Stämpfli's Commentary

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The Federal Intermediated Securities Act (FISA) and the Hague Securities Convention (HSC)

Stämpfli Publishers Ltd. Berne

Conflict of Laws – Preliminary Remarks

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I. History of the Hague Securities Convention (HSC)

1 The vast majority of transactions in securities held with an intermediary take place in an international context. It is essential to be able to determine with certainty the law applicable to the acquisition and loss of rights in such securities. The fact that a chain of financial intermediaries located in different States is involved in a single transaction complicates the determination of the law applicable to the transfer or pledging of a security.[1] The classic rules of private international law are based on a direct holding system that refers to the law of the place where the security is located *(lex rei sitae* or *lex chartae sitae)*. While this connecting factor is suited to a direct holding system based on the physical transfer of securities, it is inappropriate to an indirect holding system based on the immobilization of securities.[2] Any attempt to apply it to such a system is likely to produce unexpected or even unmanageable results in practice. For example, in the context of a transaction involving a portfolio of securities whose issuers are located in different States, the idea of referring each security to the law of the place where it is located has the unfortunate effect of multiplying the applicable laws. If this factor is applied to the granting of a security interest in a securities account, it is in practice quite impossible for the beneficiary of a security interest to perfect that interest by fulfilling the perfection requirements of all the laws applicable to all the securities. Moreover, the investor has no way of knowing which law or laws will apply, since he has no direct contact with the issuing company.[3] The development of an indirect system for holding securities has therefore brought with it significant legal uncertainty in private international law.

2 It is in this context that an international review was launched early in 2000 under the aegis of the Hague Conference on Private International Law. It followed a joint proposal by Australia, the United Kingdom and the United States of America to set up an international convention with a view to establishing modern conflict rules reflecting the fact that securities are now held, transferred, and pledged indirectly. Harmonizing the rules of private international law seemed to be the best way of guaranteeing legal certainty. The work of the Hague Conference was based on two guiding principles: on the one hand, the need to

1 *Guillaume,* Titres intermédiés, pp. 149–151.
2 *Girsberger,* Swiss Prospects, pp. 100–101; *Girsberger/Guillaume,* pp. 19–22.
3 Guillaume, Aspects, pp. 255–259.

modernize the traditional conflict of laws rules that exist in most States, and on the other, to set up a system of connections that would guarantee legal predictability and thus provide legal certainty. Given the urgent needs of practitioners, the States rapidly reached an agreement, and the text of a new Hague Convention was adopted in December 2002.[4] The primary rule chosen by the States attached great importance to a person's freedom to choose the law applicable to the securities he holds with an intermediary.[5] However, this freedom of choice is not unlimited.

II. Status of the Hague Securities Convention (HSC)

The Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary (the Hague Convention on Securities Held with an Intermediary, HSC) was signed jointly by Switzerland and the United States on 5 July 2006. 3

Switzerland was the first State to ratify the HSC, on 14 September 2009. It was followed by the Republic of Mauritius on 15 October 2009. No other State has ratified it to date. 4

Within the European Union, ratification of the HSC has been postponed because the system of connections relating to rights in securities held with an intermediary that was finally adopted in European law is different from the system finally adopted in the HSC. The European legislator chose to subject these rights to the law of the place where the securities account is located.[6] This PRIMA *(Place of the Relevant Intermediary Approach)* rule does not give any freedom of choice to the parties concerned. PRIMA was used as the basis for initial discussion during the process of drawing up the HSC, but was not adopted in the end because of the difficulty – or even impossibility – of determining, in practice, the place where a securities account is located.[7] In the meantime, however, it had been accepted in European law. In a report issued in July 2006,[8] the European Commission concluded that adopting the HSC would not require any amendment to the Commu- 5

4 *Goode/Kanda/Kreuzer,* N Int-1–15.

5 *Bonomi,* pp. 11–12.

6 See Art. 9(2) of the Settlement Finality Directive 98/26/EC (OJEU 1998 L 166, pp. 45 seq); Art. 24 of the Reorganisation and Winding up of Credit Institutions Directive 2001/24/EC (OJEU 2001 L 125, pp. 15 seq); Art. 9(1) of the Financial Collateral Arrangements Directive 2002/47/EC (OJEU 2002 L 168, pp. 43 seq).

7 *Goode/Kanda/Kreuzer,* N Int-41–46.

8 The European Commission's legal assessment of the HSC may be consulted in a working document entitled "Legal Assessment of Certain Aspects of the Hague Securities Convention (SEC(2006) 910)," dated 3 July 2006, http://ec.europa.eu/internal_market/financial-markets/docs/hague/legal_assessment_en.pdf.

nity rules applicable to insolvency proceedings.[9] It therefore recommended that the HSC be signed as soon as it had come into force in at least two of the European Union's principal trading partners, one of which must be the United States of America. But this report has not put an end to debates within EU Member States on the advisability of ratifying the HSC.[10] In April 2009, the European Commission asked the opinion of the Member States, market participants and other stakeholders whether the legal framework for securities holding and disposition should be improved.[11] The answers to this consultation have shown that there is a need for a uniform conflict of laws rule for determining the law applicable to book-entry securities. The European Commission is therefore currently studying the reform of the Community legal framework and will probably draft new conflict of law rules to be put into the Directive on Intermediated Securities. The draft of this new Directive is expected sometime in 2010. This might open the door to the accession to the HSC by the European Commission and the ratification by the EU Member States.

6 Several States are presently debating a possible ratification of the HSC, e.g. the United States of America, Canada and Japan.

7 The Latin American countries have also shown a certain interest in acceding to the HSC. Brazil, Mexico, Argentina, Chile, and Peru have launched a process of serious review and examination of the HSC after recommendations made by the Executive Committee of ACSDA *(Americas' Central Securities Depositories Association)* on 14 May 2007 called on all ACSDA Member States to ratify the HSC.[12]

8 The entry into force of the HSC at international level requires ratification by three States (Art. 19(1) HSC). To date, only two States have ratified the HSC, and thus it has not yet entered into force internationally.

III. Implementation of the Hague Securities Convention in Swiss Law

9 In order not to delay the entry into force of the HSC in Switzerland, the Swiss legislator incorporated into the Swiss Private International Law Act (SPI-

[9] These include the following texts: Insolvency Proceedings Council Regulation 1346/2000/EC (OJEU 2000 L 160, pp. 1 seq); Reorganisation and Winding up of Credit Institutions Directive 2001/24/EC (OJEU 2001 L 125, pp. 15 seq); and Reorganisation and Winding-up of Insurance Undertakings Directive 2001/17/EC (OJEU 2001 L 110, pp. 28 seq).

[10] *Bariatti,* pp. 19–23; *Deguée*, pp. 33–38; *Devos*, pp. 377–395; *Sigman/Bernasconi,* pp. 31–35; *Thoma,* pp. 190–192.

[11] Consultation document of the European Commission of 16 April 2009: Legislation on Legal Certainty of Securities Holding and Dispositions (G2/PP D(2009)).

[12] These recommendations are available on the website of the Hague Conference http://www.hcch.net/upload/acsda.pdf.

LA) a new Art. 108*c* that refers directly to the HSC for the purpose of determining the law governing rights in indirectly held securities. This provision makes it possible to apply the HSC as national law in Switzerland pending its entry into force at international level.[13] In the meantime the connecting rules of the HSC will be converted into Swiss connecting rules. As a result, as from 1 January 2010 (the date of its entry into force in Switzerland), the HSC will be invoked when determining the law applicable to all issues that fall within its scope.

Three other provisions were introduced into SPILA at the same time in order to (i) clarify the concept of indirectly held securities within Swiss private international law (Art. 108*a* SPILA) and (ii) supplement the HSC with rules for conflict of jurisdiction with regard to the forum (Art. 108*b* SPILA) and to the recognition of foreign judgments (Art. 108*d* SPILA). 10

These four provisions constitute Chapter 7a of SPILA.[14] The creation of a special chapter in the law was justified by the fact that rights to securities held with an intermediary are *sui generis*. They are similar to rights *in rem* insofar as they have effects against third parties, yet they cannot all be qualified as *in rem* rights in the traditional sense of the term as used in Swiss law. However, rights to securities held with an intermediary are more closely related to proprietary *(in rem)* rights than to contractual rights. For this reason, the legislator decided to insert into the law a special chapter on rights in securities held with an intermediary, immediately after the one devoted to rights *in rem.*[15] 11

[13] Message, BBl 2006, p. 9399 = FF 2006, p. 8898; *Guillaume,* Conventions, pp. 185–187.
[14] *Girsberger,* Swiss Prospects, pp. 104–106.
[15] Message, BBl 2006, p. 9400/9401 = FF 2006, p. 8899.

Swiss Federal Private International Law Act (SPILA)

Art. 108*a*

I. Definition	**Intermediated securities shall be defined as securities held with an intermediary under the Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.**
I. Begriff	Unter intermediärverwahrten Wertpapieren sind Wertpapiere zu verstehen, die bei einem Intermediär im Sinne des Haager Übereinkommens vom 5. Juli 2006 über die auf bestimmte Rechte an Intermediärverwahrten Wertpapieren anzuwendende Rechtsordnung verwahrt sind.
I. Notion	On entend par titres intermédiés les titres détenus auprès d'un intermédiaire au sens de la Convention de La Haye du 5 juillet 2006 sur la loi applicable à certains droits sur des titres détenus auprès d'un intermédiaire.
I. Definizione	Per strumenti finanziari detenuti presso un intermediario finanziario si intendono quelli ai sensi della Convenzione dell'Aia del 15 luglio 20065 sulla legge applicabile ad alcuni diritti su strumenti finanziari detenuti presso un intermediario.

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I. Definition of Intermediated Securities in Swiss Private International Law

1. Definition of Intermediated Securities by Reference to the Hague Securities Convention (HSC)

Art. 108*a* of the Swiss Federal Private International Law Act (SPILA) defines the notion of intermediated securities in Swiss private international law. This provision simply refers to the definition of securities held with an intermediary as it appears in the HSC. 1

Art. 1(1)(f) HSC defines securities held with an intermediary as "the rights of an account holder resulting from a credit of securities to a securities account." Based on the other concepts defined in Art. 1 HSC, we would instead propose the following definition: securities held with an intermediary are securities, that is, "any 2

shares, bonds or other financial instruments or financial assets (other than cash), or any interest therein" (Art. 1(1)(a) HSC) held with an intermediary, that is, "a person that in the course of a business or other regular activity maintains securities accounts for others or both for others and for its own account and is acting in that capacity" (Art. 1(1)(c) HSC).[1] Intermediaries include banks, securities dealers, central banks, and central securities depositories.[2]

3 The key element in the definition is the intervention of an intermediary in the securities holding system: intermediated securities are securities credited to a securities account maintained by an intermediary on behalf of an account holder (who may be a client of the intermediary or the intermediary itself). The account holder may be either an investor (natural or legal person) or another financial intermediary. As soon as a security is credited to a securities account held with an intermediary, it enters the indirect securities holding system and is defined as a "security held with an intermediary" or an "indirectly held security" or an "intermediated security."

2. *The Definition of Intermediated Securities is Independent of the Definition in Swiss Substantive Law*

4 The definition of intermediated securities used in Swiss private international law is independent of the definition in substantive law. The reason for referring to the HSC definition of intermediated securities rather than the FISA definition is that the former makes it possible for the rules of private international law to apply to institutions governed by foreign law that do not exist in Swiss substantive law and are not covered by the FISA definition.[3] The latter is in fact narrower than the definition used in the HSC.

5 In Swiss substantive law, only securities that are held in collective custody (Art. 973*a* CO), global certificates (Art. 973*b* CO), and uncertificated securities (i.e. book-entry securities; Art. 973*c* CO) are considered to be intermediated securities.

II. Scope of Chapter 7a SPILA

6 Art. 108*a* SPILA defines the scope of Chapter 7a SPILA. By referring simply to the concept of securities held with an intermediary as defined in the HSC, Art. 108*a* SPILA specifies that the scope of Chapter 7a SPILA is the same as that of the HSC.

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1 See Cmt. Art. 1 HSC N 2–3.
2 See Art. 4 FISA for the list of intermediaries authorized under Swiss law.
3 See Art. 3 FISA for the definition of intermediated securities in Swiss substantive law.

If a security is an intermediated security within the meaning of the HSC, Chapter 7a of the SPILA applies to all issues relating to the holding, transfer, and pledge of that security as defined in Art. 2(1) HSC.[4] 7

The FISA applies wherever the HSC designates Swiss law as the law applicable to rights in an intermediated security. 8

[4] See Cmt. Art. 2 HSC.

Art. 108*b*

II. Jurisdiction

[1] The Swiss courts of the domicile or, if there is no domicile those of the habitual residence of the defendant shall have jurisdiction over actions relating to intermediated securities.

[2] The Swiss courts of the place where the defendant has an establishment shall also have jurisdiction over actions relating to intermediated securities arising from the operations of that establishment.

II. Zuständigkeit

[1] Für Klagen betreffend intermediärverwahrte Wertpapiere sind die schweizerischen Gerichte am Wohnsitz des Beklagten oder, wenn ein solcher fehlt, diejenigen an seinem gewöhnlichen Aufenthalt zuständig.

[2] Für Klagen betreffend intermediärverwahrte Wertpapiere aufgrund der Tätigkeit einer Niederlassung in der Schweiz sind überdies die Gerichte am Ort der Niederlassung zuständig.

II. Compétence

[1] Les tribunaux suisses du domicile ou, à défaut de domicile, ceux de la résidence habituelle du défendeur sont compétents pour connaître des actions relatives à des titres intermédiés.

[2] Les tribunaux suisses du lieu où le défendeur a son établissement sont aussi compétents pour connaître des actions relatives à des titres intermédiés découlant de l'exploitation de cet établissement.

II. Competenza

[1] Per le azioni derivanti da strumenti finanziari detenuti presso un intermediario finanziario sono competenti i tribunali svizzeri del domicilio o, in mancanza di domicilio, della dimora abituale del convenuto.

[2] Per le azioni derivanti da strumenti finanziari detenuti presso un intermediario finanziario fondate sull'attività di una stabile organizzazione in Svizzera sono inoltre competenti i tribunali del luogo dell'organizzazione medesima.

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I. Jurisdiction Over Actions Relating to Intermediated Securities

Art. 108*b* SPILA applies to determining jurisdiction over actions relating to intermediated securities that fall within the scope of the HSC. Art. 2(1) HSC should therefore be referred to in order to determine whether the action relates to an intermediated security within the meaning of this provision.[1] 1

Art. 108*b* SPILA applies e.g. to determining the forum for the following actions: 2

- an action to determine the priority between two competing rights in an intermediated security, e.g. the rights of two secured creditors;
- an action concerning the perfection of the transfer of an intermediated security to a securities account;
- an action to determine whether a transfer of an intermediated security has been rendered effective;
- an action to determine whether the pledging of an intermediated security has been rendered effective;
- an action to determine whether a person has validly acquired rights in an intermediated security;
- an action to determine whether a person's acquisition of rights in an intermediated security extinguishes or has priority over another person's rights in the same security;
- etc.

II. Jurisdiction of the Swiss Courts

Switzerland is a contracting State of the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 16 September 1988. The Lugano Convention is applicable to all civil and commercial matters that fall within its material scope, including relationships that involve one contracting State and one non-contracting State. Actions relating to intermediated securities will in principle fall within its material scope. Hence, Swiss courts will apply Art. 108*b* SPILA to the determination of jurisdiction only on the rare occasions when they cannot apply the Lugano Convention. This Convention has been revised and a new version was signed on 30 October 2007 in Lugano.[2] The revised Lugano Convention is concluded between Switzerland, the European Community, the Kingdom of Denmark, the Republic of Iceland, and the Kingdom of Norway. It is expected to enter into force in respect of Switzerland on 1 January 2011. We shall refer hereafter to the provisions of the revised Lugano Convention. We shall mention only the main provisions likely to apply in the context of actions relating to intermediated securities. 3

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1 See Cmt. Art. 2 HSC.

2 Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007.

1. Choice of Forum

4 The parties always have the option of choosing a particular court as the forum for settling disputes that have arisen or that may arise between them.

5 If one of the parties to an action (respondent or claimant) is domiciled in a contracting State of the Lugano Convention, and the parties have chosen the Swiss courts, the Lugano Convention is applicable to determining the forum. According to Art. 23(1) of the Lugano Convention,[3] "If the parties, one or more of whom is domiciled in a State bound by this Convention, have agreed that a court or the courts of a State bound by this Convention are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive unless the parties have agreed otherwise."

6 If the parties to an action have chosen the Swiss courts but none of them is domiciled in a contracting State of the Lugano Convention, the convention does not apply. In such cases, Art. 5 SPILA defines the conditions determining the validity of the choice of forum: "The parties may agree that a court is to have jurisdiction to settle any disputes which have arisen or which may arise as regards a pecuniary claim in connection with a particular legal relationship."

7 The choice of forum must be either in writing or evidenced in writing. The chosen jurisdiction is exclusive unless otherwise agreed by the parties. The choice of forum may be agreed in advance, e.g. in the account agreement (including its annexed documents, such as the general terms and conditions) between an intermediary and its client. It may be expressed either in general terms ("all disputes") or expressly limited to disputes relating to intermediated securities within the meaning of the HSC.

2. Forum at the Place of Domicile of the Respondent

8 If the respondent is domiciled in Switzerland, an action relating to intermediated securities may be brought before the courts of his domicile (Art. 2(1) Lugano Convention). The Lugano Convention always applies to determining the forum at the place of domicile of a respondent domiciled in Switzerland. Domestic jurisdiction is specified in Art. 108*b*(1) SPILA, which also designates the forum at the respondent's domicile.

9 Domicile is defined in the Lugano Convention with reference to the private international law of the State concerned (Arts. 59 and 60 Lugano Convention).[4] For

[3] Art. 17 of the 1988 Lugano Convention.
[4] Arts. 52 and 53 of the 1988 Lugano Convention.

