

Barrier 9
Removal of restrictions
on location of securities

Preliminary conclusions of the LCG

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Core Elements of the dismantling of Barrier 9

1. Scope
 - Barrier 9 urges the public sector to remove restrictions regarding the location of securities as they limit the choice of investors and issuers and are contrary to the principles underlying the internal market for financial services.
 - The LCG is called upon assessing whether any provision of law or regulation would restrict such choice and providing solutions in light of Barrier 9.

2. LCG suggests change of terminology, choosing “restrictions regarding place of issuance” instead of “restrictions regarding location of securities”.

3. “Restrictions on the place of issuance” refers to –
 - a. Initial issuance into a CSD
 - b. Shift of an issue from one CSD to another CSD
 - c. Split of an issue between two CSDs (under discussion, unlikely to be included)

Core Elements of the dismantling of Barrier 9

4. Existence of restrictions confirmed by LCG's fact finding exercise:
 - a. Restrictions on exportability of domestic securities (e.g. provisions requiring StoX listed securities to be issued into CSD)
 - b. Restrictions on importability of foreign securities (e.g. provisions on formal requirements; certification/dematerialisation)
5. The dismantling of Barrier 9 is a necessary complement to Art. 34 and Art. 46 MiFID and to the Code of Conduct
6. Definition of "place of issuance" requires a demarcation line between
 - Creation of securities (belonging to the world of corporate law = remaining domestic)
 - Issuance of securities (securities entering the world of ownership and transfer = no restrictions on place)

The LCG's analysis comes to the result that the activity of a CSD belongs to the world of ownership and transfer, i.e the issuance of securities (cf. following 2 slides).

