

Solutions to Legal Barriers related to Post-Trading within the EU

2008 Advice of the Legal
Certainty Group

*Interconnection between
Recommendations 1-14 and
English Law*

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Introduction

- Whilst English law has outcomes which are broadly in line with the LCG's Recommendations
 - the basis for those outcomes is not always absolutely clear
 - there are differences in points of detail
 - clarification of the cross-border position is important

Basis of Existing English Law

- Combination of
 - Trust law
 - Contract law
- with an overlay of regulatory requirements

- As outcomes are broadly in line, there will be question to what extent new laws would be required

Aspects to Change?

- What are the aspects where it may be worthwhile to add to current English law?
- Recommendation 4: Book-Entry Securities
 - The nature of the rights currently afforded under English law is consistent with Recommendation 4: only need to legislate if want to consolidate into one source rather than the current combination of sources
- Recommendation 14: Attachments
 - Confirmation of limitation to level of account provider

Aspects to Change?

- Recommendation 5: Effectiveness of Book-Entry
 - Under current English law, the legally effective act may be a consequence of the book-entry, rather than the book-entry itself e.g. change of name of holder in register made consequent upon book entry debit and credit
- Recommendation 5 looks to give the book-entry itself larger status
- Recommendation 5 also addresses earmarking and control agreements

Aspects to Change?

- Recommendation 6: Effectiveness and Reversal
 - rule for immediate effectiveness
 - currently settlement finality rules only applicable to systems
 - rules addressing reversals
- Recommendation 7: Protection of Acquirers against Reversal and current good faith purchaser rule

Aspects to Change?

- Recommendation 8: Priority
 - Current law largely prioritises based on chronology but impacted by legal versus equitable interests

Aspects to Change?

- Recommendation 9: Integrity of the Issue
 - duty to maintain corresponding number of securities and obligation to buy in or use own account securities
 - contractual settlement arrangements
 - prime brokerage
 - what is relevance of fault?

Aspects to Change?

- Recommendations 12 to 14: Corporate Actions
 - interaction of cross border laws
 - tax laws
 - implications of holding pattern
 - practicalities

Conclusion

- English law broadly in line
- Detailed aspects raise policy and practicality questions

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