Switzerland, Arts. 20 and 21 SPILA apply.[5] However, Art. 60(1) of the Lugano Convention provides an independent definition of the domicile of companies and other legal persons: "For the purposes of this Convention, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its: (a) statutory seat; or (b) central administration; or (c) principal place of business." Hence, the Lugano Convention is applicable even if the company's statutory seat is not located in a contracting State, so long as its central administration or its principal place of business is within one of these States. Furthermore, Swiss courts have jurisdiction if the respondent has its statutory seat, central administration, or principal place of business in Switzerland (Art. 2(1) *cum* Art. 60(1) Lugano Convention).

3. Forum at the Place of Habitual Residence of the Respondent

If the respondent (natural person) has no domicile, the Swiss courts of the place of his habitual residence have jurisdiction pursuant to Art. 108*b*(1) SPILA. 10

The concept of habitual residence is defined in Art. 20 SPILA.[6] 11

4. Forum at the Place of an Establishment of the Respondent

If the respondent is domiciled in a contracting State of the Lugano Convention, an action relating to intermediated securities may be brought before the courts of the place where a branch, agency, or other establishment is located, if the dispute arises out of their operations (Art. 5(5) Lugano Convention). 12

If the respondent has no domicile in any contracting State of the Lugano Convention, an action relating to intermediated securities arising out of the operations of an establishment may also be brought before the Swiss courts of the place where that establishment is located (Art. 108*b*(2) SPILA). If the respondent is a com- 13

[5] Art. 20 SPILA: "(1) For the purpose of this law, a natural person: (a) is domiciled in the State in which he resides with the intention of establishing himself there. […]"; Art. 21 SPILA: "(1) For companies and trusts, the seat is the equivalent of a domicile. (2) The seat of a company is deemed to be at the place designated in the company's articles of association or memorandum of incorporation. Where there is no such designation, the seat of the company is the place from which it is administered. (3) The seat of a trust is deemed to be at the place designated in the terms of the trust as its place of administration, whether these terms are in writing or in another form that can be documented. Where there is no such designation, the seat of the trust is the place from which it is administered."

[6] Art. 20 SPILA: "For the purpose of this law, a natural person […] (b) has his habitual residence in the State in which he resides for a certain length of time, even if this period is initially limited."

pany or another legal person, this provision applies only if the respondent does not have its statutory seat, central administration, or principal place of business in any contracting State of the Lugano Convention (see Art. 60(1) Lugano Convention).

14 This forum is an alternative to that of the respondent's domicile. The concept of "establishment" is defined in Arts. 20 and 21 SPILA.[7]

[7] Art. 20(1) SPILA: "For the purpose of this law, a natural person: […] (c) is established in the State in which the focus of his professional or business activities is located"; Art. 21(4) SPILA: "The establishment of a company or trust is located in the State in which its registered office is located or in a State in which one of its branches is located."

Art. 108*c*

III. Applicable law	**The law applicable to intermediated securities is determined by the Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.**
III. Anwendbares Recht	Für intermediärverwahrte Wertpapiere gilt das Haager Übereinkommen vom 5. Juli 2006 über die auf bestimmte Rechte an Intermediär-verwahrten Wertpapieren anzuwendende Rechtsordnung.
III. Loi applicable	Le droit applicable aux titres intermédiés est régi par la Convention de La Haye du 5 juillet 2006 sur la loi applicable à certains droits sur des titres détenus auprès d'un intermédiaire.
III. Diritto applicabile	Agli strumenti finanziari detenuti presso un intermediario finanziario si applica la Convenzione dell'Aia del 15 luglio 2006 sulla legge applicabile ad alcuni diritti su strumenti finanziari detenuti presso un intermediario.

Determination of the Law Applicable to Intermediated Securities by Reference to the HSC

Art. 108*c* SPILA refers to the HSC for the determination of the law applicable to intermediated securities. 1

The HSC designates the law applicable to rights in respect of intermediated securities credited to a securities account. This law applies to the rights of the account holder and of the intermediary maintaining the securities account (the "relevant intermediary") in the intermediated securities, as well as the rights of any other person (e.g. a creditor) in the same intermediated securities. 2

Where a transaction in intermediated securities gives rise to a chain of holdings, the law designated by the HSC does not apply globally to the entire chain of holdings. The applicable law must be determined separately for each securities account.[1] 3

The HSC applies when determining the law applicable to all issues relating to intermediated securities falling within the scope of the HSC. This means all the issues listed in Art. 2(1) HSC. That list is exhaustive: any issues relating to intermediated securities that are not included in it are not governed by the HSC.[2] 4

The HSC provides for two connecting rules: Art. 4 HSC gives the primary rule and Art. 5 HSC gives the fall-back rules. According to Art. 4(1) HSC, the law applicable to rights in intermediated securities is the law designated by the ac- 5

[1] See Cmt. Art. 4 HSC N 5.
[2] See Cmt. Art. 2 HSC.

count holder and his direct intermediary by means of a choice of law in the account agreement between them.[3] To be valid, this choice of law must meet two conditions: (i) the choice of law must be express and (ii) the relevant intermediary must have a qualifying office[4] in the State whose law has been chosen. If the choice of law is not valid or the account holder and his direct intermediary have not designated any applicable law in their account agreement, Art. 5 HSC provides for three cascading fall-back rules.[5] The first of these designates the law of the State where the office of the relevant intermediary (which concluded the account agreement) is located (Art. 5(1) HSC). Two conditions must be met: (i) the office through which the account agreement was entered into can be determined with certainty and (ii) this office is a qualifying office. If the office through which the account was entered into cannot be determined with certainty, or is not a qualifying office, this rule cannot apply. The second fall-back rule designates the law of the State under whose law the relevant intermediary is incorporated or otherwise organized (Art. 5(2) HSC). If the relevant intermediary has not been validly incorporated or organized, this rule cannot apply. The third fall-back rule designates the law of the principal place of business of the relevant intermediary (Art. 5(3) HSC).

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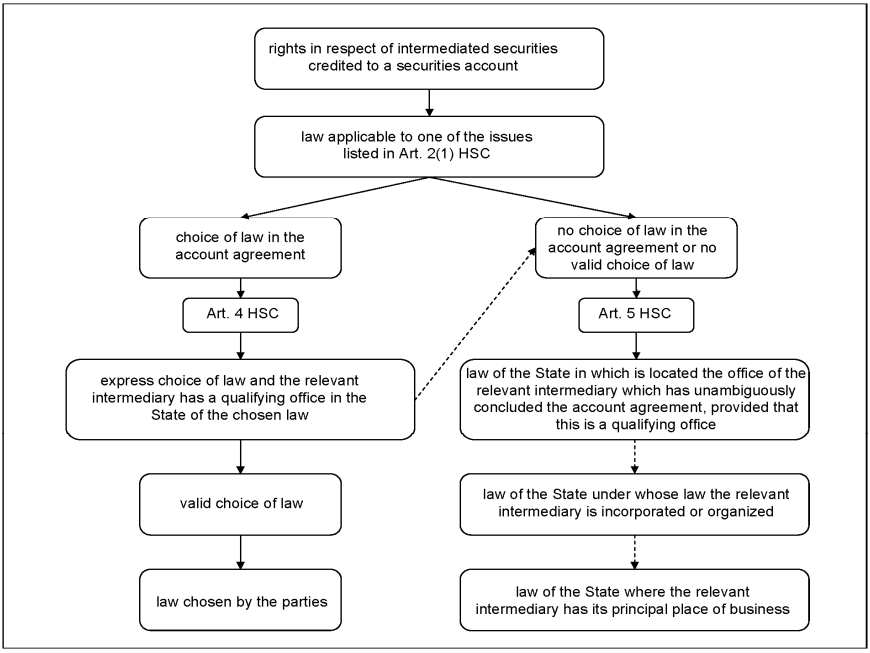

[3] See Cmt. Art. 4 HSC.
[4] See Cmt. Art. 4 HSC N 11 seq.
[5] See Cmt. Art. 5 HSC.

Art. 108*c* SPILA incorporates the HSC into the SPILA, allowing the HSC to be applied as a national law in Switzerland, even if it has not yet entered into force at international level.[6] 7

[6] See Conflict of Laws – Prel. Remarks N 9.

Art. 108*d*

IV. Foreign judgments	**A foreign judgment relating to intermediated securities shall be recognized in Switzerland provided:** **a. it was issued in the State in which the defendant had its domicile or its habitual residence; or** **b. it was issued in the State in which the defendant had its establishment and the claim arises from the operations of that establishment.**
IV. Ausländische Entscheidungen	Ausländische Entscheidungen über intermediärverwahrte Wertpapiere werden in der Schweiz anerkannt, wenn sie: a. im Staat ergangen sind, in dem der Beklagte seinen Wohnsitz oder seinen gewöhnlichen Aufenthalt hatte; oder b. im Staat ergangen sind, in dem der Beklagte seine Niederlassung hatte, und sie Ansprüche aus dem Betrieb dieser Niederlassung betreffen.
IV. Décisions étrangères	Les décisions étrangères rendues en relation avec une action relative à des titres intermédiés sont reconnues en Suisse: a. lorsqu'elles ont été rendues dans l'Etat du domicile ou de la résidence habituelle du défendeur; ou b. lorsqu'elles ont été rendues dans l'Etat de l'établissement du défendeur et que la prétention résulte de l'exploitation de cet établissement.
IV. Decisioni straniere	Le decisioni straniere in materia di strumenti finanziari detenuti presso un intermediario finanziario sono riconosciute in Svizzera se pronunciate: a. nello Stato in cui il convenuto era domiciliato o dimorava abitualmente; o b. nello Stato in cui il convenuto aveva la stabile organizzazione, qualora concernano le pretese derivanti dalla gestione di tale organizzazione.

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I. Recognition and Enforcement of Foreign Judgments Relating to Intermediated Securities

Switzerland is a contracting State of the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007. This is a revised version of the Lugano Convention of 1988.[1] The Lugano Convention applies to the recognition and enforcement of any foreign judgment relating to intermediated securities that fall within its scope, issued in a contracting State of the Lugano Convention. Where the Lugano Convention cannot apply, the SPILA applies instead to the recognition and enforcement of a foreign judgment. 1

1. Foreign Judgments Issued in a Non-Contracting State of the Lugano Convention

In order for a foreign judgment relating to intermediated securities to have the same effects in Switzerland as in its State of origin, it must undergo a process of recognition and enforcement in Switzerland (Art. 29 SPILA). On the application of any interested party, the foreign judgment may be declared enforceable in Switzerland (Art. 28 SPILA). Such a declaration is necessary if the judgment is to be enforced in Switzerland. The party against whom enforcement has been sought is entitled to make submissions (Art. 29(2) SPILA). There are several preconditions for the recognition and enforcement of a foreign judgment in Switzerland: 2

The judgment must have been given by a jurisdictional authority with a power inherent in the exercise of sovereignty (court, authority, commission, etc.). The authority that gave the judgment must have jurisdiction pursuant to Swiss private international law (indirect international jurisdiction; Art. 25(a) SPILA). 3

Indirect international jurisdiction is assumed if it is stipulated in a special provision of the SPILA (Art. 26(a) SPILA). Art. 108*d* SPILA lists the cases in which Swiss private international law holds that a foreign authority is competent to render a judgment relating to intermediated securities. Jurisdiction is recognized if the judgment has been issued (i) in the State where the respondent is domiciled or has his habitual residence (Art. 108*d*(a) SPILA), or (ii) in the State in which the respondent has an establishment if the claim arises out of the operations of that establishment (Art. 108*d*(b) SPILA). Indirect international jurisdiction is also recognized where the judgment has been issued by the authority of a State designated by the parties in their choice of forum (Art. 26(b) SPILA). Finally, indirect international jurisdiction is also recognized if the respondent has entered an appearance without any reservations as regards the jurisdiction (Art. 26(c) SPILA), 4

[1] See Cmt. Art. 108b SPILA N 3.

and if the authority that has given the judgment upon a counterclaim had jurisdiction for the original claim (Art. 26(d) SPILA).

5 Only a definitive judgment or one that is not subject to ordinary appeal may be recognized (Art. 25(b) SPILA). Recognition of a foreign judgment may be refused if it is manifestly contrary to Swiss substantive or procedural public policy or if it is irreconcilable with an earlier judgment (Art. 25(c) *cum* Art. 27(1) and (2) SPILA). Under no circumstances may the Swiss court review the substance of the foreign judgment (Art. 27(3) SPILA).

2. Foreign Judgments Issued in a Contracting State of the Lugano Convention

6 If the foreign judgment was issued in a contracting State of the Lugano Convention, then the recognition and enforcement procedure to be followed is that stipulated in Arts. 32 seq of the Lugano Convention.[2] Recognition is automatic, but any interested party may apply for a decision that the foreign judgment be recognized (Art. 33 Lugano Convention).[3] However, a foreign judgment given in one contracting State of the Lugano Convention is not automatically enforceable in another contracting State. Hence the interested party must always file an application for the foreign judgment to be declared enforceable in the relevant contracting State (Art. 38(1) Lugano Convention).[4]

7 The procedure for recognition or enforcement is described in Arts. 38–58 of the Lugano Convention.[5] The party seeking recognition or applying for a declaration of enforceability must produce a copy of the foreign judgment which satisfies the conditions necessary to establish its authenticity (Art. 53(1) Lugano Convention).[6] The procedure for enforcement is facilitated by the fact that the authority which issued the judgment is obliged to deliver a certificate attesting that it is enforceable in its State of origin (Art. 54 Lugano Convention and Annex V).[7] The party against whom enforcement has been sought is not entitled to make any submissions except by lodging an appeal against the decision declaring the foreign judgment enforceable (Arts. 41 and 43 Lugano Convention).[8]

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2 Arts. 25 seq of the 1988 Lugano Convention.
3 Art. 26 of the 1988 Lugano Convention.
4 Art. 31(1) of the 1988 Lugano Convention.
5 Arts. 31–51 of the 1988 Lugano Convention. See *Felix Dasser/Paul Oberhammer* (eds.), Kommentar zum Lugano-Übereinkommen (LugÜ), Berne 2008, Commentary on Arts. 31–51 of the Lugano Convention.
6 Art. 46 of the 1988 Lugano Convention.
7 There is no equivalent disposition in the 1988 Lugano Convention.
8 Arts. 34 and 36 of the 1988 Lugano Convention.

The conditions for recognition and enforcement in Switzerland of a foreign judgment given in a contracting State of the Lugano Convention are stipulated in Arts. 34 and 35 of the Convention.[9] The foreign judgment does not have to be definitive. If an ordinary appeal against the foreign judgment has been lodged, the Swiss court may stay the recognition procedure (Art. 37(1) Lugano Convention).[10] Recognition of a foreign judgment may be refused if it is manifestly contrary to Swiss substantive or procedural public policy or if it is irreconcilable with an earlier judgment (Art. 34 Lugano Convention).[11] The jurisdiction of the court of the State of origin may not be reviewed (Art. 35(3) Lugano Convention).[12] Under no circumstances may the Swiss court review the substance of the foreign judgment (Arts. 36 and 45(2) Lugano Convention).[13] 8

[9] Arts. 27 and 28 of the 1988 Lugano Convention.
[10] Art. 30(1) of the 1988 Lugano Convention.
[11] Art. 27 of the 1988 Lugano Convention.
[12] Art. 28(4) of the 1988 Lugano Convention.
[13] Arts. 29 and 34(3) of the 1988 Lugano Convention.

Convention on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary (HSC)

Chapter I: Definitions and Scope of Application

Art. 1

Definitions and interpretation

[1] In this Convention

a) "securities" means any shares, bonds or other financial instruments or financial assets (other than cash), or any interest therein;

b) "securities account" means an account maintained by an intermediary to which securities may be credited or debited;

c) "intermediary" means a person that in the course of a business or other regular activity maintains securities accounts for others or both for others and for its own account and is acting in that capacity;

d) "account holder" means a person in whose name an intermediary maintains a securities account;

e) "account agreement" means, in relation to a securities account, the agreement with the relevant intermediary governing that securities account;

f) "securities held with an intermediary" means the rights of an account holder resulting from a credit of securities to a securities account;

g) "relevant intermediary" means the intermediary that maintains the securities account for the account holder;

h) "disposition" means any transfer of title whether outright or by way of security and any grant of a security interest, whether possessory or non-possessory;

i) "perfection" means completion of any steps necessary to render a disposition effective against persons who are not parties to that disposition;

j) "office" means, in relation to an intermediary, a place of business at which any of the activities of the intermediary are carried on, excluding a place of business which is intended to be merely temporary and a place of business of any person other than the intermediary;

k) "insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, in which the assets and affairs of the debtor are subject to control or supervision by a court or other competent authority for the purpose of reorganisation or liquidation;

l) "insolvency administrator" means a person authorised to administer a reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

m) "Multi-unit State" means a State within which two or more territorial units of that State, or both the State and one or

more of its territorial units, have their own rules of law in respect of any of the issues specified in Article 2(1);

n) "writing" and "written" mean a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion.

[2] References in this Convention to a disposition of securities held with an intermediary include

a) a disposition of a securities account;

b) a disposition in favour of the account holder's intermediary;

c) a lien by operation of law in favour of the account holder's intermediary in respect of any claim arising in connection with the maintenance and operation of a securities account.

[3] A person shall not be considered an intermediary for the purposes of this Convention merely because

a) it acts as registrar or transfer agent for an issuer of securities; or

b) it records in its own books details of securities credited to securities accounts maintained by an intermediary in the names of other persons for whom it acts as manager or agent or otherwise in a purely administrative capacity.

[4] Subject to paragraph (5), a person shall be regarded as an intermediary for the purposes of this Convention in relation to securities which are credited to securities accounts which it maintains in the capacity of a central securities depository or which are otherwise transferable by book entry across securities accounts which it maintains.

[5] In relation to securities which are credited to securities accounts maintained by a person in the capacity of operator of a system for the holding and transfer of such securities on records of the issuer or other records which constitute the primary record of entitlement to them as against the issuer, the Contracting State under whose law those securities are constituted may, at any time, make a declaration that the person which operates that system shall not be an intermediary for the purposes of this Convention.

