
Update on the work of the
EU Legal Certainty Group

10th CESAME meeting
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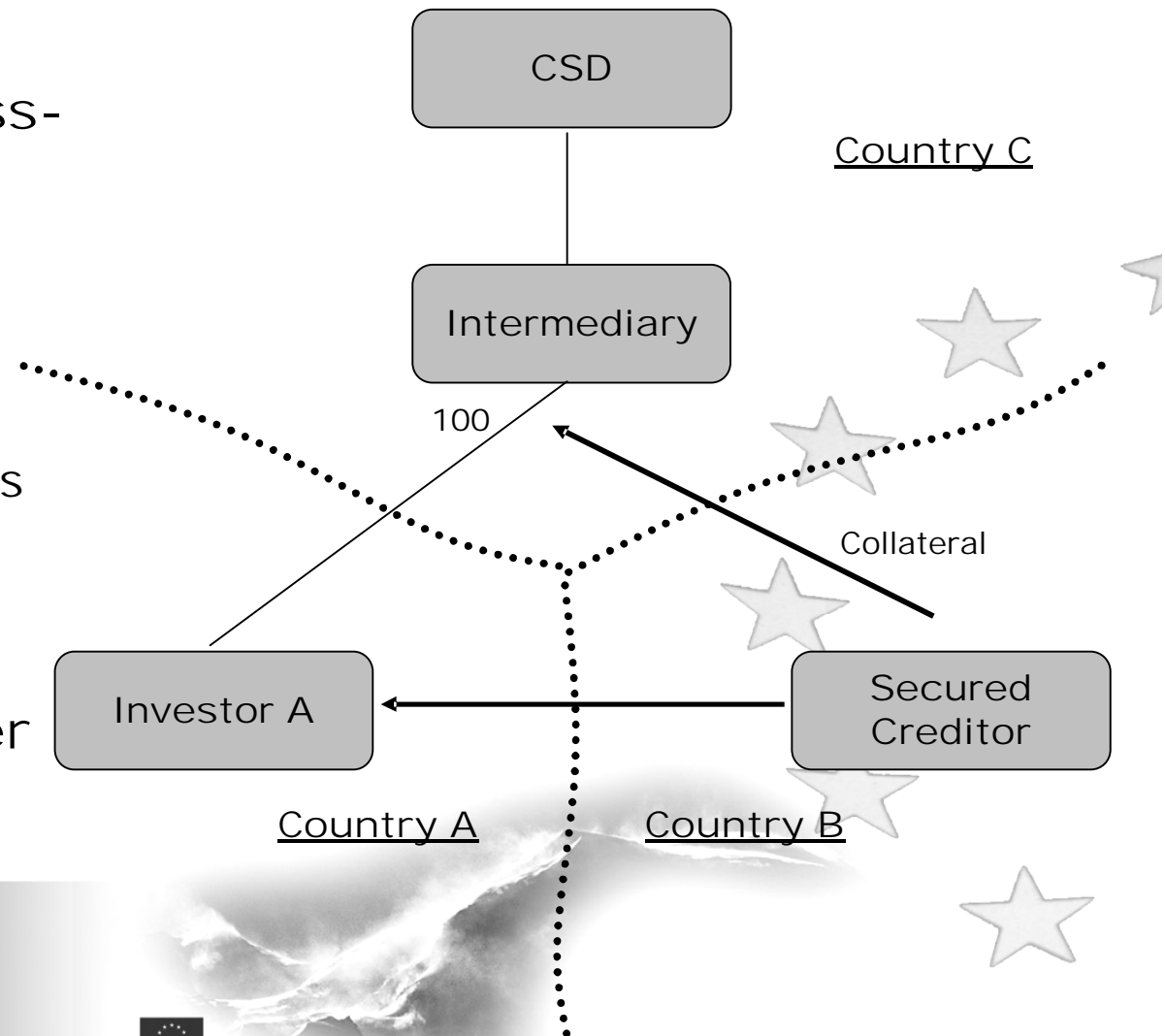


Cross-border Situation - Example

Solution in a cross-border context:

- Conflict-of-laws
- Substantive law
 - Corporate law
 - Law governing proprietary aspects
 - Civil law
 - Insolvency law
 - Supervisory rules

have to work together



Overview: Conflict-of-Laws and Substantive Law Initiatives

Cross-border legal situation regarding securities holding and disposition

Conflict-of-laws

FCD, SFD

Global: Hague Securities Conv.

Substantive law

FCD, SFD (revision ongoing)

Legal Certainty Group

Global: draft UNIDROIT Conv.



1st phase of the work (2005-2006)

- Five meetings
- 2006 Advice to the Commission (July 2006) plus ancillary documentation
- Results regarding
 - Book-entry
 - Corporate action
 - Location of securities



2nd phase of the work (2007-2008)

- Renewed mandate (September 2006)
- 6th and 7th meeting (February/May 2007)
- Work in 3 subgroups with co-ordinators
- Interim report (November 2007)
 - First set of legislative principles
 - Seek guidance regarding political issues
 - Give timely input to negotiators at the Unidroit negotiations
- 2008 Advice (November 2008)
 - Full detailed blueprint
 - Recommendation as to legislative form
 - Optional: tentative proposal for draft provisions



Findings so far: Subject 1 ("book entry")

- Relates to Barrier 13
- Some key issues:
 - Legal effect of book entries
 - Prohibition of upper tier attachment
 - Protection against insolvency of intermediaries
 - Rules on "validity" of book entries
 - Duties of the account provider
- Level of harmonisation – going beyond minimum standards (investor protection and stability)
- Relationship with the Unidroit draft (cf. below)



Findings so far:

Subject 2 („corporate actions“)

- Relates to Barrier 3
- Issues:
 - Passing down corporate information to the investor
 - Passing up information corporate information to the issuer
 - Facilitating the exercise of rights vis-à-vis the issuer
 - Exercise of rights upon authorisation/instruction
- Goal: maintain key functions of securities in the intermediated system
- Key elements:
 - Date relevant for identification of investor
 - Establish a uniform set of duties of the intermediary



Findings so far:

Subject 3 („Location of securities“)

- Relates to Barrier 9
- Existence of restrictions confirmed
- Categorisation
- Assessment whether justifiable or not
- Proposals to remove restrictions without affecting the certainty, transparency and efficiency of the market



LCG and Unidroit

- Unidroit: Diplomatic Conference June 2008
- Significant overlap?
 - Unidroit=global; LCG=regional EU
 - Unidroit=international Convention; LCG=advice for prospective legislation
 - Scope as regards book-entry securities nearly identical; LCG treats additional elements, Subjects 2 and 3
 - LCG: additional emphasis on investor protection and systemic stability
- Timing? Both projects are moving targets

