Advice of the Legal Certainty Group and the way
forward Organised by the European Commission

 **SOCIETE GENERALE**
Securities Services

Philippe LANGLET



PLAN

■ Introduction

LCG key goals

- ▶ Interconnection with insolvency law and regulatory principles (nature of the rights of the Account Holder)
- ▶ LCG advice solution : Integrity of the issue
- ▶ Interconnection with security interest law

■ Conclusion

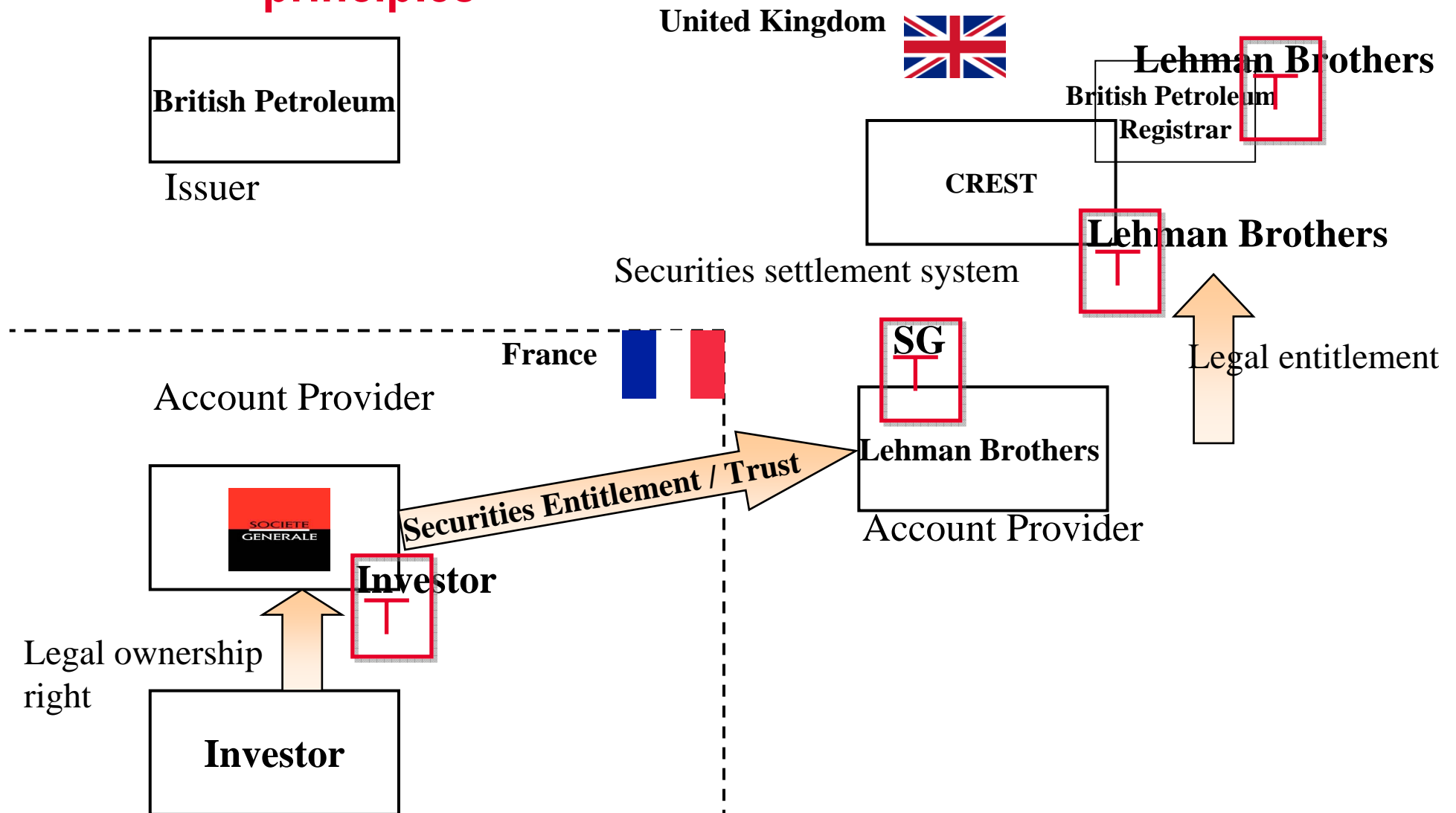
Urgent situation need strong remedies



INTRODUCTION

- **LCG key goals : market integration and investor protection**
- **Fostering of investors confidence**

PART I – Interconnection with insolvency law and regulatory principles





PART I - Interconnection with insolvency law and regulatory principles

- **A bankruptcy in the holding chain example**

How French Account Holder is already protected in case of bankruptcy of a foreign Account Provider ?

- **The French investor is vested with actual ownership right .**

Article 322-4 3 of AMF Rules : The Account Provider «has an obligation to return any financial instruments held in book entry form on its books».

- **The French Account Holder seems to be vested with a mere equitable interest “vis à vis” an English Account Provider.**



PART I - Interconnection with insolvency law and regulatory principles

Article 322-4 -3 of AMF Rules.

The Account Providers «ensures that the asset of its customers, including those of any collective investment scheme for which it is custodian, are segregated from its own assets on the books of any central securities depositories of which it is a member».