Begriffsbestimmungen und Auslegung

[1] In diesem Übereinkommen gelten folgende Begriffsbestimmungen:

a) «Wertpapiere» bezeichnet Aktien, Schuldverschreibungen, andere Finanzinstrumente, Finanzanlagen (ausgenommen Barguthaben) oder Rechte daran;

b) «Depotkonto» bezeichnet ein Konto, das von einem Intermediär geführt wird und dem Wertpapiere gutgeschrieben oder von dem Wertpapiere abgebucht werden können;

c) «Intermediär» bezeichnet eine Person, die im Rahmen einer geschäftlichen oder anderen regelmässigen Tätigkeit für fremde oder sowohl für eigene als auch für fremde Rechnung Depotkonten führt und in dieser Eigenschaft tätig ist;

d) «Depotinhaber» bezeichnet eine Person, auf deren Namen ein Intermediär ein Depotkonto führt;
e) «Kontovereinbarung» bezeichnet im Zusammenhang mit einem Depotkonto die Vereinbarung mit dem massgeblichen Intermediär über dieses Depotkonto;
f) «Intermediär-verwahrte Wertpapiere» bezeichnet die Rechte eines Depotinhabers, die sich aus einer Gutschrift von Wertpapieren auf einem Depotkonto ergeben;
g) «massgeblicher Intermediär» bezeichnet den Intermediär, der das Depotkonto für den Depotinhaber führt;
h) «Verfügung» bezeichnet jede Vollrechtsübertragung, gleichviel, ob uneingeschränkt oder zu Sicherungszwecken, und jede Einräumung eines Sicherungsrechts, gleichviel, ob mit oder ohne Besitzübertragung;
i) «Herbeiführung der Drittwirkung» bezeichnet die Vollendung der notwendigen Schritte, um eine Verfügung gegenüber Personen, die nicht Parteien dieser Verfügung sind, wirksam werden zu lassen;
j) «Geschäftsstelle» bezeichnet in Bezug auf einen Intermediär einen Geschäftssitz, an dem Tätigkeiten des Intermediärs ausgeübt werden, unter Ausschluss jedes Geschäftssitzes, der lediglich vorübergehend als solcher vorgesehen ist, und jedes Geschäftssitzes einer Pferson, die nicht der Intermediär ist;
k) «Insolvenzverfahren» bezeichnet kollektive Gerichts- oder Verwaltungsverfahren einschliesslich vorläufiger Verfahren, in denen das Vermögen und die Geschäfte des Schuldners zur Sanierung oder Liquidation der Kontrolle oder Aufsicht eines Gerichts oder einer anderen zuständigen Behörde unterstellt werden;
l) «Insolvenzverwalter» bezeichnet eine Person, welche die Befugnis hat, sei es auch nur vorläufig, eine Sanierung oder Liquidation durchzuführen, und schliesst einen Schuldner in Eigenverwaltung ein, sofern das anzuwendende Insolvenzrecht dies zulässt;
m) «Mehrrechtsstaat» bezeichnet einen Staat, in dem zwei oder mehr Gebietseinheiten dieses Staates oder sowohl der Staat als auch eine oder mehrere seiner Gebietseinheiten für Fragen, die in Artikel 2 Absatz 1 genannt sind, ihre eigenen Rechtsnormen haben;
n) «schriftlich» bedeutet durch Aufzeichnung von Angaben (einschliesslich der Übermittlung durch Fernübertragung) in verkörperter Form oder in anderer Form, die später in verkörperter Form wiedergegeben werden kann.

[2] Bezugnahmen in diesem Übereinkommen auf eine Verfügung über Intermediär- verwahrte Wertpapiere schliessen Folgendes ein:
a) eine Verfügung über ein Depotkonto;
b) eine Verfügung zugunsten des Intermediärs des Depotinhabers;
c) ein gesetzliches Pfand- oder Zurückbehaltungsrecht zugunsten des Intermediärs des Depotinhabers in Bezug auf eine Forderung, die in Zusammenhang mit der Führung und Verwaltung eines Depotkontos entstanden ist.

[3] Eine Person wird nicht schon allein deshalb als Intermediär im Sinne dieses Übereinkommens angesehen, weil sie

a) als Register- oder Übertragungsstelle für einen Emittenten tätig ist oder
b) in ihren eigenen Büchern Aufzeichnungen über Wertpapiere auf Depotkonten macht, die ein Intermediär für andere Personen führt, für die sie als Verwalterin oder Bevollmächtigte oder sonst in rein administrativer Eigenschaft tätig ist.

[4] Vorbehaltlich des Absatzes 5 wird eine Person als Intermediär im Sinne dieses Übereinkommens in Bezug auf Wertpapiere angesehen, die von ihr in der Eigenschaft als Zentralverwahrer von Wertpapieren geführten Depotkonten gutgeschrieben sind oder sonst zwischen von ihr geführten Depotkonten durch Buchung übertragen werden können.

[5] Werden Wertpapiere Depotkonten gutgeschrieben, die eine Person als Betreiberin eines Verwahr- oder Übertragungssystems für Wertpapiere auf der Grundlage des Registers des Emittenten oder anderer Aufzeichnungen führt, welche die massgebliche Eintragung der Rechte an diesen Wertpapieren gegenüber dem Emittenten darstellen, so kann der Vertragsstaat, nach dessen Rechtsordnung diese Wertpapiere begründet sind, jederzeit erklären, dass die Systembetreiberin kein Intermediär im Sinne dieses Übereinkommens ist.

Définitions et interprétation

[1] Dans la présente Convention:

a) «titres» désigne toutes actions, obligations ou autres instruments financiers ou actifs financiers (autres que des espèces), ou tout droit sur ces titres;
b) «compte de titres» désigne un compte tenu par un intermédiaire sur lequel des titres peuvent être crédités ou duquel des titres peuvent être débités;
c) «intermédiaire» désigne toute personne qui, dans le cadre de son activité professionnelle ou à titre habituel, tient des comptes de titres pour autrui ou tant pour autrui que pour compte propre, et agit en cette qualité;
d) «titulaire de compte» désigne la personne au nom de laquelle un intermédiaire tient un compte de titres;
e) «convention de compte» désigne, pour un compte de titres, la convention avec l'intermédiaire pertinent régissant ce compte de titres;
f) «titres détenus auprès d'un intermédiaire» désigne les droits d'un titulaire de compte résultant du crédit de titres à un compte de titres;
g) «intermédiaire pertinent» désigne l'intermédiaire qui tient le compte de titres pour le titulaire de compte;
h) «transfert» désigne tout transfert de propriété, pur et simple ou à titre de garantie, ainsi que toute constitution de sûreté, avec ou sans dépossession;
i) «opposabilité» désigne l'accomplissement de toute formalité nécessaire en vue d'assurer le plein effet d'un transfert envers toute personne qui n'est pas partie à ce transfert;

j) «établissement» désigne, par rapport à un intermédiaire, un lieu d'activité professionnelle où l'une des activités de l'intermédiaire est exercée, à l'exclusion d'un lieu destiné à l'exercice purement temporaire d'activités professionnelles et d'un lieu d'activité de toute personne autre que l'intermédiaire;
k) «procédure d'insolvabilité» désigne une procédure collective judiciaire ou administrative, y compris une procédure provisoire, dans laquelle les actifs et les activités du débiteur sont soumis au contrôle ou à la supervision d'un tribunal ou d'une autre autorité compétente aux fins de redressement ou de liquidation;
l) «administrateur d'insolvabilité» désigne une personne qui est autorisée à administrer une procédure de redressement ou de liquidation, y compris à titre provisoire, et comprend un débiteur non dessaisi si la loi applicable en matière d'insolvabilité le permet;
m) «Etat à plusieurs unités» désigne un Etat dans lequel deux ou plusieurs unités territoriales de cet Etat ou cet Etat et une ou plusieurs de ses unités territoriales ont leurs propres règles de droit se rapportant aux questions mentionnées à l'article 2(1);
n) «écrit» désigne une information (y compris celle transmise par télécommunication) qui se présente sur un support matériel ou sous une autre forme de support, qui peut être reproduite ultérieurement sur un support matériel.

[2] Toute référence dans la présente Convention à un transfert de titres détenus auprès d'un intermédiaire comprend:
a) un transfert ayant comme objet un compte de titres;
b) un transfert en faveur de l'intermédiaire du titulaire de compte;
c) un privilège légal en faveur de l'intermédiaire du titulaire de compte relatif à toute créance née en relation avec la tenue et le fonctionnement d'un compte de titres.

[3] Une personne n'est pas considérée comme intermédiaire au sens de la présente Convention pour la seule raison:
a) qu'elle agit en tant qu'agent de registre ou de transfert d'un émetteur de titres; ou
b) qu'elle tient dans ses propres livres des écritures portant sur des titres inscrits en compte de titres tenu par un intermédiaire au nom d'autres personnes pour lesquelles elle agit comme gestionnaire, agent ou autrement dans une qualité purement administrative.

[4] Sous réserve du paragraphe (5), une personne est considérée, au sens de la présente Convention, comme intermédiaire pour des titres inscrits en compte de titres qu'elle tient en qualité de dépositaire central de titres ou qui sont autrement transférables par voie d'inscription entre les comptes de titres qu'elle tient.

[5] Pour des titres inscrits en compte de titres tenu par une personne en qualité d'opérateur d'un système pour la tenue et le transfert de tels titres sur les livres de l'émetteur ou d'autres livres qui constituent l'inscription primaire des droits sur ces titres envers l'émetteur, l'Etat

contractant dont la loi régit la création de ces titres peut, à tout moment, faire une déclaration afin que la personne qui opère ce système ne soit pas considérée comme intermédiaire au sens de la présente Convention.

Definizioni e interpretazione

[1] Nella presente convenzione si intende per:

a) «strumenti finanziari»: ogni azione, obbligazione o altro strumento finanziario o attività finanziaria (diversa dal contante) o qualsiasi diritto su tali strumenti finanziari;
b) «conto titoli»: un conto tenuto da un intermediario sul quale possono essere accreditati o addebitati strumenti finanziari;
c) «intermediario»: una persona che nel quadro della sua attività professionale o di altra regolare attività tiene conti titoli per altri o sia per altri che per conto proprio e agisce in tale qualità;
d) «titolare del conto»: una persona nel cui nome un intermediario tiene un conto titoli;
e) «accordo sul conto»: in relazione a un conto titoli, l'accordo con l'intermediario di pertinenza che disciplina tale conto titoli;
f) «strumenti finanziari detenuti presso un intermediario»: diritti del titolare del conto derivanti dall'accreditamento di strumenti finanziari sul conto titoli;
g) «intermediario di pertinenza»: l'intermediario che tiene il conto titoli per il titolare del conto;
h) «trasferimento»: un trasferimento di proprietà, puro e semplice o a scopo di garanzia, e qualunque costituzione di garanzia, con o senza spossessamento;
i) «opponibilità»: il completamento di tutte le formalità necessarie per assicurare l'efficacia di un trasferimento nei confronti di chiunque non sia parte del trasferimento;
j) «ufficio»: rispetto ad un intermediario, un luogo di attività professionale dove l'intermediario esercita una qualunque delle sue attività, esclusi i luoghi destinati all'esercizio puramente temporaneo di attività professionali ed i luoghi di attività di qualunque persona diversa dall'intermediario;
k) «procedura d'insolvenza»: una procedura collettiva giudiziaria o amministrativa, comprese le procedure provvisorie, nella quale le attività e gli attivi del debitore sono soggetti al controllo o alla vigilanza di un tribunale o di un'altra autorità competente a fini di risanamento o liquidazione;
l) «curatore dell'insolvenza»: una persona autorizzata ad amministrare una procedura di risanamento o di liquidazione, anche a titolo provvisorio, compreso un debitore non spossessato se la legge applicabile all'insolvenza lo consente;
m) «Stato a più unità»: uno Stato nel quale due o più unità territoriali di tale Stato o tale Stato ed una o più delle sue unità territoriali hanno le proprie norme rispetto alle questioni indicate dall'articolo 2, paragrafo 1;
n) «scritto»: un'informazione (anche teletrasmessa) che si presenta su un supporto materiale o di altro tipo e che può essere successivamente riprodotta su un supporto materiale.

[2] Nella presente convenzione, ogni riferimento ad un trasferimento di strumenti finanziari detenuti presso un intermediario comprende:
a) un trasferimento di un conto titoli;
b) un trasferimento a favore dell'intermediario del titolare del conto;
c) un privilegio legale a favore dell'intermediario del titolare del conto relativo ad ogni credito derivante dalla tenuta e dalla gestione di un conto titoli.

[3] Una persona non è considerata come intermediario ai fini della presente convenzione solo perché:
a) agisce in qualità di conservatore di registro o agente di trasferimento per un emittente strumenti finanziari; o
b) tiene nei propri libri scritture riguardanti strumenti finanziari iscritti in conti titoli tenuti da un intermediario a nome di altre persone per le quali opera come gestore, agente o altrimenti in qualità puramente amministrativa.

[4] Fatto salvo il paragrafo 5, una persona è considerata, ai sensi della presente convenzione, come intermediario per gli strumenti finanziari accreditati in conti titoli che essa tiene in qualità di depositario centrale di strumenti finanziari o che sono altrimenti trasferibili tramite iscrizione tra i conti titoli che essa tiene.

[5] Per gli strumenti finanziari accreditati in conti titoli tenuti da una persona in qualità di gestore di un sistema per la tenuta e il trasferimento di tali strumenti finanziari sui libri dell'emittente o su altri libri che costituiscono l'iscrizione primaria dei diritti su tali strumenti finanziari nei confronti dell'emittente, lo Stato contraente la cui legge disciplina l'emissione di tali strumenti finanziari può in qualunque momento fare una dichiarazione affinché la persona che gestisce tale sistema non sia considerata come intermediario ai sensi della presente convenzione.

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I. Definition of Terms Used in the HSC

1 Art. 1 HSC defines the principal terms used in the HSC. The most important concepts are the following:

1. Securities Held with an Intermediary

2 Securities held with an intermediary are securities, that is, "any shares, bonds or other financial instruments or assets (other than cash), or any right to such securities" (Art. 1(1)(a) HSC), held with an intermediary, that is, "a person that in the course of a business or other regular activity maintains securities accounts for others or both for others and for its own account and is acting in that capacity" (Art. 1(1)(c) HSC).[1] Central securities depositories are also intermediaries (Art. 1(4) HSC), as are system operators, with some exceptions (Art. 1(5) HSC).[2] Agents who act as registrars or transfer agents for an issuer of securities, as well as those who act purely as managers or administrators of securities accounts, are not intermediaries within the meaning of the HSC (Art. 1(3) HSC).

3 In order for a security to be held with an intermediary, it must be entered in an indirect holding system by being credited to a securities account held with an intermediary. A security credited to a securities account held with an intermediary is defined as a "security held with an intermediary" or an "indirectly held security" or an "intermediated security." The HSC applies exclusively to securities held with an intermediary (Art. 2(1) HSC). It does not apply either to securities held directly, or to cash.

2. Relevant Intermediary

4 An intermediary that maintains a securities account for an account holder (Art. 1(1)(d) HSC) is deemed to be a "relevant intermediary" (Art. 1(1)(g) HSC). This indicates that such intermediaries play an important role in the system of connections established by the HSC.[3]

5 Any place of business where the activities of an intermediary are carried on is an intermediary office (Art. 1(1)(j) HSC). Hence an intermediary's "office" includes its registered office, subsidiaries, and branches. A place of business which is intended to be purely temporary or a place of business of any person other than the intermediary is not an office (Art. 1(1)(j) *in fine* HSC). Therefore, within the

[1] See Cmt. Art. 108*a* SPILA N 2.
[2] See Cmt. Art. 22 HSC N 1.
[3] See Arts. 4 and 5 HSC.

meaning of the HSC, the place of business of a subsidiary or other company belonging to the intermediary's group is not an office.[4]

The relationships between the account holder and its intermediary are contractually defined in the account agreement between them (Art. 1(1)(e) HSC). This account agreement plays a central role in the system of connections established by the HSC.[5] 6

3. Disposition of a Security Held with an Intermediary

Within the context of the HSC, the disposition of a security held with an intermediary refers to (i) any transfer of title, whether outright or by way of security, and (ii) any grant of a security interest, whether possessory or non-possessory (Art. 1(1)(h) HSC). Its scope includes, therefore, sales and purchases of securities, repurchase agreements, sell/buy-back transfers, stock loans, and security interests. The non-possessory security interests that fall within the scope of the HSC are those that can be granted without crediting the securities to the collateral taker's securities account, simply by means of an agreement between the account holder and an intermediary that grants control over the securities to the collateral taker. A disposition of securities may refer either to the transfer of all or some of the securities in a securities account, or to the transfer of the securities account itself (Art. 1(2)(a) HSC). This may be done either in favor of the account holder or in favor of its intermediary (Art. 1(2)(b) HSC). A lien by operation of law in favor of an intermediary, such as a right of retention, is also considered a disposition within the meaning of the HSC (Art. 1(2)(c) HSC). 7

4 *Goode/Kanda/Kreuzer*, N 1–25.
5 See Arts. 4 and 16 HSC.

Art. 2

Scope of the Convention and of the applicable law

[1] This Convention determines the law applicable to the following issues in respect of securities held with an intermediary

a) the legal nature and effects against the intermediary and third parties of the rights resulting from a credit of securities to a securities account;

b) the legal nature and effects against the intermediary and third parties of a disposition of securities held with an intermediary;

c) the requirements, if any, for perfection of a disposition of securities held with an intermediary;

d) whether a person's interest in securities held with an intermediary extinguishes or has priority over another person's interest;

e) the duties, if any, of an intermediary to a person other than the account holder who asserts in competition with the account holder or another person an interest in securities held with that intermediary;

f) the requirements, if any, for the realisation of an interest in securities held with an intermediary;

g) whether a disposition of securities held with an intermediary extends to entitlements to dividends, income, or other distributions, or to redemption, sale or other proceeds.

[2] This Convention determines the law applicable to the issues specified in paragraph (1) in relation to a disposition of or an interest in securities held with an intermediary even if the rights resulting from the credit of those securities to a securities account are determined in accordance with paragraph (1)(a) to be contractual in nature.

[3] Subject to paragraph (2), this Convention does not determine the law applicable to

a) the rights and duties arising from the credit of securities to a securities account to the extent that such rights or duties are purely contractual or otherwise purely personal;

b) the contractual or other personal rights and duties of parties to a disposition of securities held with an intermediary; or

c) the rights and duties of an issuer of securities or of an issuer's registrar or transfer agent, whether in relation to the holder of the securities or any other person.