Dematerialised Public Bonds

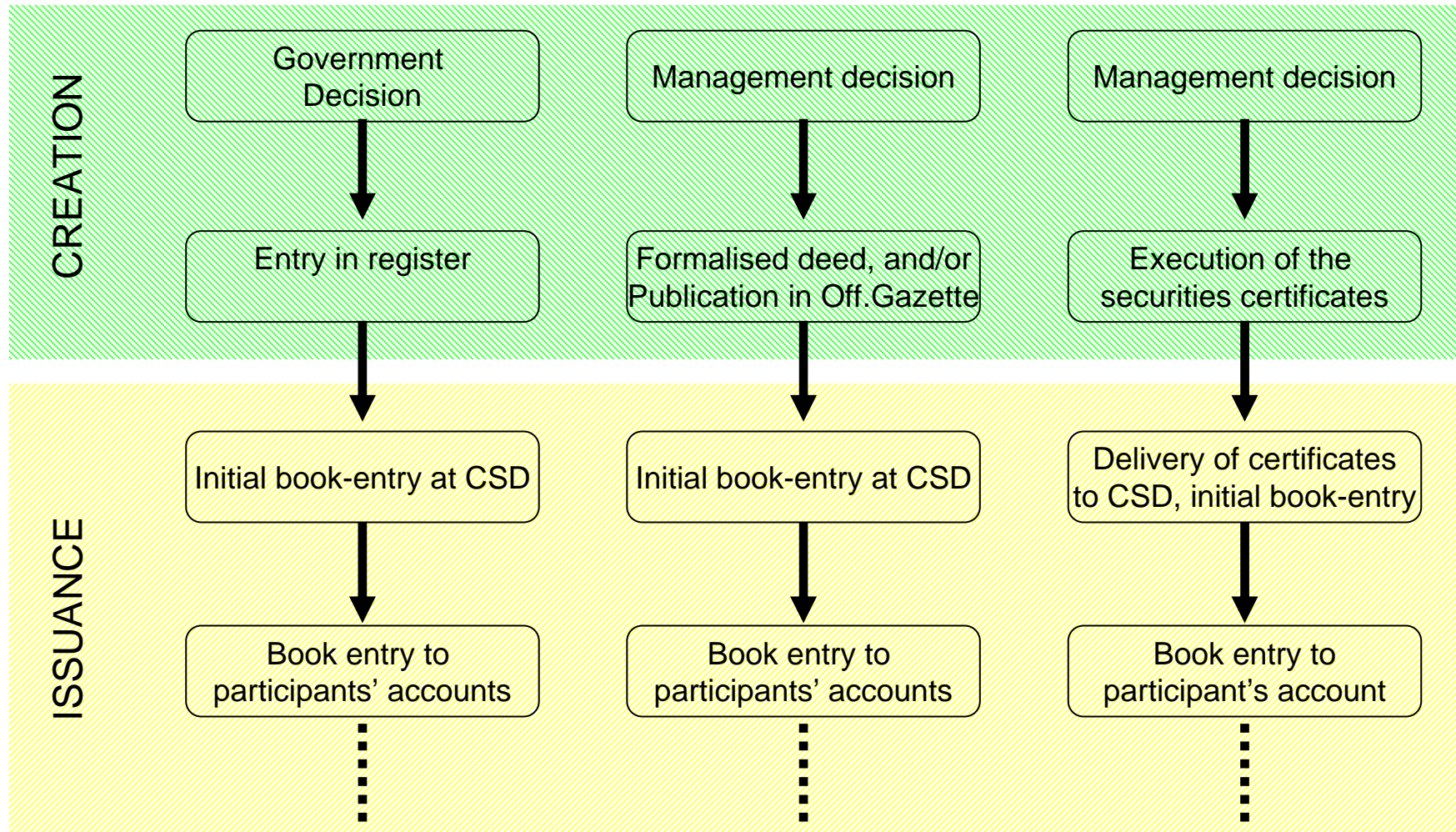
Example:
XY country

Dematerialised Corporate Bonds

Example:
YY country

Certificated Corporate Bonds

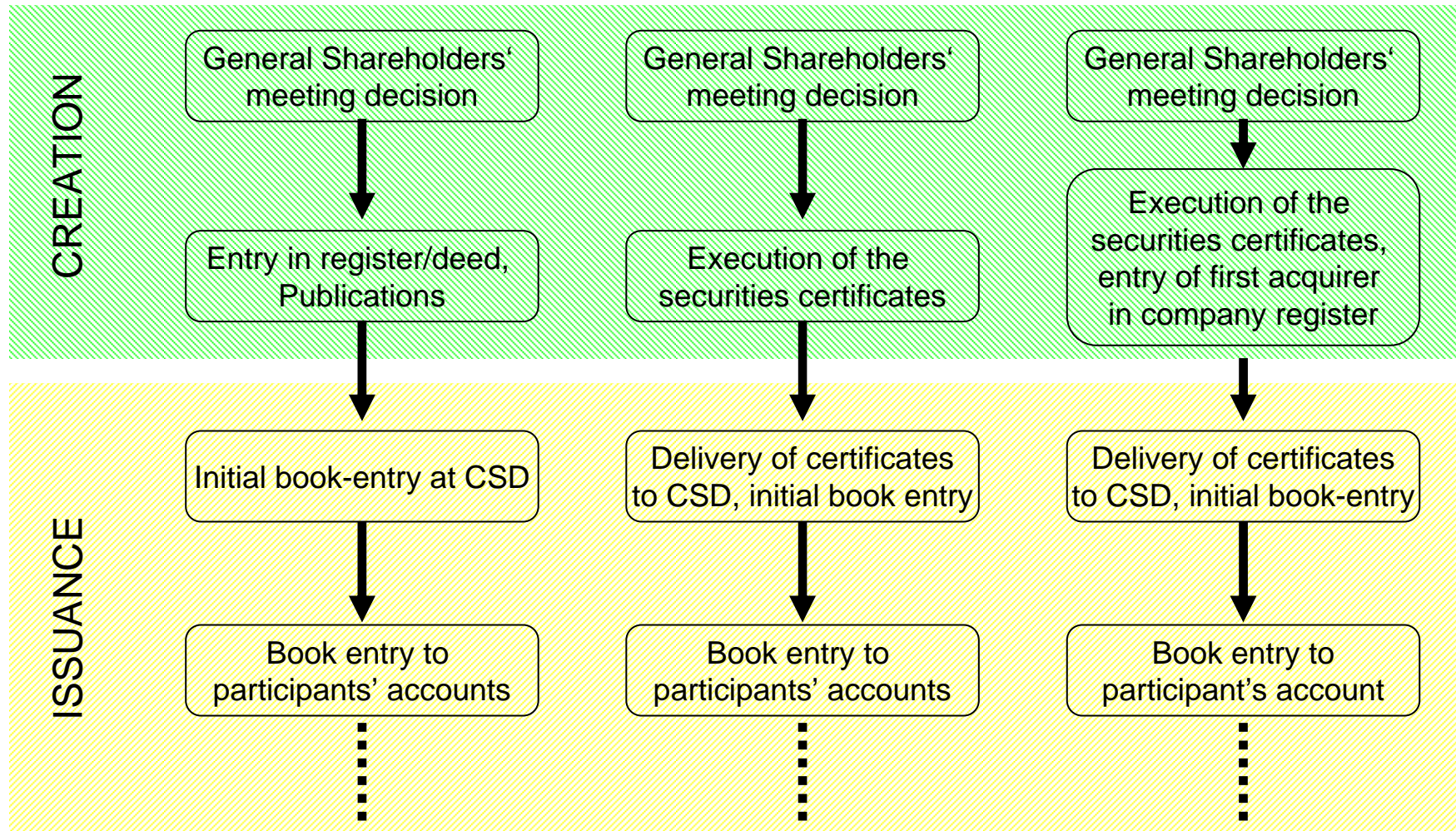
Example:
ZY country



Dematerialised
Shares
Example:
XZ country

Certificated
Shares
Example:
YZ Country

Registered shares
Example:
ZZ country



Core Elements of the dismantling of Barrier 9

7. Justification of existing restrictions? Examples:
 - a. Necessary to avoid loss of securities or inflation of their number
 - b. Special protection for specific securities
(e.g. shares in pension funds)
 - c. Holding of Government bonds needed
to be kept under national control
 - d. Better connectivity with tax procedures
(in particular: withholding tax)
 - e. Etc.

8. Result: the LCG is of the view that most justifications date from times before the achievement of an integrated EU financial market. In light of the overall improvement of the legal and operational underpinnings and in particular the future treatment of issues addressed under Barriers 13 and 11/12, restrictions are for the far greatest part not justified and should be removed.

Recommendation of the LCG on Barrier 9

Tentative approach:

As regards exportability,

- There should be no provision requiring that the shares of stock exchange listed companies are deposited in the local CSD, and/or exclusively settled in the local SSS, and/or registered with a local registrar.
- There should be no restriction regarding the form (dematerialised or certificated) of securities issued into a foreign CSD.
- Legal rules generally prohibiting a place of issuance other than the national system should be abolished.

As regards importability,

- The Place of issuance law should not require compliance with formalities the purpose of which is covered by similar formalities required by the issuer law (e.g. specific form of securities certificate).
- The Place of issuance law shall not discriminate securities which are constituted under an issuer law which is different from the Place of issuance law.