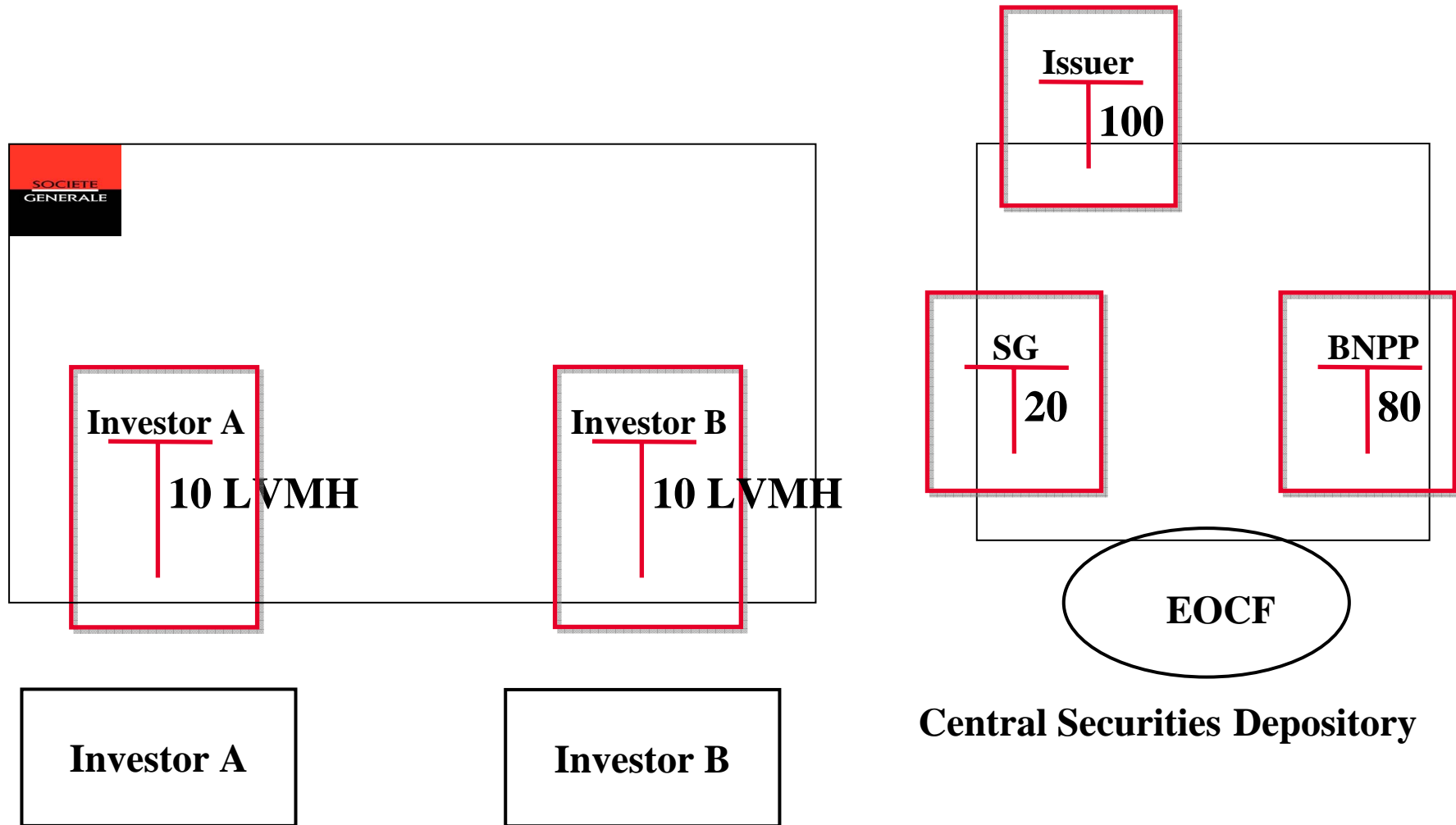
PART I - Interconnection with insolvency law and regulatory principles

■ Article 211- 6 of the Monetary and Financial Code

- The administrator determines the balance of the Account Holders securities.**
- In case of securities shortfall, an allocation in prorata of their holdings is made amongst Account Holders.**
- Account Holder may choose to transfer such securities to another Account Provider or to the issuer.**



PART II – Integrity of the issue - French model





PART II – Integrity of the issue

- **Article 322-17 of AMF Rules.** For the purpose of ascertaining and monitoring the rights of account holders, financial instrument accounts are kept according to the rules of double-entry book-keeping.
- **Article 322-30 of AMF Rules.** The accounting system for financial instruments implements procedures for ongoing verification of the accuracy of available asset account balances, with the aid of documentation of the corresponding assets provided by the central depository, the custody account-keepers having custody of the financial instruments, and the legal persons that issued them by means of a public offer of securities. Any discrepancy is substantiated.



PART II - Integrity of the issue-LCG solutions

Recommendation 9a :

Through its functional approach compels the Account Holder to maintain a number of book entry securities that corresponds to the aggregate number of book entry securities credited to the accounts of its Account Holders or held for its own account.

Recommendation 9b :

In case of securities shortfall a list of measures are suggested:

- Own account securities of the Account Provider could be used to make up the shortfall.**
- In case of the Account Provider bankruptcy like under article 211-6 of the MFC, an allocation in prorata of their holding is made amongst Account Holder.**



PART III – Interconnection with security interest law

- **There is today, more than before, a huge market need to use securities as collateral.**
- **Beyond the Financial Collateral Directive scope there is always a doubt concerning the law applicable to the creation and enforcement of a security interest in securities . The most careful advice would be to create a security interest at each level of the holding chain.**
- **The Recommendation 5 concerning harmonisation disposition methods will definitely reinforce the legal certainty in security interest law.**
- **The protection of acquirers against reversal (Recommendation 7) would enhance banks liquidity business when they accept securities with transfer of ownership right as collateral.**



CONCLUSION

A message has to be sent by European Commission that, investors protection will be improved through a directive based on LCG recommendations.

We could even go further in our ambitions :

- The Account Provider must definitely be an authorized entity.**
- The integrity of the issue and the double accounting principle must be carried out, even at the CSD level.**