Geltungsbereich des Übereinkommens und der anzuwendenden Rechtsordnung

[1] Dieses Übereinkommen bestimmt die anzuwendende Rechtsordnung für die folgenden Fragen in Bezug auf Intermediär-verwahrte Wertpapiere:

a) die Rechtsnatur der sich aus einer Gutschrift von Wertpapieren auf einem Depotkonto ergebenden Rechte und die Wirkung dieser Rechte gegenüber dem Intermediär und gegenüber Dritten;

b) die Rechtsnatur einer Verfügung über Intermediär-verwahrte Wertpapiere und die Wirkung einer solchen Verfügung gegenüber dem Intermediär und gegenüber Dritten;
c) gegebenenfalls die Voraussetzungen für die Herbeiführung der Drittwirkung einer Verfügung über Intermediär-verwahrte Wertpapiere;
d) ob das Recht einer Person an Intermediär-verwahrten Wertpapieren ein konkurrierendes Recht zum Erlöschen bringt oder ihm gegenüber Vorrang hat;
e) gegebenenfalls die Pflichten eines Intermediärs gegenüber einer anderen Person als dem Depotinhaber, die in Konkurrenz mit dem Depotinhaber oder einer anderen Person ein Recht an Wertpapieren geltend macht, die bei diesem Intermediär verwahrt werden;
f) gegebenenfalls die Voraussetzungen für die Verwertung eines Rechts an Intermediär-verwahrten Wertpapieren;
g) ob sich eine Verfügung über Intermediär-verwahrte Wertpapiere auf Ansprüche auf Dividenden, Einnahmen oder sonstige Ausschüttungen oder auf Einlösungs-, Veräusserungs- oder sonstige Erträge erstreckt.

[2] Dieses Übereinkommen bestimmt die anzuwendende Rechtsordnung für die in Absatz 1 genannten Fragen in Bezug auf eine Verfügung über Intermediär-verwahrte Wertpapiere oder ein Recht daran selbst dann, wenn nach Absatz 1 Buchstabe a die sich aus der Gutschrift dieser Wertpapiere auf einem Depotkonto ergebenden Rechte vertraglicher Natur sind.

[3] Vorbehaltlich des Absatzes 2 bestimmt dieses Übereinkommen die anzuwendende Rechtsordnung nicht in Bezug auf
a) die Rechte und Pflichten aus der Gutschrift von Wertpapieren auf einem Depotkonto, soweit es sich um rein vertragliche oder sonst rein persönliche Rechte oder Pflichten handelt;
b) die vertraglichen oder sonstigen persönlichen Rechte und Pflichten der Parteien einer Verfügung über Intermediär-verwahrte Wertpapiere;
c) die Rechte und Pflichten eines Emittenten oder einer Register- oder Übertragungsstelle eines Emittenten im Verhältnis zum Wertpapierinhaber oder zu einer anderen Person.

Champ d'application matériel de la Convention et domaine de la loi applicable

[1] La présente Convention détermine la loi applicable aux questions suivantes concernant des titres détenus auprès d'un intermédiaire:
a) la nature juridique et les effets à l'égard de l'intermédiaire et des tiers des droits résultant du crédit de titres à un compte de titres;
b) la nature juridique et les effets à l'égard de l'intermédiaire et des tiers d'un transfert de titres détenus auprès d'un intermédiaire;
c) les éventuelles conditions d'opposabilité d'un transfert de titres détenus auprès d'un intermédiaire;
d) si le droit d'une personne sur des titres détenus auprès d'un intermédiaire a pour effet d'éteindre ou de primer le droit d'une autre personne;

e) les éventuelles obligations d'un intermédiaire envers une personne autre que le titulaire de compte qui revendique des droits concurrents sur des titres détenus auprès de cet intermédiaire à l'encontre du titulaire de compte ou d'une autre personne;
f) les éventuelles conditions de réalisation d'un droit sur des titres détenus auprès d'un intermédiaire;
g) si le transfert de titres détenus auprès d'un intermédiaire s'étend aux droits aux dividendes, revenus, ou autres distributions, ou aux remboursements, produits de cession ou tous autres produits.

[2] La présente Convention détermine la loi applicable aux questions mentionnées au paragraphe (1) concernant un transfert de titres ou d'un droit sur ces titres détenus auprès d'un intermédiaire, même si les droits résultant du crédit de ces titres à un compte de titres sont déterminés, conformément au paragraphe (1)(a), comme étant de nature contractuelle.

[3] Sous réserve du paragraphe (2), la présente Convention ne détermine pas la loi applicable:
a) aux droits et obligations résultant du crédit de titres à un compte de titres, dans la mesure où ces droits et obligations sont de nature purement contractuelle ou autrement purement personnelle;
b) aux droits et obligations contractuels ou personnels des parties à un transfert de titres détenus auprès d'un intermédiaire; et
c) aux droits et obligations d'un émetteur de titres ou d'un agent de registre ou de transfert d'un tel émetteur, que ce soit à l'égard du titulaire des droits sur les titres ou de toute autre personne.

Campo di applicazione della convenzione e della legge applicabile

[1] La presente convenzione determina la legge applicabile alle questioni seguenti riguardanti strumenti finanziari detenuti presso un intermediario:
a) la natura giuridica e gli effetti nei confronti dell'intermediario e dei terzi dei diritti derivanti dall'accreditamento di strumenti finanziari su un conto titoli;
b) la natura giuridica e gli effetti nei confronti dell'intermediario e dei terzi di un trasferimento di strumenti finanziari detenuti presso un intermediario;
c) le eventuali condizioni di opponibilità di un trasferimento di strumenti finanziari detenuti presso un intermediario;
d) se il diritto di una persona su strumenti finanziari detenuti presso un intermediario pone nel nulla o prevale sul diritto di un'altra persona;
e) gli eventuali obblighi di un intermediario nei confronti di una persona diversa dal titolare del conto che vanti un diritto su strumenti finanziari detenuti presso tale intermediario in concorrenza con il titolare del conto o un'altra persona;
f) le eventuali condizioni di realizzo di un diritto su strumenti finanziari detenuti presso un intermediario;

g) se il trasferimento di strumenti finanziari detenuti presso un intermediario si estende ai diritti a dividendi, redditi o altre distribuzioni o a rimborsi, proventi di cessioni o qualsiasi altro provento.

[2] La presente convenzione determina la legge applicabile alle questioni indicate dal paragrafo 1 riguardanti un trasferimento di strumenti finanziari o di un diritto su tali strumenti finanziari detenuti presso un intermediario anche se i diritti derivanti dall'accreditamento di tali strumenti finanziari su un conto titoli sono considerati, conformemente al paragrafo 1, lettera a), di natura contrattuale.

[3] Fatto salvo il paragrafo 2, la presente convenzione non determina la legge applicabile:

a) ai diritti e agli obblighi derivanti dall'accreditamento di strumenti finanziari su un conto titoli, nella misura in cui tali diritti e obblighi sono di natura puramente contrattuale o altrimenti puramente personale;
b) ai diritti e agli obblighi contrattuali o personali delle parti del trasferimento di strumenti finanziari detenuti presso un intermediario; e
c) ai diritti e agli obblighi di un emittente strumenti finanziari o di un conservatore di registro o di un agente di trasferimento di tale emittente, nei confronti sia del titolare degli strumenti finanziari che di qualunque altra persona.

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I. Scope of the HSC

1 The scope of the HSC is limited to determining the applicable law. The HSC does not, therefore, govern questions of direct or indirect jurisdiction. These aspects are governed by the private international law of each State, which in the case of Switzerland means the SPILA and the Lugano Convention.[1]

2 Art. 2(1) HSC is one of the most important provisions of the HSC, since it provides an exhaustive list of issues that fall within its scope. This list is meant to include all issues in respect of rights in intermediated securities that are of practical importance, irrespective of the way these issues are treated in the domestic law of the States concerned. Anything not included in the list is not governed by the law designated by the HSC.

3 It often happens that the same matter comes under two different letters of the list in Art. 2(1) HSC. It is not necessary to determine precisely which letter governs any particular matter: if it falls within at least one of the topics listed then the HSC will apply.[2]

4 The rights specified in Art. 2(1) HSC relate either to the intermediated security itself, or to its disposition. "Disposition" in the HSC refers to both transfers of title and grants of security interest (Art. 1(1)(h) HSC).[3]

II. Issues Falling within the Scope of the HSC

5 The issues that fall within the scope of the HSC are as follows:

1. Legal Nature and Effects against the Intermediary and Third Parties of the Rights Resulting from a Credit of Securities to a Securities Account

6 Pursuant to Art. 2(1)(a) HSC, the legal nature and effects against the intermediary and third parties of the rights resulting from a credit of securities to a securities account are governed by the law designated by the HSC. This provision makes it possible for the HSC's conflict rules to be applied uniformly without regard to the treatment of rights in intermediated securities under national law (rights *in rem*, claims, etc.).[4] Art. 2(2) HSC recalls this principle, specifying that the HSC is applicable even where rights in intermediated securities are determined to be contractual in nature. It does not, however, apply to purely contrac-

1 See Cmt. Arts. 108b and 108d SPILA.
2 *Goode/Kanda/Kreuzer*, N 2–9.
3 See Cmt. Art. 1 HSC N 7.
4 *Deguée*, pp. 43–45.

tual aspects arising from the relationship between the account holder and his intermediary (Art. 2(3)(a) and (b) HSC).[5]

Where Swiss law is applicable by virtue of the HSC, chapter 4 of the FISA determines the rights relating to intermediated securities. In Swiss law, a right in an intermediated security is a *sui generis* right with effects of a proprietary nature: it is effective against both the intermediary and third parties (Art. 3(2) FISA).[6] 7

2. *Legal Nature and Effects Against the Intermediary and Third Parties of a Disposition of Intermediated Securities*

Pursuant to Art. 2(1)(b) HSC, the legal nature and effects against the intermediary and third parties of a disposition of intermediated securities are governed by the law designated by the HSC. This provision provides an assurance to the parties to a disposition that their transaction will not be challenged pursuant to any law other than the one designated by the HSC. The question whether the rights acquired by a person as a result of the disposition of intermediated securities includes the right to dispose of them, with or without the consent of any other person, is governed by the law designated by the HSC. It is this law that determines, for instance, whether or not a collateral taker has the right to grant another security interest on securities pledged in its favor. 8

In Swiss law, chapter 5 of the FISA includes the decisive provisions on this matter. The intermediary may not, in its own name and on its own behalf, dispose of securities credited to an account it maintains unless the account holder has given his consent in writing (Art. 22 FISA). The intermediary may, however, grant a new security interest on securities pledged in its favor (Art. 23 FISA). The intermediary also has a right of retention over intermediated securities credited to a securities account it maintains for an account holder provided it has a perfected claim arising from custody of the intermediated securities or from financing their acquisition (Art. 21 FISA). Such a right of retention may be enforced, for instance, in order to cover administration commissions and custody fees. If these requirements for enforcing the right of retention are fulfilled, the intermediary may sell the intermediated securities in question and satisfy its claims from the proceeds of the sale (Art. 31 FISA). 9

3. *Requirements for Perfection of a Disposition of Intermediated Securities*

Pursuant to Art. 2 (1)(c) HSC, the requirements for perfection of a disposition of intermediated securities are governed by the law designated by the HSC. Requirements for perfection mean "completion of any steps necessary to render a 10

[5] See *infra* N 20–22.

[6] Message, BBl 2006, p. 9345 = FF 2006, p. 8846.

disposition effective against persons who are not parties to that disposition" (Art. 1(1)(i) HSC). The law designated by the HSC thus determines whether any particular steps are required in order for a transfer of intermediated securities to be rendered effective against third parties (registration in a public register, acquiring control, etc.).

11 In Swiss law, no particular steps are required to render a disposition of intermediated securities effective against third parties. Crediting to a securities account is sufficient.[7] In such a case, the entry has a constitutive effect and the transfer of title guarantees effectiveness against third parties. A security interest can also be granted without transfer of title, in other words without being credited to the collateral taker's securities account, simply by means of an agreement between the account holder and his intermediary, granting control over the securities to the collateral taker (Art. 25(1) FISA). In such a case, the control exercised by the collateral taker guarantees effectiveness against third parties. The two forms of security interest – with or without crediting securities to the collateral taker's account – may be granted either in specific securities, or in all securities credited to an account, or in all securities credited to an account up to a specified value (Art. 25(2) FISA).

4. Priority Among Competing Rights

12 Pursuant to Art. 2(1)(d) HSC, priority among competing rights is governed by the law designated by the HSC.[8] This law thus determines which of two or more competing claims based on title to or interest in intermediated securities should prevail. An exception must be made for cases where insolvency proceedings have been opened: in such a case priority among the creditors' rights is determined by insolvency law (Art. 8(2) HSC).[9]

13 In Swiss law, the principle of temporal priority applies when determining the ranking of rights in intermediated securities: the earlier the creation of the right, the higher its priority (*prior tempore potior jure*; Art. 30(1) FISA). However, a security interest granted in favor of the direct intermediary does not have priority over a later security interest granted in favor of a third party without transfer of securities to the latter's account (Art. 25(1) FISA) unless the collateral taker was informed of the existence of the security interest in favor of the intermediary (Art. 30(2) FISA). Furthermore, a person who acquires intermediated securities in good faith enjoys specific protection that allows him, among other things, to oppose the claims of a prior holder whose securities were transferred by the intermediary without authorization (Art. 29 (1) FISA). However, if the acquirer was

7 See Arts. 24(2), 25(1) and 26(1) FISA.

8 The law designated by the HSC also determines priority among competing rights of which one was acquired before the HSC came into force (Art. 15 HSC).

9 See Cmt. Art. 8 HSC N 6.

not acting in good faith, he is obliged to return the securities – or the consideration received if there is no security of the same type left in his account – in accordance with the provisions on unjust enrichment (*restitutio in integrum*; Art. 29(2) FISA and Arts. 62 seq CO).

5. Obligations of an Intermediary where a Competing Right is Invoked

Pursuant to Art. 2(1)(e) HSC, the obligations of an intermediary in cases where a competing right is invoked are governed by the law designated by the HSC. This law determines, for example, the obligations of the intermediary where securities are subject to an attachment, seizure or any other interim measure. The same law also determines whether an upper-tier attachment, i.e. one with an intermediary other than the holder of the securities account for the debtor, is possible. 14

In Swiss law, the intermediary has neither the right nor the obligation to verify whether the requirements for realization of the securities by a collateral taker have been fulfilled (Art. 31(3) FISA). Upper-tier attachment is excluded (Art. 14 FISA). 15

6. Requirements for the Realization of an Interest in an Intermediated Security

Pursuant to Art. 2(1)(f) HSC, the requirements for the realization of an interest in an intermediated security are governed by the law designated by the HSC. For example, if a collateral taker wishes to sell securities pledged in his favor, the law designated by the HSC determines whether he can do so and what requirements must be fulfilled (court authorization of the sale, sale by auction, etc.). 16

In Swiss law, chapter 6 of the FISA contains the relevant provisions on this matter. The holder of a security interest in intermediated securities has the right to realize his security interest by either selling the securities or appropriating them (Art. 31(1) FISA). In either case the proceeds of the transaction are credited against the secured claim. This right to private realization persists even if the collateral provider is subjected to an enforcement measure, such as a bankruptcy order (Art. 31(2) FISA). 17

7. Disposition of Entitlements to Dividends and Other Proceeds Relating to an Intermediated Security

Pursuant to Art. 2(1)(g) HSC, the law designated by the HSC determines whether the disposition of an intermediated security extends to entitlement to dividends and other proceeds of that security. The law designated by the HSC 18

determines, for example, whether a security interest granted in an intermediated security extends to entitlement to dividends paid by the issuer. However, the existence of such an entitlement to dividends and how it is exercised continue to be governed by the law applicable to the issuer.[10]

19 In Swiss law, if a security interest is granted without disposing of the securities to the collateral taker's account (Art. 25(1) FISA), the grantor retains his entitlement to dividends and interest.[11]

III. Issues Excluded from the Scope of the HSC

1. Contractual Rights

20 The HSC does not apply to purely contractual or personal rights (Art. 2(3)(a) and (b) HSC). These rights derive from the legal contractual status and are governed by the contract rules in the private international law of each State.[12]

21 All rights arising exclusively from the contractual relationship between an account holder and his intermediary (or between two intermediaries) fall outside the scope of the HSC. These include, for instance, matters relating to the degree of diligence expected of the intermediary in maintaining securities accounts; the contents and frequency of account statements; risks of loss; securities prices; the date on which securities must be transferred against payment; and the consequences of a violation by one of the parties in the course of a disposition of securities or in payment for securities at maturity.[13]

22 Contractual rights between parties to a disposition of intermediated securities likewise do not fall within the scope of the HSC.

2. Rights and Obligations of an Issuer of Securities

23 The HSC does not apply to the rights and obligations of an issuer of securities, whether in relation to the holder of the securities or to any other person (Art. 2(3)(c) HSC). These rights depend on the legal status of the issuing company and are governed by the law applicable to the latter in accordance with the rules of the private international law of each State.[14]

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10 See *infra* N 23–24.
11 Message, BBl 2006, p. 9370 = FF 2006, p. 8870.
12 See *Guillaume*, Titres intermédiés, pp. 156–158.
13 *Deguée*, p. 45.
14 See *Guillaume*, Titres intermédiés, pp. 158–159.

The law applicable to the issuing company determines whether there is a corporate right as well as the conditions for exercising that right. It determines e.g. entitlement to dividends, the type of voting right attaching to securities, requirements with regard to granting free shares, the requirements for the disposition of securities, and the possibility of including restrictions on the transferability of securities in a company's articles of association. 24

Art. 2(1)(g) HSC does, however, provide for a specific rule in respect of dividends and other proceeds: the law designated by the HSC (rather than the law of the issuing company) determines whether the transfer of an intermediated security extends to the entitlement to dividends and other proceeds.[15] 25

3. Regulatory Provisions

The regulation of financial markets does not fall within the scope of the HSC.[16] The regulatory provisions relating to the issue or trading of securities as well as those relating to supervision of financial markets contained in the law of the forum are thus applicable regardless of the law designated by the HSC. 26

In Swiss law, this means the regulations in the Federal Stock Exchange Act,[17] the Stock Exchange and Securities Trading Ordinance,[18] the Ordinance of the Swiss Takeover Board on Public Takeover Bids,[19] the Federal Financial Markets Supervisory Act,[20] the Swiss Federal Banking Commission Ordinance on Stock Exchanges and Securities Trading,[21] and the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector.[22] 27

15 See *supra* N 18–19.
16 See *Sigman/Bernasconi*, pp. 31–32.
17 RS 954.1.
18 RS 954.11.
19 RS 954.195.1.
20 RS 956.1. See the FINMA website at http://www.finma.ch.
21 RS 954.193.
22 RS 955.0.

Art. 3

Internationality	**This Convention applies in all cases involving a choice between the laws of different States.**
Internationalität	Dieses Übereinkommen ist auf alle Sachverhalte anzuwenden, die eine Verbindung zu den Rechtsordnungen verschiedener Staaten aufweisen.
Caractère international d'une situation	La présente Convention s'applique à toutes les situations comportant un conflit entre les lois de différents Etats.
Carattere internazionale di una situazione	La presente convenzione si applica a tutte le situazioni che comportano un conflitto tra le leggi di diversi Stati.

Internationality of a Situation Involving Intermediated Securities

1 The HSC applies only in international situations. An international situation is one that involves "a choice between the laws of different States" (Art. 3 HSC). The decisive factor in determining whether a situation is "international" is whether the foreign element creates some doubt as to which law should apply to a right in intermediated securities falling within the scope of the HSC. This factor alone is relevant: the usual criterion (the private international law of the forum) cannot be invoked to determine whether or not a particular situation is "international."

2 In practice, nearly all situations involving intermediated securities have a sufficient foreign element to fall within the scope of the HSC. It seldom happens that intermediated securities issued by a company with registered office in State A, held with a central depository in State A, are the subject of a transaction between two persons both domiciled in State A, both of whose intermediaries are also located in State A; and any other situation is "international."

3 The situation is international e.g. if an intermediary has its registered office or its domicile in another country; or the securities account is maintained in another country; or the issuing company has its registered office in another country or is subject to foreign law; or the register of account holders is kept in another country; or the securities are held with a central depository located in another country.

4 The designation of a foreign law by the parties to an account agreement is sufficient to make the situation "international." In such cases, the foreign element does indeed raise the question as to the applicable law. However, if the only foreign

element is the choice of a forum in another country, the situation is not considered an international one.[1]

A situation involving intermediated securities may be domestic to begin with and become international when a certain event occurs. For example, merely granting a security interest in intermediated securities in favor of a person domiciled abroad introduces a sufficient foreign element to make the entire situation international. Any person participating in a transaction involving intermediated securities must therefore expect the HSC to apply at one time or another, by virtue of the appearance of a foreign element. 5

[1] *Goode/Kanda/Kreuzer*, N 3-3.

Chapter II: Applicable Law

Art. 4

Primary rule

[1] The law applicable to all the issues specified in Article 2(1) is the law in force in the State expressly agreed in the account agreement as the State whose law governs the account agreement or, if the account agreement expressly provides that another law is applicable to all such issues, that other law. The law designated in accordance with this provision applies only if the relevant intermediary has, at the time of the agreement, an office in that State, which

a) alone or together with other offices of the relevant intermediary or with other persons acting for the relevant intermediary in that or another State –
   i) effects or monitors entries to securities accounts;
   ii) administers payments or corporate actions relating to securities held with the intermediary; or
   iii) is otherwise engaged in a business or other regular activity of maintaining securities accounts; or

b) is identified by an account number, bank code, or other specific means of identification as maintaining securities accounts in that State.

[2] For the purposes of paragraph (1)(a), an office is not engaged in a business or other regular activity of maintaining securities accounts

a) merely because it is a place where the technology supporting the bookkeeping or data processing for securities accounts is located;

b) merely because it is a place where call centres for communication with account holders are located or operated;

c) merely because it is a place where the mailing relating to securities accounts is organised or files or archives are located; or

d) if it engages solely in representational functions or administrative functions, other than those related to the opening or maintenance of securities accounts, and does not have authority to make any binding decision to enter into any account agreement.

[3] In relation to a disposition by an account holder of securities held with a particular intermediary in favour of that intermediary, whether or not that intermediary maintains a securities account on its own records for which it is the account holder, for the purposes of this Convention

a) that intermediary is the relevant intermediary;

b) the account agreement between the account holder and that intermediary is the relevant account agreement;

c) the securities account for the purposes of Article 5(2) and (3) is the securities account to which the securities are credited immediately before the disposition.

Hauptanknüpfung

[1] Auf alle in Artikel 2 Absatz 1 genannten Fragen ist die geltende Rechtsordnung des Staates anzuwenden, dessen Rechtsordnung in der Kontovereinbarung ausdrücklich als für diese massgebend vereinbart wurde, oder, wenn in der Kontovereinbarung ausdrücklich vorgesehen ist, dass auf alle diese Fragen eine andere Rechtsordnung anzuwenden ist, diese andere Rechtsordnung. Die so bestimmte Rechtsordnung ist nur anzuwenden, wenn der massgebliche Intermediär im Zeitpunkt der Vereinbarung eine Geschäftsstelle in diesem Staat hat, die

a) allein oder zusammen mit anderen Geschäftsstellen des massgeblichen Intermediärs oder mit anderen Personen, die für den massgeblichen Intermediär in diesem oder einem anderen Staat tätig sind,
   i) Buchungen auf Depotkonten vornimmt oder überwacht;
   ii) Zahlungen oder gesellschaftsbezogene Massnahmen hinsichtlich beim Intermediär verwahrter Wertpapiere abwickelt oder
   iii) sonst im Rahmen einer geschäftlichen oder anderen regelmässigen Tätigkeit Depotkonten führt oder
b) durch eine Kontonummer, Bankleitzahl oder sonstige spezielle Kennung als eine Geschäftsstelle identifiziert ist, die Depotkonten in diesem Staat führt.

[2] Im Sinne des Absatzes 1 Buchstabe a führt eine Geschäftsstelle Depotkonten im Rahmen einer geschäftlichen oder anderen regelmässigen Tätigkeit nicht

a) allein deshalb, weil sich bei ihr die technische Ausstattung zur Unterstützung der Buchführung oder Datenverarbeitung für Depotkonten befindet;
b) allein deshalb, weil sich bei ihr Call-Center für die Kommunikation mit Depotinhabern befinden oder solche bei ihr betrieben werden;
c) allein deshalb, weil bei ihr der Postversand in Bezug auf Depotkonten erfolgt oder weil sich bei ihr Akten oder Archive befinden, oder
d) wenn sie ausschliesslich Aufgaben einer Repräsentanz oder Verwaltungsaufgaben wahrnimmt, die mit der Eröffnung oder Führung von Depotkonten nicht in Zusammenhang stehen, und nicht befugt ist, über den Abschluss einer Kontovereinbarung rechtsverbindlich zu entscheiden.

[3] Im Fall einer Verfügung des Depotinhabers über bei einem bestimmten Intermediär verwahrte Wertpapiere zugunsten dieses Intermediärs, unabhängig davon, ob dieser Intermediär in seinen eigenen Aufzeichnungen ein Eigendepotkonto führt, gilt im Sinne dieses Übereinkommens Folgendes:

a) Dieser Intermediär ist der massgebliche Intermediär;
b) die Kontovereinbarung zwischen dem Depotinhaber und diesem Intermediär ist die massgebliche Kontovereinbarung;

c) das Depotkonto im Sinne des Artikels 5 Absätze 2 und 3 ist das Depotkonto, dem die Wertpapiere unmittelbar vor der Verfügung gutgeschrieben sind.

Rattachement principal

[1] La loi applicable à toutes les questions mentionnées à l'article 2(1) est la loi en vigueur de l'Etat convenue expressément dans la convention de compte comme régissant celle-ci ou, si la convention de compte désigne expressément une autre loi applicable à toutes ces questions, cette autre loi. La loi désignée conformément à la présente disposition ne s'applique que si l'intermédiaire pertinent a, au moment de la conclusion de la convention, un établissement dans cet Etat, qui:

a) soit seul, soit avec d'autres établissements de l'intermédiaire pertinent ou d'autres personnes agissant pour l'intermédiaire pertinent, dans cet Etat ou dans un autre Etat:
   i) effectue ou assure le suivi des inscriptions en comptes de titres;
   ii) gère les paiements ou les opérations sur titres relatifs à des titres détenus auprès de l'intermédiaire; ou
   iii) exerce autrement à titre professionnel ou habituel une activité de tenue de compte de titres; ou
b) est identifié comme tenant des comptes de titres dans cet Etat au moyen d'un numéro de compte, d'un code bancaire ou d'un autre mode d'identification spécifique.

[2] Pour les besoins du paragraphe (1)(a), un établissement n'exerce pas, à titre professionnel ou habituel, une activité de tenue de comptes de titres:

a) au seul motif que les installations de traitement de données ou de comptabilité de comptes de titres y sont situées;
b) au seul motif que des centres d'appel pour communiquer avec des titulaires de compte y sont situés ou exploités;
c) au seul motif que le courrier relatif aux comptes de titres y est organisé ou que des dossiers ou des archives s'y trouvent; ou que
d) lorsque cet établissement remplit exclusivement des fonctions de représentation ou administratives, autres que celles se rapportant à l'ouverture ou à la tenue de comptes de titres, et qu'il n'a pas le pouvoir de conclure une convention de compte.

[3] En cas d'un transfert de titres détenus par un titulaire de compte auprès d'un intermédiaire effectué en faveur de ce dernier, que celui-ci tienne ou non dans ses livres un compte propre, pour les besoins de la présente Convention:

a) cet intermédiaire est l'intermédiaire pertinent;
b) la convention de compte entre le titulaire de compte et cet intermédiaire constitue la convention pertinente;
c) le compte de titres visé à l'article 5(2) et (3) est le compte auquel les titres sont crédités immédiatement avant le transfert.

Criterio di collegamento principale

[1] La legge applicabile a tutte le questioni indicate dall'articolo 2, paragrafo 1 è la legge in vigore nello Stato indicato espressamente nell'accordo sul conto come lo Stato la cui legge disciplina tale accor-

do o, se l'accordo sul conto designa espressamente un'altra legge applicabile a tutte queste questioni, quest'altra legge. La legge designata conformemente alla presente disposizione si applica soltanto se l'intermediario di pertinenza, al momento della conclusione dell'accordo, dispone in tale Stato di un ufficio che:

a) da solo o con altri uffici dell'intermediario di pertinenza o altre persone che agiscono per l'intermediario di pertinenza in tale Stato o in un altro Stato:
   i) effettua o controlla le iscrizioni in conti titoli;
   ii) gestisce i pagamenti o le operazioni su strumenti finanziari detenuti
   presso l'intermediario; o iii) esercita altrimenti a titolo professionale o abituale un'attività di tenuta
   conti titoli; o
b) è identificato come ufficio che tiene conti titoli in tale Stato tramite un numero di conto, un codice bancario o un altro mezzo di identificazione specifico.

[2] Ai fini del paragrafo 1, lettera a), un ufficio non esercita, a titolo professionale o di altra regolare attività, un'attività di tenuta di conti titoli:

a) solo perché vi sono situate le apparecchiature per la contabilità o il trattamento dei dati relativi ai conti titoli;
b) solo perché vi sono situati o gestiti call centre per comunicare con i titolari di conti;
c) solo perché la corrispondenza relativa ai conti titoli vi è organizzata o vi si trovano dossier o archivi; o
d) quando tale ufficio svolge esclusivamente funzioni di rappresentanza o amministrative diverse da quelle che si riferiscono all'apertura o alla tenuta di conti titoli e non ha il potere di prendere alcuna decisione vincolante sulla conclusione di accordi sui conti.

[3] In caso di trasferimento di strumenti finanziari detenuti presso un intermediario da parte del titolare di un conto a favore di tale intermediario, indipendentemente dal fatto che tale intermediario tenga o meno nei suoi libri un conto titoli in nome proprio, ai fini della presente convenzione:

a) tale intermediario è l'intermediario di pertinenza;
b) l'accordo sul conto tra il titolare del conto e tale intermediario costituisce l'accordo sul conto di pertinenza;
c) il conto titoli di cui all'articolo 5, paragrafi 2 e 3 è il conto sul quale gli strumenti finanziari sono accreditati immediatamente prima del trasferimento.

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I. Determination of the Law Applicable to Rights in a Security Held with an Intermediary

1 The HSC establishes a system of connections that makes it possible to determine the law applicable to rights in a security held with an intermediary as defined in Art. 2(1) HSC.[1] This system focuses on the individual securities account and determines the law applicable to all rights in intermediated securities that are credited to that account.

2 This system of connections is centered on the specific relationship between an account holder and the direct intermediary which maintains his securities account: these two persons may choose which law shall apply to their rights in the intermediated securities credited to the account, and the same law will then apply to the rights of any other person (e.g. a creditor) in the same intermediated securities.

3 The account holder's direct intermediary, which maintains his securities account, is deemed to be the "relevant intermediary". The word "relevant" highlights the fact that this intermediary is decisive in the definition of the connecting factor. The intermediary which maintains a securities account is always the relevant intermediary in respect of that account. This is true even if a disposition of securities is made in its favor (Art. 4(3) HSC).[2] The central role played by the account holder's direct intermediary in the system of connections established by the HSC is recalled in Art. 6(d) HSC.

4 A single law governs all legal issues specified in Art. 2(1) HSC relating to intermediated securities that are credited to a particular securities account. The applicable law cannot be fragmented by stipulating that a different law shall apply to some of the issues specified in Art. 2(1) HSC.[3]

5 If a transaction in intermediated securities gives rise to a chain of intermediaries, the applicable law is not determined globally for the entire chain; it is designated separately for each securities account. The HSC does not permit the designation of a single law to govern all matters falling within its scope in respect of all the securities accounts maintained by the intermediaries located between the investor and the issuing company. A single transaction – e.g. the acquisition of securities –

[1] See Cmt. Art. 108*c* SPILA N 5.
[2] *Reuschle*, Grenzüberschreitender Effektengiroverkehr, pp. 734–736.
[3] *Goode/Kanda/Kreuzer*, N 4–10.

may therefore be governed by different laws at each level in the chain of intermediaries.[4] Even if a single intermediary performs the transaction by debiting and crediting respectively two or more securities accounts that it maintains for different investors, it is still possible – if only in theory – for a different law to apply to each securities account.

Example: An investor located in State A wishes to acquire securities from an issuing company in State D. The securities are held in collective deposit with the central securities depository located in State D. Suppose that the securities are acquired through credits made to an account by the investor's direct intermediary, located in State B, and by that intermediary's intermediary, located in State C, which is in direct contact with the central securities depository, and that the securities are entered in the latter's books. Following the system of connections established by the HSC, the credit of securities to the investor's account held with its direct intermediary located in State B is not necessarily subject to the same law as the debit of the same securities to the account of that same intermediary held with its own intermediary located in State C. In an "international" situation it would, in fact, be surprising if the two transactions were subject to the same law. Even if the securities are acquired solely by the investor's direct intermediary, the crediting of the securities to the investor's account is not necessarily governed by the same law as the debiting of the same securities to the vendor's account held with the same intermediary. 6

II. Primary Rule: Choice of Law

The primary rule in Art. 4 HSC is based on the choice of applicable law by the parties to an account agreement. This subjective connecting factor has the great advantage of avoiding the need to localize a securities account held with an intermediary in order to determine the law applicable to the rights arising from a credit to the account. The localization of securities accounts may prove very complicated or even impossible in practice, mainly due to the fact that securities accounts may be held in various places and can easily be moved. A criterion based on the localization of the securities account would therefore lack the necessary legal certainty. 7

The law applicable to rights in intermediated securities is the law designated by the account holder and his direct intermediary by means of an express *electio juris* in the account agreement between them (Art. 4(1) first sentence HSC). 8

The choice of law may be either (i) general, in which case it applies to all legal relationships between the parties, including issues falling within the scope of the HSC, or (ii) specific, applying only to issues falling within the scope of the HSC. 9

[4] *Goode/Kanda/Kreuzer*, N 4–43 at 4–51; *Bloch/de Vauplane,* pp. 26–27; *Kreuzer,* pp. 537–539; *Bernasconi/Sigman*, Facteurs de rattachement, p. 65.

The law applicable to issues falling within the scope of the HSC is therefore not necessarily the same as the one governing other aspects of the legal relationship between the parties to the account agreement. The parties can choose the law of State A for their contractual relationships and the law of State B for issues specified in Art. 2(1) HSC. The choice of law governing the parties' contractual relationships must comply with the law of the forum if it is to be valid.[5] If the parties have chosen a single applicable law without specifying a different law to govern issues falling within the scope of the HSC, then the said law applies automatically to these issues as well. In such a case, the choice of law must, if it is to be valid, comply not only with the HSC but also with the law of the forum.

10 To be valid pursuant to the HSC, the choice of law must be express: it cannot derive implicitly from the provisions of the account agreement or from external circumstances. It may be contained in the account agreement in the broader sense: it may appear in an annex, e.g. terms and conditions.[6] Although Art. 4(1) HSC does not require the choice of law to be made in writing, it is difficult to imagine a situation in which it could validly be made orally.

III. The Qualifying Office Requirement

11 The parties to an account agreement cannot choose just any law. The *electio juris* is limited insofar as it is valid only if the intermediary has a qualifying office in the State whose law has been designated by the parties (Art. 4(1) second sentence HSC).

12 An intermediary is deemed to have an office at any place of business in which any of its activities are carried on (Art. 1(1)(j) HSC). It therefore has an office at any place in which it has a registered office, branch, or agency.[7] Subsidiaries or other companies belonging to the intermediary's group are not offices as defined in the HSC. The presence of a subsidiary in the State whose law has been designated is not sufficient to fulfill the requirement for a qualifying office.[8]

13 An intermediary has a qualifying office if it has, at the time of the account agreement, an office in the State whose law has been designated in the account agreement and this office is either (i) engaged in a business or other regular activity relating to the maintenance of securities accounts (Art. 4(1)(a) HSC), or (ii) identified as holding securities accounts in that State by an account number, bank code, or other specific means of identification (Art. 4(1)(b) HSC). In any event, an office will not be deemed to be a qualifying office if it engages only in limited

5 See Art. 116 SPILA.
6 *Goode/Kanda/Kreuzer*, N 4–18.
7 See Cmt. Art. 1 HSC N 5.
8 Same opinion: Message, BBl 2006, p. 9404 = FF 2006, p. 8902; *Peyer,* p. 964; *Devos,* p. 387. Different opinion: *Girsberger/Hess*, p. 999.

activities related to the maintenance of securities accounts (e.g. processing electronic data or operating a call center) in the State whose law has been chosen in the account agreement (Art. 4(2)(a)–(c) HSC). Moreover, an office that engages solely in representational or administrative functions and does not have authority to enter into an account agreement cannot be deemed a qualifying office (Art. 4(2)(d) HSC).

14 An intermediary's qualifying office need not necessarily maintain the securities account in respect of which a question arises: the choice of law is valid so long as the intermediary has an office that engages in an activity relating to the maintenance of securities accounts in the State whose law has been chosen.[9] The securities account in respect of which a question is raised may therefore be held by any other office of the intermediary or even by one or more sub-contractors, regardless of their location(s). For example, if the parties to an account agreement have chosen the law of State B for issues within the scope of the HSC, this choice is valid if the intermediary has an office in State B, even if the securities account in question is held partly in State C by another office of the intermediary and partly in State D by one of its sub-contractors.

15 The qualifying office requirement must be fulfilled at the time when the choice of law is agreed (Art. 4(1) second sentence HSC). If the intermediary has no qualifying office in the State whose law has been chosen by the parties at the time the choice is made, the choice of law is not valid. In such a case, the law applicable to rights in intermediated securities credited to the account in question must be determined pursuant to Art. 5 HSC. If the intermediary later sets up a qualifying office in the State whose law is designated in the account agreement, this will not remedy the initial defect. In such a case, the choice of law must be made afresh in the account agreement, or at least the existing choice of law clause must be expressly confirmed if the choice of law is thenceforth to be valid.[10] Conversely, if at the time when the choice of law was agreed the intermediary had a qualifying office in the State whose law was chosen but this office later ceases to be a qualifying one, the choice of law remains valid.

16 If the parties to the account agreement have chosen the law of a territorial unit of a multi-unit State, the qualifying office requirement is in principle fulfilled if the intermediary has an office in any place within the multi-unit State.[11]

17 The qualifying office requirement is intended to prevent parties from choosing a law solely for the advantages it offers them. But it must be acknowledged that this requirement can very easily be fulfilled by the intermediary, all the more so because it is not necessary for the securities account to be held by the qualifying office. Since it is unlikely that any private investor will be in a position to oppose a choice of law proposed by his direct intermediary, the latter has a degree of

[9] *Goode/Kanda/Kreuzer*, N 4–23.
[10] *Goode/Kanda/Kreuzer*, N 4–27.
[11] See Cmt. Art. 12 HSC N 5.

freedom to choose the law that best serves its interests in its relationships with investors. However, the power relationship may be reversed in the case of institutional investors. Such investors are in a better position to impose the law of their choice on their intermediary, e.g. in order to subject all their transactions to the same law. Likewise, in the context of relationships between two financial intermediaries, the intermediary that holds the securities account on behalf of the other intermediary is not necessarily the one that is in a position to impose the applicable law. The risk of abuse in the choice of applicable law is acknowledged in the HSC, and it should not be possible to invoke fraud as grounds for invalidating the choice of law made by the parties to an account agreement.[12]

18 The qualifying office requirement is the only limitation to the freedom of the parties to an account agreement to choose the applicable law to issues falling within the scope of the HSC. However, the intermediary may be forced to choose a specific law by regulatory provisions.[13] It may even be a condition to participation in a system. Such regulatory provisions would apply on grounds of public policy (internationally mandatory rules).[14]

12 *Goode/Kanda/Kreuzer,* N 3–10. See Cmt. Art. 11 HSC N 5.
13 *Sigman/Bernasconi*, p. 32; *Deguée/Devos*, p. 26.
14 See Art. 11 HSC.

Art. 5

Fall-back rules

[1] If the applicable law is not determined under Article 4, but it is expressly and unambiguously stated in a written account agreement that the relevant intermediary entered into the account agreement through a particular office, the law applicable to all the issues specified in Article 2(1) is the law in force in the State, or the territorial unit of a Multi-unit State, in which that office was then located, provided that such office then satisfied the condition specified in the second sentence of Article 4(1). In determining whether an account agreement expressly and unambiguously states that the relevant intermediary entered into the account agreement through a particular office, none of the following shall be considered

a) a provision that notices or other documents shall or may be served on the relevant intermediary at that office;

b) a provision that legal proceedings shall or may be instituted against the relevant intermediary in a particular State or in a particular territorial unit of a Multi-unit State;

c) a provision that any statement or other document shall or may be provided by the relevant intermediary from that office;

d) a provision that any service shall or may be provided by the relevant intermediary from that office;

e) a provision that any operation or function shall or may be carried on or performed by the relevant intermediary at that office.

[2] If the applicable law is not determined under paragraph (1), that law is the law in force in the State, or the territorial unit of a Multi-unit State, under whose law the relevant intermediary is incorporated or otherwise organised at the time the written account agreement is entered into or, if there is no such agreement, at the time the securities account was opened; if, however, the relevant intermediary is incorporated or otherwise organised under the law of a Multi-unit State and not that of one of its territorial units, the applicable law is the law in force in the territorial unit of that Multi-unit State in which the relevant intermediary has its place of business, or, if the relevant intermediary has more than one place of business, its principal place of business, at the time the written account agreement is entered into or, if there is no such agreement, at the time the securities account was opened.

[3] If the applicable law is not determined under either paragraph (1) or paragraph (2), that law is the law in force in the State, or the territorial unit of a Multi-unit State, in which the relevant intermediary has its place of business, or, if the relevant intermediary has more than one place of business, its principal place of business, at the time the written account agreement is entered into or, if there is no such agreement, at the time the securities account was opened.

Subsidiäre Anknüpfungen

[1] Ist die anzuwendende Rechtsordnung nach Artikel 4 nicht bestimmt, wird jedoch in einer schriftlichen Kontovereinbarung ausdrücklich und unmissverständlich erklärt, dass der massgebliche Intermediär die Kontovereinbarung über eine bestimmte Geschäftsstelle geschlossen hat, so ist auf alle in Artikel 2 Absatz 1 genannten Fragen die geltende Rechtsordnung des Staates oder der Gebietseinheit eines Mehrrechtsstaats anzuwenden, in dem oder der diese Geschäftsstelle damals belegen war, wenn diese Geschäftsstelle damals die in Artikel 4 Absatz 1 Satz 2 genannten Voraussetzungen erfüllte. Bei der Feststellung, ob in einer Kontovereinbarung ausdrücklich und unmissverständlich erklärt ist, dass der massgebliche Intermediär die Kontovereinbarung über eine bestimmte Geschäftsstelle geschlossen hat, werden Vertragsbestimmungen nicht berücksichtigt, wonach

a) Mitteilungen oder andere Schriftstücke dem massgeblichen Intermediär in dieser Geschäftsstelle zugestellt werden müssen oder können,
b) Gerichtsverfahren gegen den massgeblichen Intermediär in einem bestimmten Staat oder in einer bestimmten Gebietseinheit eines Mehrrechtsstaats eingeleitet werden müssen oder können,
c) der massgebliche Intermediär Kontoauszüge oder sonstige Schriftstücke von dieser Geschäftsstelle aus übersenden muss oder kann,
d) der massgebliche Intermediär Dienstleistungen von dieser Geschäftsstelle aus erbringen muss oder kann,
e) der massgebliche Intermediär eine Tätigkeit oder Aufgabe in dieser Geschäftsstelle durchführen oder wahrnehmen muss oder kann.

[2] Ist die anzuwendende Rechtsordnung nach Absatz 1 nicht bestimmt, so ist die Rechtsordnung anzuwenden, die im Zeitpunkt des Abschlusses der schriftlichen Kontovereinbarung oder in Ermangelung einer solchen Vereinbarung im Zeitpunkt der Eröffnung des Depotkontos in dem Staat oder der Gebietseinheit eines Mehrrechtsstaats gilt, nach dessen oder deren Rechtsordnung der massgebliche Intermediär als juristische Person gegründet oder in anderer Weise organisiert ist; wenn der massgebliche Intermediär jedoch nach der Rechtsordnung eines Mehrrechtsstaats und nicht nach der einer seiner Gebietseinheiten als juristische Person gegründet oder in anderer Weise organisiert ist, so ist die Rechtsordnung anzuwenden, die im Zeitpunkt des Abschlusses der schriftlichen Kontovereinbarung oder in Ermangelung einer solchen Vereinbarung im Zeitpunkt der Eröffnung des Depotkontos in der Gebietseinheit dieses Mehrrechtsstaats gilt, in welcher der massgebliche Intermediär seinen Geschäftssitz oder, bei mehreren Geschäftssitzen, seinen Hauptgeschäftssitz hat.

[3] Ist die anzuwendende Rechtsordnung weder nach Absatz 1 noch nach Absatz 2 bestimmt, so ist die Rechtsordnung anzuwenden, die im Zeitpunkt des Abschlusses der schriftlichen Kontovereinbarung oder in Ermangelung einer solchen Vereinbarung im Zeitpunkt der Eröffnung des Depotkontos in dem Staat oder in der Gebietseinheit eines Mehrrechtsstaats gilt, in welchem oder in welcher der massgebliche Intermediär seinen Geschäftssitz oder, bei mehreren Geschäftssitzen, seinen Hauptgeschäftssitz hat.

Rattachements subsidiaires

[1] Si la loi applicable n'est pas déterminée en vertu de l'article 4, mais qu'il ressort expressément et sans ambiguïté d'une convention de compte écrite que celle-ci a été conclue via un établissement particulier de l'intermédiaire pertinent, la loi applicable à toutes les questions mentionnées à l'article 2(1), est la loi en vigueur dans l'Etat, ou dans l'unité territoriale de l'Etat à plusieurs unités, dans lequel cet établissement était alors situé, si celui-ci remplissait la condition prévue à la deuxième phrase de l'article 4(1). Afin de déterminer s'il ressort expressément et sans ambiguïté d'une convention de compte que celle-ci a été conclue via un établissement particulier de l'intermédiaire pertinent, les éléments suivants ne peuvent pas être pris en considération:

a) une clause stipulant qu'un acte ou tout autre document peut ou doit être notifié à l'intermédiaire pertinent à cet établissement;
b) une clause stipulant que l'intermédiaire pertinent peut ou doit être assigné en justice dans un Etat particulier ou dans une unité territoriale particulière d'un Etat à plusieurs unités;
c) une clause stipulant qu'un relevé de compte ou tout autre document peut ou doit être fourni par l'intermédiaire pertinent depuis cet établissement;
d) une clause stipulant qu'un service peut ou doit être fourni par l'intermédiaire pertinent depuis cet établissement;
e) une clause stipulant qu'une opération ou fonction peut ou doit être accomplie par l'intermédiaire pertinent à cet établissement.

[2] Si la loi applicable n'est pas déterminée en vertu du paragraphe (1), cette loi est la loi en vigueur dans l'Etat, ou dans l'unité territoriale d'un Etat à plusieurs unités, dont la loi régit la constitution ou, à défaut, l'organisation de l'intermédiaire pertinent au moment de la conclusion de la convention de compte écrite, ou en l'absence d'une telle convention, au moment de l'ouverture du compte de titres; toutefois, si l'intermédiaire pertinent est constitué ou, à défaut, organisé en vertu de la loi d'un Etat à plusieurs unités, mais non pas en vertu de la loi d'une unité territoriale de cet Etat, la loi applicable est la loi en vigueur dans l'unité territoriale de cet Etat à plusieurs unités dans laquelle il exerce son activité et, en l'absence d'un lieu unique, la loi de l'unité territoriale dans laquelle est situé son principal lieu d'activité, au moment de la conclusion de la convention de compte écrite, ou en l'absence d'une telle convention, au moment de l'ouverture du compte de titres.

[3] Si la loi applicable n'est déterminée ni en vertu du paragraphe (1) ni en vertu du paragraphe (2), cette loi est la loi en vigueur dans l'Etat, ou dans l'unité territoriale d'un Etat à plusieurs unités, dans lequel l'intermédiaire pertinent exerce son activité et, en l'absence d'un lieu unique, l'Etat, ou l'unité territoriale d'un Etat à plusieurs unités, dans lequel est situé son principal lieu d'activité au moment de la conclusion de la convention de compte écrite, ou en l'absence d'une telle convention, au moment de l'ouverture du compte de titres.

Criteri di collegamento sussidiari

[1] Se la legge applicabile non può essere determinata a norma dell'articolo 4, ma se da un accordo scritto sul conto risulta espressamente e senza ambiguità che tale accordo è stato concluso dall'intermediario di pertinenza tramite un determinato ufficio, la legge applicabile a tutte le questioni indicate dall'articolo 2, paragrafo 1 è la legge in vigore nello Stato o nell'unità territoriale dello Stato a più unità nel quale tale ufficio era allora situato purché quest'ultimo soddisfi la condizione prevista dal secondo periodo dell'articolo 4, paragrafo 1. Per determinare se risulti espressamente e senza ambiguità dall'accordo sul conto che tale accordo è stato concluso tramite un determinato ufficio dell'intermediario di pertinenza, non possono essere presi in considerazione gli elementi seguenti:

a) una clausola che stabilisce che un atto o qualsiasi altro documento può o deve essere notificato all'intermediario di pertinenza in tale ufficio;
b) una clausola che stabilisce che una domanda giudiziale può o deve essere proposta contro l'intermediario di pertinenza in un determinato Stato o in una determinata unità territoriale di uno Stato a più unità;
c) una clausola che stabilisce che un atto o qualsiasi altro documento può o deve essere fornito dall'intermediario di pertinenza da tale ufficio;
d) una clausola che stabilisce che un servizio può o deve essere fornito dall'intermediario di pertinenza da tale ufficio;
e) una clausola che stabilisce che un'operazione o funzione può o deve essere realizzata dall'intermediario di pertinenza presso tale ufficio.

[2] Se la legge applicabile non può essere determinata a norma del paragrafo 1, tale legge è la legge in vigore nello Stato o nell'unità territoriale di uno Stato a più unità la cui legge regolamenta la costituzione o, in mancanza, l'organizzazione dell'intermediario di pertinenza al momento della conclusione dell'accordo scritto sul conto, o, in mancanza di tale accordo, al momento dell'apertura del conto titoli; tuttavia se l'intermediario di pertinenza è costituito o organizzato in base alla legge di uno Stato a più unità ma non alla legge di un'unità territoriale di tale Stato, la legge applicabile è la legge in vigore nell'unità territoriale di tale Stato a più unità nella quale esercita la sua attività e, in mancanza di un luogo unico, la legge dell'unità territoriale nella quale è situato il suo luogo principale di attività, al momento della conclusione dell'accordo scritto sul conto o, in mancanza di tale accordo, al momento dell'apertura del conto titoli.

[3] Se la legge applicabile non può essere determinata né a norma del paragrafo 1 né a norma del paragrafo 2, tale legge è la legge in vigore nello Stato o nell'unità territoriale di uno Stato a più unità nel quale l'intermediario di pertinenza esercita la sua attività e, in mancanza di un luogo unico, lo Stato o l'unità territoriale di uno Stato a più unità nel quale è situato il suo principale luogo di attività al momento della conclusione dell'accordo scritto sul conto o, in mancanza di tale accordo, al momento dell'apertura del conto titoli.

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I. Fall-back Rules for Determining the Law Applicable to Rights in a Security Held with an Intermediary

The primary connecting factor to the law designated by the parties is supplemented by a cascade of fall-back rules that apply in the event that (i) the parties have not designated the applicable law in their account agreement, or (ii) the choice of law is not valid (Art. 5 HSC). 1

The fall-back rules are of only marginal importance, since cases where there has been no choice of law or no valid choice of law are in practice rare. The main case where a choice of law is not valid is where the direct intermediary did not have an office in the State whose law was chosen by the parties at the time when the choice of law was made. 2

The fall-back rules provided for in Art. 5 HSC are objective rules based on the PRIMA (Place of the Relevant Intermediary Approach) connecting factor. This connecting factor refers to the place where the account holder's direct intermediary – described as the "relevant intermediary" – maintains the former's securities account.[1] In the course of negotiations at The Hague, the PRIMA conflict rule was long retained as the principal connecting factor to be used for the purposes of the HSC. The formulation of this connecting factor gave rise to numerous problems, however, because of the practical difficulty of identifying the location of the relevant intermediary or of the securities account it maintains for the account holder. It is not unusual for the various activities involved in maintaining a securities account to be dispersed among offices located in a number of different countries, or distributed among a number of sub-contractors located in different countries. Moreover, the location of a securities account may easily be changed. For these reasons, the PRIMA connecting factor was ultimately adopted only as a fall-back rule.[2] 3

[1] For a description of the operation of the PRIMA conflict rule, see *Girsberger/Guillaume*, pp. 24–32; *Bernasconi/Sigman,* Facteurs de rattachement, pp. 57–59.

[2] *Goode/Kanda/Kreuzer*, N. Int-41-46.

4 When determining these objective connecting factors, the point in time to be considered is the time when the account agreement – which in this case must be in writing – was concluded, or, in the absence of such an agreement, the time when the securities account was opened.

1. Law of the State where the Office of the Relevant Intermediary is Located

5 The first fall-back rule designates the law in force in the State where the office of the relevant intermediary, which has unambiguously entered into a written account agreement, is located (Art. 5(1) HSC). In order for this fall-back rule to apply, the account agreement must expressly state that it has been entered into through a particular office. Moreover, this office must be a qualifying office within the meaning of Art. 4 HSC.

2. Law of the State where the Relevant Intermediary is Incorporated or Otherwise Organized

6 The second fall-back rule designates the law in force in the State where the relevant intermediary is incorporated or otherwise organized (Art. 5(2) HSC). This rule is subsidiary to the preceding one, meaning that it can only be invoked if the office through which the account agreement was entered into cannot be determined with certainty, or if there was no qualifying office within the meaning of Art. 4 HSC. It applies, of course, only to intermediaries that are companies.

3. Law of the Principal Place of Business of the Relevant Intermediary

7 The third fall-back rule designates the law of the principal place of business of the relevant intermediary (Art. 5(3) HSC). This rule is subsidiary to the two preceding ones. Since it can only be invoked if the relevant intermediary has not been validly incorporated or organized, it should only be applied to intermediaries that are natural persons. It is as a matter of fact rather difficult to imagine that a company could be considered an intermediary without being validly incorporated or organized in accordance with the law of a State. However, this last fall-back rule has been clearly drawn up for companies and should therefore not often apply in practice.

Art. 6

Factors to be disregarded

In determining the applicable law in accordance with this Convention, no account shall be taken of the following factors

a) the place where the issuer of the securities is incorporated or otherwise organised or has its statutory seat or registered office, central administration or place or principal place of business;

b) the places where certificates representing or evidencing securities are located;

c) the place where a register of holders of securities maintained by or on behalf of the issuer of the securities is located; or

d) the place where any intermediary other than the relevant intermediary is located.

Nicht zu berücksichtigende Kriterien

Bei der Bestimmung der anzuwendenden Rechtsordnung nach diesem Übereinkommen bleibt Folgendes unberücksichtigt:

a) der Ort, an dem der Emittent als juristische Person gegründet oder in anderer Weise organisiert ist oder seinen satzungsmässigen oder eingetragenen Sitz, seine Hauptverwaltung, seinen Geschäftssitz oder Hauptgeschäftssitz hat;

b) die Orte, an denen sich Urkunden befinden, die Wertpapiere darstellen oder der Nachweis dafür sind;

c) der Ort, an dem sich ein Register über Wertpapierinhaber befindet, das von dem oder für den Emittenten geführt wird;

d) der Ort, an dem sich ein Intermediär befindet, der nicht der massgebliche Intermediär ist.

Critères exclus

Pour déterminer la loi applicable en vertu de la présente Convention, il ne peut être tenu compte des éléments suivants:

a) le lieu de constitution ou, à défaut, d'organisation ou du siège social de l'émetteur des titres, de son administration centrale ou de son lieu ou principal lieu d'activité;

b) les lieux où sont situés les certificats représentant les titres ou constituant la preuve de l'existence de ceux-ci;

c) le lieu où est tenu, par ou pour le compte de l'émetteur des titres, un registre des titulaires des titres;

d) le lieu de tout intermédiaire autre que l'intermédiaire pertinent.

Circostanze escluse

Per determinare la legge applicabile a norma della presente convenzione, non si possono prendere in considerazione le seguenti circostanze:

a) il luogo di costituzione o, in mancanza, dell'organizzazione o della sede sociale, dell'amministrazione centrale o del luogo di attività o luogo principale di attività dell'emittente strumenti finanziari;

b) i luoghi in cui sono situati i certificati rappresentativi degli strumenti finanziari o che costituiscono la prova dell'esistenza di strumenti finanziari;

c) il luogo in cui è tenuto, ad opera o per conto dell'emittente strumenti finanziari, un registro dei titolari di strumenti finanziari; o
d) il luogo in cui è situato qualunque intermediario diverso dall'intermediario di pertinenza.

Factors to be Disregarded when Determining the Law Applicable to Rights in a Security held with an Intermediary

1 Art. 6 HSC supplements Arts. 4 and 5 HSC by drawing up a negative list of connecting factors that are to be disregarded when determining the law applicable to rights in intermediated securities. This provision is intended to unambiguously exclude all connecting factors traditionally applied by States to determining the law applicable to securities held within a direct holding system.[1] The irrelevance of these criteria is already apparent from an *a contrario* interpretation of Arts. 4 and 5 HSC.

2 Pursuant to Art. 6(a)–(c) HSC, the law applicable to the matters specified in Art. 2(1) HSC cannot be determined with regard to the place where the issuing company is incorporated or otherwise organized or has its statutory seat or registered office or principal place of business, or to the place where the securities are located, or to the place where a register of holders of securities maintained on behalf of the issuing company is located.

3 Art. 6(d) HSC recalls that only the account holder's direct intermediary is decisive in determining the applicable law. It is not possible to take account of another intermediary in the chain. In particular, the applicable law cannot be found by treating the direct intermediary as transparent and referring to another, higher-level intermediary, or referring directly to the issuing company (the so-called "look-through approach").[2]

[1] *Goode/Kanda/Kreuzer*, N 6-1.
[2] *Goode/Kanda/Kreuzer*, N 6-2 and N Int-37 to Int-40.

Art. 7

Protection of rights on change of the applicable law

[1] This Article applies if an account agreement is amended so as to change the applicable law under this Convention.

[2] In this Article
a) "the new law" means the law applicable under this Convention after the change;
b) "the old law" means the law applicable under this Convention before the change.

[3] Subject to paragraph (4), the new law governs all the issues specified in Article 2(1).

[4] Except with respect to a person who has consented to a change of law, the old law continues to govern
a) the existence of an interest in securities held with an intermediary arising before the change of law and the perfection of a disposition of those securities made before the change of law;
b) with respect to an interest in securities held with an intermediary arising before the change of law
i) the legal nature and effects of such an interest against the relevant intermediary and any party to a disposition of those securities made before the change of law;
ii) the legal nature and effects of such an interest against a person who after the change of law attaches the securities;
iii) the determination of all the issues specified in Article 2(1) with respect to an insolvency administrator in an insolvency proceeding opened after the change of law;
c) priority as between parties whose interests arose before the change of law.

[5] Paragraph (4)(c) does not preclude the application of the new law to the priority of an interest that arose under the old law but is perfected under the new law.

Bestandsschutz bei Wechsel der anzuwendenden Rechtsordnung

[1] Dieser Artikel findet Anwendung, wenn eine Kontovereinbarung so geändert wird, dass nach diesem Übereinkommen eine andere Rechtsordnung anzuwenden ist.

[2] In diesem Artikel bezeichnet
a) «neue Rechtsordnung» die aufgrund dieses Übereinkommens nach dem Wechsel anzuwendende Rechtsordnung;
b) «alte Rechtsordnung» die aufgrund dieses Übereinkommens vor dem Wechsel anzuwendende Rechtsordnung.

[3] Vorbehaltlich des Absatzes 4 ist die neue Rechtsordnung massgebend für alle in Artikel 2 Absatz 1 genannten Fragen.

[4] Ausser in Bezug auf eine Person, die einem Wechsel der Rechtsordnung zugestimmt hat, bleibt die alte Rechtsordnung massgebend

a) für das Bestehen eines Rechts an Intermediär-verwahrten Wertpapieren, das vor dem Wechsel der anzuwendenden Rechtsordnung entstanden ist, und eine Verfügung über diese Wertpapiere, deren Drittwirkung vor dem Wechsel der Rechtsordnung herbeigeführt worden ist;
b) in Bezug auf ein Recht an Intermediär-verwahrten Wertpapieren, das vor dem Wechsel der anzuwendenden Rechtsordnung entstanden ist,
   i) für die Rechtsnatur eines solchen Rechts und seine Wirkung gegenüber dem massgeblichen Intermediär und gegenüber Parteien einer vor dem Wechsel der Rechtsordnung getroffenen Verfügung über diese Wertpapiere;
   ii) für die Rechtsnatur eines solchen Rechts und seine Wirkung gegenüber einer Person, welche die Wertpapiere nach dem Wechsel der Rechtsordnung pfänden oder arrestieren lässt;
   iii) für die Entscheidung über alle in Artikel 2 Absatz 1 genannten Fragen in Bezug auf einen Insolvenzverwalter in einem Insolvenzverfahren, das nach dem Wechsel der Rechtsordnung eröffnet wird;
c) für das Rangverhältnis zwischen Parteien, deren Rechte vor dem Wechsel der Rechtsordnung entstanden sind.

[5] Absatz 4 Buchstabe c schliesst die Anwendung der neuen Rechtsordnung in Bezug auf den Rang eines Rechts nicht aus, das zwar nach der alten Rechtsordnung entstanden, dessen Drittwirkung aber nach der neuen Rechtsordnung herbeigeführt worden ist.

Protection des droits en cas de changement de la loi applicable

[1] Le présent article s'applique lorsqu'une convention de compte est modifiée de manière à changer la loi applicable en vertu de la présente Convention.

[2] Pour les besoins du présent article:
a) la «nouvelle loi» désigne la loi applicable en vertu de la présente Convention après le changement;
b) «l'ancienne loi» désigne la loi applicable en vertu de la présente Convention avant le changement.

[3] Sous réserve du paragraphe (4), la nouvelle loi régit toutes les questions mentionnées à l'article 2(1).

[4] Sauf à l'égard d'une personne ayant consenti au changement de la loi, l'ancienne loi demeure applicable:
a) à l'existence d'un droit sur des titres détenus auprès d'un intermédiaire né avant le changement de la loi ainsi qu'à un transfert de ces titres rendu opposable avant le changement de la loi;
b) s'agissant d'un droit sur des titres détenus auprès d'un intermédiaire né avant le changement de la loi,
   i) à la nature juridique et aux effets d'un tel droit à l'égard de l'intermédiaire pertinent et de toute personne partie à un transfert de ces titres effectué avant le changement de la loi;

ii) à la nature juridique et aux effets d'un tel droit à l'égard d'une personne qui, après le changement de la loi, procède à une saisie sur ces titres;
iii) à la détermination de toutes les questions mentionnées à l'article 2(1) à l'égard d'un administrateur d'insolvabilité dans une procédure d'insolvabilité ouverte après le changement de la loi;

c) à la priorité entre parties dont les droits sont nés avant le changement de la loi applicable.

[5] Le paragraphe (4)(c) n'écarte pas l'application de la nouvelle loi concernant la priorité d'un droit né sous l'ancienne loi mais qui a été rendu opposable en vertu de la nouvelle loi.

Protezione dei diritti in caso di cambiamento della legge applicabile

[1] Il presente articolo si applica se l'accordo sul conto è modificato in modo da cambiare la legge applicabile a norma della presente convenzione.

[2] Nel presente articolo si intende per:
a) «nuova legge»: la legge applicabile a norma della presente convenzione dopo il cambiamento;
b) «vecchia legge»: la legge applicabile a norma della presente convenzione prima del cambiamento.

[3] Fatto salvo il paragrafo 4, la nuova legge disciplina tutte le questioni indicate dall'articolo 2, paragrafo 1.

[4] Salvo nei confronti di una persona che abbia acconsentito al cambiamento della legge, la vecchia legge resta applicabile:
a) all'esistenza di un diritto su strumenti finanziari detenuti presso un intermediario sorto prima del cambiamento della legge nonché all'opponibilità di un trasferimento di tali strumenti finanziari realizzato prima del cambiamento della legge;
b) per quanto riguarda un diritto su strumenti finanziari detenuti presso un intermediario sorto prima del cambiamento della legge:
i) alla natura giuridica e agli effetti di tale diritto nei confronti dell'intermediario di pertinenza e di qualunque persona che sia parte nel trasferimento di tali strumenti finanziari effettuato prima del cambiamento della legge;
ii) alla natura giuridica e agli effetti di tale diritto nei confronti di una persona che dopo il cambiamento della legge proceda ad un sequestro di tali strumenti finanziari;
iii) alla determinazione di tutte le questioni indicate dall'articolo 2, paragrafo 1 nei confronti del curatore dell'insolvenza in una procedura di insolvenza avviata dopo il cambiamento della legge;
c) alla priorità tra i soggetti i cui diritti sono sorti prima del cambiamento della legge.

[5] Il paragrafo 4, lettera c) non impedisce l'applicazione della nuova legge alla priorità di un diritto sorto secondo la vecchia legge ma reso opponibile secondo la nuova legge.

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I. Consequences of a Change of the Applicable Law

1 Art. 7 HSC applies in the event of a change of the applicable law agreed upon by the parties to an account agreement. The issue of a change of applicable law arises only if the parties to the account agreement decide to change the law applicable to interests in intermediated securities by making a choice of law. As a matter of fact the conditions for applying the connecting factors of the HSC have to be satisfied only at the time the account agreement is entered into (Arts. 4(1) and 5(1) HSC), or at the time the securities account was opened if there is no account agreement (Art. 5(2) and (3) HSC).[1] If these conditions subsequently cease to be satisfied, the connecting factor remains valid. For example, if the relevant intermediary loses its qualifying office in the State whose law the parties have chosen, this does not lead to a change of the applicable law.

2 The parties to an account agreement may at any time change the law applicable to issues governed by the HSC. They may, for instance, insert a choice of law clause into the account agreement, even if it did not previously include one. They may also insert into an account agreement that already contained a general choice of law clause a special clause designating the law applicable to the issues specified in Art. 2(1) HSC.[2] They may also change the law designated in a pre-existing clause. For example, the parties may designate a new law in their account agreement in order to replace a choice of law agreement that was invalid because the intermediary did not have a qualifying office, within the meaning of Art. 4(1) HSC, in the State whose law was chosen. In such as case, choosing the law of a State where the intermediary has a qualifying office makes it possible for the parties to choose the law applicable to issues falling within the scope of the HSC rather than having to follow the default law designated in Art. 5 HSC.

3 The parties to an account agreement cannot change the applicable law unless the new choice of law satisfies the conditions specified in Art. 4 HSC. If these conditions are not satisfied, there is no valid change of applicable law. For example, if the relevant intermediary does not have a qualifying office in the State whose law the parties have chosen, the new choice of law is invalid and the interests in the securities held with the intermediary continue to be governed by the law that was previously applicable. This means (i) the law designated by the previous choice

[1] See Cmt. Art. 4 HSC N 15 and Art. 5 HSC N 4.
[2] See Cmt. Art. 4 HSC N 9.

of law clause if it was validly drawn up within the meaning of Art. 4 HSC, or (ii) the law designated by Art. 5 HSC.

If the conditions for choosing a law as specified in Art. 4 HSC are satisfied, the new law designated by the parties to the account agreement will apply retroactively, replacing *ab initio* the law that was previously applicable (Art. 7(3) HSC). In principle, the new law will thus govern all interests in the intermediated securities that were credited to the securities account both before and after the change to the law chosen in the account agreement governing that account. 4

II. Protection of the Third-Party Rights in Case of a Change of the Applicable Law

The law designated by the HSC applies not only to the rights of the parties to an account agreement governing the account to which a security has been credited, but also to the rights of third parties in the same security. This principle arises from the list of rights in intermediated securities specified in Art. 2(1) HSC.[3] For example, the applicable law determines the conditions that must be satisfied in order for a grant of a security interest in an intermediated security to be effective against third parties, as well as the order of priority among creditors. 5

In principle, the law applicable to interests in intermediated securities is determined by the account holder and his direct intermediary by means of a choice of law made in the account agreement between them (Art. 4(1) HSC). The rights of third parties in intermediated securities thus depend on the will of the account holder and his direct intermediary. These rights may be endangered if the parties to the agreement change the applicable law and the third parties are not informed of the change.[4] 6

To illustrate the effects on third-party rights of a change of the applicable law, let us take the following *example:* An intermediary and its client chose the law of State A in their account agreement. The intermediary has a qualifying office in State A at the time the account agreement is entered into; the law of State A thus governs all the issues specified in Art. 2(1) HSC. If subsequently the client grants a creditor a security interest in all the securities credited to his account, but without transferring the securities to the creditor's account,[5] the security interest must be granted in accordance with the conditions specified by the law of State A. This is therefore the law that will determine, among other things, whether the security interest is effective against third parties. If subsequently the client and his direct intermediary agree to replace the law of State A by the law of State B where the intermediary also has a qualifying office, the collateral taker runs the risk that his 7

[3] See Cmt. Art. 2 HSC.
[4] *Guillaume*, Electio juris, pp. 75–76; *Sigman/Bernasconi*, p. 34.
[5] See Art. 25(1) FISA.

security interest will no longer be validly granted under the new applicable law and that other creditors will have higher priority. For example, in the event that a client grants another creditor a security interest to all the securities credited to his account, without transferring the securities to that creditor's account, in accordance with the law of State B, this law will determine the priority between the security interests. If the first security interest does not satisfy the conditions for validity under the law of State B, the second security interest will probably have priority. Yet, if the first collateral taker was not informed of the change of the applicable law, he would have had no opportunity to improve his legal situation. This example indicates that the fact that the primary rule in the HSC designates the law chosen by the parties to the account agreement governing the account to which intermediated securities are credited renders third parties vulnerable. Their rights therefore need to be protected in order to ensure certainty of transactions.

8 Art. 7(4) HSC reduces the risk of harm to third parties in the event of a change of the applicable law agreed upon by parties to an account agreement. It provides that interests acquired by third parties before the change of law are neither restricted nor set aside if the parties to an account agreement agree to change the applicable law. The old law remains applicable in principle to third parties for all issues in respect of (i) the existence of an interest in intermediated securities arising before the change of law, (ii) interests arising from the perfection of a disposition of securities that were perfected before the change of law, and (iii) priority as between parties whose interests arose before the change of law (Art. 7(4)(a)–(c) HSC). However, if an interest in an intermediated security that arose before the change of law was not perfected under the old applicable law, but was subsequently perfected under the new law chosen by the parties to the account agreement, then the new law applies to issues of priority (Art. 7(5) HSC).

9 Art. 7(4) HSC applies only to third parties who have not been informed of the change of applicable law agreed upon by the parties to an account agreement. The new law designated by the parties to the account agreement is also applicable to third parties who were informed of and consented to the change of law made by the parties to the account agreement (Art. 7(4) *cum* Art. 7(3) HSC). For example, if the collateral taker was informed of and consented to the change of law made by the parties to the account agreement, the new law chosen by the parties applies to the collateral taker's rights in the pledged securities. This new law applies in respect of the collateral taker, and does so retroactively, as soon as he has given his consent. This means that he must make his security interest effective in accordance with the new law designated by the parties to the account agreement. It is not necessary to afford any particular protection to the rights of an informed third party, inasmuch as he himself has the means necessary to protect them.

Art. 8

Insolvency

[1] Notwithstanding the opening of an insolvency proceeding, the law applicable under this Convention governs all the issues specified in Article 2(1) with respect to any event that has occurred before the opening of that insolvency proceeding.

[2] Nothing in this Convention affects the application of any substantive or procedural insolvency rules, including any rules relating to

a) the ranking of categories of claim or the avoidance of a disposition as a preference or a transfer in fraud of creditors; or

b) the enforcement of rights after the opening of an insolvency proceeding.

Insolvenz

[1] Ungeachtet der Eröffnung eines Insolvenzverfahrens ist die nach diesem Übereinkommen anzuwendende Rechtsordnung für alle in Artikel 2 Absatz 1 genannten Fragen in Bezug auf jedes Ereignis massgebend, das vor Eröffnung des betreffenden Insolvenzverfahrens eingetreten ist.

[2] Dieses Übereinkommen berührt nicht die Anwendung materiell- oder verfahrensrechtlicher Vorschriften des Insolvenzrechts einschliesslich der Vorschriften über

a) die Rangordnung von Anspruchskategorien oder die Anfechtung einer Verfügung als Gläubigerbegünstigung oder Gläubigerbenachteiligung oder

b) die Durchsetzung von Ansprüchen nach Eröffnung eines Insolvenzverfahrens.

Insolvabilité

[1] Nonobstant l'ouverture d'une procédure d'insolvabilité, la loi applicable en vertu de la présente Convention régit toutes les questions mentionnées à l'article 2(1) en rapport avec tout évènement intervenu avant l'ouverture de cette procédure.

[2] La présente Convention ne porte pas atteinte à l'application de toute règle de droit matériel ou de procédure en matière d'insolvabilité, telle que celle relative:

a) au rang des catégories de créances ou à la nullité d'un transfert effectué au mépris des règles sur la période suspecte ou effectué en fraude des droits des créanciers; ou

b) à l'exercice de droits à compter de l'ouverture d'une procédure d'insolvabilité.

Insolvenza

[1] Nonostante l'apertura di una procedura di insolvenza la legge applicabile a norma della presente convenzione disciplina tutte le questioni indicate dall'articolo 2, paragrafo 1 rispetto a qualunque evento verificatosi prima dell'apertura di tale procedura.

[2] La presente convenzione non pregiudica l'applicazione delle norme sostanziali o procedurali sull'insolvenza, incluse quelle relative:

a) al rango delle categorie di crediti o alla nullità di un trasferimento effettuato in violazione delle norme sul periodo sospetto o effettuato in frode ai creditori; o
b) all'esecuzione di diritti dopo l'apertura di una procedura di insolvenza.

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I. Consequences of the Opening of an Insolvency Proceeding

1 Art. 8 HSC applies where an insolvency proceeding has been opened against one of the participants in the indirect holding system. It makes no difference against whom the insolvency proceeding is directed: the insolvent party may be an investor, a creditor, an intermediary, a depository, or an issuing company.

2 If an insolvency proceeding is opened, it is then necessary to determine whether and to what extent the rights that a creditor has acquired in intermediated securities before the proceeding began are maintained and may be enforced after it opens. The answer to this question depends on the law applicable to the rights in the intermediated securities. Either of two laws may apply: the law designated by the HSC or the insolvency law. Art. 8 HSC provides the key to distinguishing which of them in fact applies.

3 Art. 8 HSC applies only to rights in intermediated securities acquired before the opening of an insolvency proceeding. The fate of a right in intermediated securities acquired *after* the opening of such proceeding falls outside the scope of the HSC. The answer to the question whether such a right is maintained and may still be enforced must be sought in the insolvency law (i.e. in principle, the law of the place where the bankruptcy proceeding has been opened).

II. Protection of the Third-Party Rights in an Insolvency Proceeding

4 Art. 8 HSC protects third-party rights in intermediated securities in the context of an insolvency proceeding.[1] The aim of this provision is to ensure that rights acquired under the law designated by the HSC are recognized in the context of an insolvency proceeding.

[1] For a detailed analysis of the consequences of the opening of an insolvency proceeding in respect of the rights of third parties, see *Guillaume*, Electio juris, pp. 77–82.

Pursuant to Art. 8(1) HSC, all rights acquired pursuant to the law designated by the HSC must be recognized in the context of a subsequent insolvency proceeding. For example, if an intermediated security was credited to a securities account before the opening of a bankruptcy proceeding against the intermediary maintaining the securities account in question, the rights of the account holder continue to be governed by the law designated by the HSC. The place where the insolvency proceeding has been opened therefore does not affect the law applicable to the perfection of rights in the intermediated securities. Only the law designated by the HSC may validly determine the existence of rights in intermediated securities acquired before the opening of the insolvency proceeding. 5

The HSC has no effect on the insolvency law of any particular State. Only that law (i.e. in principle the law of the place where the bankruptcy proceeding has been opened) can determine the effects of rights in intermediated securities in the context of such proceeding (Art. 8(2) HSC). In the example mentioned above, it is the insolvency law that determines, among other things, whether or not the rights of the account holder in the securities credited to his account have priority over the rights of other creditors of the bankrupt intermediary. If the insolvency proceeding is opened in Switzerland, Swiss law governs, among other things, the order of distribution to creditors for recovery in the bankruptcy (Art. 219 of the Debt Enforcement and Bankruptcy Act[2]); privileged rights in the event of seizure (Art. 111 of the Debt Enforcement and Bankruptcy Act); actions to void transactions (Arts. 285 seq of the Debt Enforcement and Bankruptcy Act); the preferential rights of collateral takers in composition proceedings (Art. 324 of the Debt Enforcement and Bankruptcy Act; Art. 31(2) FISA); and the exercise of a right to require that intermediated securities of the same kind be excluded from the bankrupt's estate (Art. 29(3) FISA, Art. 17 FISA, and Art. 37*d* of the Federal Banking Act[3]). 6

Take the *example* of an investor located in Switzerland whose securities account is maintained by his intermediary located in State B. The investor and his intermediary have chosen the law of State B in their account agreement. This choice of law is valid provided the intermediary has an office in State B where it engages in an activity bearing on the maintenance of securities accounts (a qualifying office). Subsequently, the investor grants a security interest in all the securities credited to his securities account in favor of a creditor located in State C, without transferring the securities to the creditor's account. The law of State B determines the creditor's right to the securities. If a bankruptcy proceeding is later opened against the investor in Switzerland, the bankruptcy judge should recognize the existence and effectiveness of the security interest so long as the security interest was validly granted under the law of State B before the opening of the bankruptcy proceeding. Swiss law cannot be invoked in such a case as justification for refusing to recognize the security interest on the grounds that it does not satisfy the 7

[2] RS 281.1.
[3] RS 952.0.

conditions for validity specified by Swiss law. However, Swiss law will be applicable to determining the extent to which the beneficiary of the security interest can render effective and exercise his rights after the insolvency proceeding. An action for recovery pursuant to Art. 287 of the Debt Enforcement and Bankruptcy Act could, for example, be initiated if the creditor obtained a security interest the year before the opening of the bankruptcy proceeding, while he was aware that the debtor was deeply in debt. Similarly, Swiss law will determine the ranking of creditors at the opening of the bankruptcy proceeding. It follows that if the investor granted a security interest in favor of his intermediary after having granted one in favor of a third-party creditor, the question whether the intermediary can realize the securities in order to satisfy its claim after the opening of the bankruptcy proceeding against the investor is governed by Swiss law (see Art. 31 FISA). It makes no difference if the law of State B provides that the third party creditor has a preferential right over that of the intermediary: once a bankruptcy proceeding has been opened that law ceases to govern the priority of creditors.

Chapter III: General provisions

Art. 9

General applicability of the Convention	**This Convention applies whether or not the applicable law is that of a Contracting State.**
Allgemeine Anwendbarkeit des Übereinkommens	Dieses Übereinkommen findet auch dann Anwendung, wenn die anzuwendende Rechtsordnung die eines Nichtvertragsstaats ist.
Applicabilité générale de la Convention	La présente Convention est applicable même si la loi qu'elle désigne est celle d'un Etat non contractant.
Carattere universale della convenzione	La presente convenzione si applica anche se la legge indicata è quella di uno Stato non contraente.

General Applicability of the HSC

The HSC determines the law applicable to issues falling within its scope (Art. 2(1) HSC), but is not concerned with establishing whether or not the law it designates is that of a Contracting State (Art. 9 HSC). 1

For States that have ratified the HSC, the law designated by the HSC constitutes a uniform law applicable *erga omnes*. 2

Art. 10

Exclusion of choice of law rules (renvoi)	**In this Convention, the term "law" means the law in force in a State other than its choice of law rules.**
Ausschluss der Rück- und Weiterverweisung (renvoi)	In diesem Übereinkommen bezeichnet der Ausdruck «Rechtsordnung» das in einem Staat geltende Recht mit Ausnahme seiner Kollisionsnormen.
Exclusion du renvoi	Au sens de la présente Convention, le terme «loi» désigne le droit en vigueur dans un Etat, à l'exclusion des règles de conflit de lois.
Esclusione del rinvio	Ai sensi della presente convenzione, il termine «legge» designa le norme in vigore in uno Stato ad eccezione delle norme di diritto internazionale privato.

Exclusion of Choice of Law Rules (*renvoi*)

1 Art. 10 HSC specifies that the choice of law rules in the HSC directly designate the applicable substantive law. The system of connections established in the HSC therefore applies without choice of law rules (*renvoi).*

Art. 11

Public policy and internationally mandatory rules

[1] The application of the law determined under this Convention may be refused only if the effects of its application would be manifestly contrary to the public policy of the forum.

[2] This Convention does not prevent the application of those provisions of the law of the forum which, irrespective of rules of conflict of laws, must be applied even to international situations.

[3] This Article does not permit the application of provisions of the law of the forum imposing requirements with respect to perfection or relating to priorities between competing interests, unless the law of the forum is the applicable law under this Convention.

Öffentliche Ordnung (ordre public) und international zwingende Vorschriften

[1] Die Anwendung der nach diesem Übereinkommen bestimmten Rechtsordnung darf nur versagt werden, wenn die Wirkungen ihrer Anwendung mit der öffentlichen Ordnung (ordre public) des Staates des angerufenen Gerichts offensichtlich unvereinbar wären.

[2] Dieses Übereinkommen hindert nicht die Anwendung derjenigen Rechtsnormen des Staates des angerufenen Gerichts, die unabhängig davon, welche Rechtsordnung durch die Kollisionsnormen bestimmt wird, auch auf internationale Sachverhalte angewendet werden müssen.

[3] Die Anwendung von Rechtsnormen des Staates des angerufenen Gerichts über Voraussetzungen zur Herbeiführung der Drittwirkung oder die Rangordnung konkurrierender Rechte ist nach diesem Artikel nur zulässig, wenn die Rechtsordnung des Staates des angerufenen Gerichts die nach diesem Übereinkommen anzuwendende Rechtsordnung ist.

Ordre public et lois de police

[1] L'application de la loi déterminée en vertu de la présente Convention ne peut être écartée que si elle conduit à un résultat manifestement contraire à l'ordre public du for.

[2] La présente Convention ne porte pas atteinte aux dispositions de la loi du for dont l'application s'impose même aux situations internationales, quelle que soit la loi désignée par les règles de conflit de lois.

[3] Les dispositions de la loi du for imposant des conditions relatives à l'opposabilité ou se rapportant aux priorités entre droits concurrents ne peuvent être appliquées en vertu du présent article, sauf si la loi du for est la loi applicable en vertu de la présente Convention.

Ordine pubblico e norme di applicazione necessaria

[1] L'applicazione della legge designata dalla presente convenzione può essere esclusa solo se essa porta ad un risultato manifestamente incompatibile con l'ordine pubblico del foro.

[2] La presente convenzione non pregiudica l'applicazione delle disposizioni della legge del foro che devono essere applicate anche alle situa-

zioni internazionali indipendentemente dalla legge designata dalle norme di diritto internazionale privato.

[3] Il presente articolo non consente l'applicazione delle disposizioni della legge del foro che impongono condizioni relative all'opponibilità o alle priorità tra diritti concorrenti, salvo se la legge del foro è la legge applicabile a norma della presente convenzione.

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I. Public Policy and Internationally Mandatory Rules

1 Pursuant to Art. 11(1) HSC, the law designated by the HSC may be refused only if the effects of its application would be manifestly contrary to the public policy of the forum. Bearing in mind the adverb "manifestly," the public policy exception can only be invoked, with reserve, in situations where the application of a foreign substantive law rule would be diametrically opposed to the essential principles of the legal system of the forum. This limit to the scope of public policy is intended to reinforce legal certainty.[1]

2 Art. 11(2) HSC reserves the mandatory provisions of the forum whose application is required regardless of the law designated by the HSC (in other words, internationally mandatory rules or *lois d'application immédiate*).

3 Contrary to the system provided for in Swiss private international law, the scope of public policy is limited to the public policy and internationally mandatory rules of the forum.[2] The law determined under the HSC cannot be rejected in the event that its application leads to a result that is contrary to a law other than that of the forum.

4 Among the forum laws that could apply on grounds of public policy are its regulations concerning the issuing or trading of securities and the supervision of financial markets; its rules on money laundering and, in particular, the degree of diligence required of financial intermediaries; its fiscal rules; and rules intended to safeguard banking secrecy and prevent financial crime. All these rules may be invoked on grounds of public policy, regardless of the law applicable to intermediated securities.

5 The Explanatory Report on the HSC specifies that the exception of fraud cannot be invoked in order to apply the law of the forum instead of the law designated by

[1] *Goode/Kanda/Kreuzer*, N 11-6.
[2] See Art. 19 SPILA.

the parties to an account agreement.[3] The system of connections established by the HSC is rooted in the principle of freedom of the parties, albeit limiting this freedom by the requirement of a qualifying office. The conflict of law rules established by the HSC to some extent assume the risk of fraud by requiring only that the relevant intermediary have a qualifying office in the State whose law is chosen by the parties.

II. Perfection Requirement Rules and Rules of Priority Between Competing Interests

Art. 11(3) HSC limits the scope of the public policy exception by excluding its application to rules imposing requirements with respect to perfection and rules of priority between competing interests. The public policy exception and the exception in favour of internationally mandatory rules cannot be invoked in either of these two respects. 6

This very important rule is intended to ensure that the system of connections established by the HSC is predictable and hence that there is legal certainty. It prevents requirements arising from a law other than the one determined under the HSC from being imposed over and above that law on grounds of public policy. For example, a procedure for registering securities in a special register stipulated by a law other than the one designated by the HSC cannot be imposed on grounds of public policy. 7

[3] *Goode/Kanda/Kreuzer*, N 11–5.

Art. 12

Determination of the applicable law for Multi-unit States

[1] If the account holder and the relevant intermediary have agreed on the law of a specified territorial unit of a Multi-unit State
a) the references to "State" in the first sentence of Article 4(1) are to that territorial unit;
b) the references to "that State" in the second sentence of Article 4(1) are to the Multi-unit State itself.

[2] In applying this Convention
a) the law in force in a territorial unit of a Multi-unit State includes both the law of that unit and, to the extent applicable in that unit, the law of the Multi-unit State itself;
b) if the law in force in a territorial unit of a Multi-unit State designates the law of another territorial unit of that State to govern perfection by public filing, recording or registration, the law of that other territorial unit governs that issue.

[3] A Multi-unit State may, at the time of signature, ratification, acceptance, approval or accession, make a declaration that if, under Article 5, the applicable law is that of the Multi-unit State or one of its territorial units, the internal choice of law rules in force in that Multi-unit State shall determine whether the substantive rules of law of that Multi-unit State or of a particular territorial unit of that Multi-unit State shall apply. A Multi-unit State that makes such a declaration shall communicate information concerning the content of those internal choice of law rules to the Permanent Bureau of the Hague Conference on Private International Law.

[4] A Multi-unit State may, at any time, make a declaration that if, under Article 4, the applicable law is that of one of its territorial units, the law of that territorial unit applies only if the relevant intermediary has an office within that territorial unit which satisfies the condition specified in the second sentence of Article 4(1). Such a declaration shall have no effect on dispositions made before that declaration becomes effective.

Bestimmung der anzuwendenden Rechtsordnung bei Mehrrechtsstaaten

[1] Haben der Depotinhaber und der massgebliche Intermediär vereinbart, dass die Rechtsordnung einer bestimmten Gebietseinheit eines Mehrrechtsstaats anzuwenden ist, so ist
a) mit der Bezugnahme auf «Staat» in Artikel 4 Absatz 1 Satz 1 diese Gebietseinheit gemeint;
b) mit den Bezugnahmen auf «diesen Staat» in Artikel 4 Absatz 1 Satz 2 der Mehrrechtsstaat selbst gemeint.

[2] Bei der Anwendung dieses Übereinkommens gilt Folgendes:
a) Die in einer Gebietseinheit eines Mehrrechtsstaats geltende Rechtsordnung umfasst sowohl die Rechtsordnung dieser Gebietseinheit als auch die Rechtsordnung des Mehrrechtsstaats selbst, soweit sie in dieser Gebietseinheit anwendbar ist;

b) bestimmt die in einer Gebietseinheit eines Mehrrechtsstaats geltende Rechtsordnung, dass die Rechtsordnung einer anderen Gebietseinheit dieses Staates für die Herbeiführung der Drittwirkung durch öffentliche Anmeldung, Registrierung oder Eintragung massgebend ist, so ist die Rechtsordnung dieser anderen Gebietseinheit für diese Frage massgebend.

[3] Ein Mehrrechtsstaat kann bei der Unterzeichnung, der Ratifikation, der Annahme, der Genehmigung oder dem Beitritt erklären, dass, sofern nach Artikel 5 die Rechtsordnung des Mehrrechtsstaats oder einer seiner Gebietseinheiten anzuwenden ist, nach den in diesem Mehrrechtsstaat geltenden internen Kollisionsnormen zu entscheiden ist, ob die materiellrechtlichen Normen dieses Mehrrechtsstaats oder einer bestimmten Gebietseinheit dieses Mehrrechtsstaats anzuwenden sind. Ein Mehrrechtsstaat, der eine solche Erklärung abgibt, übermittelt dem Ständigen Büro der Haager Konferenz für Internationales Privatrecht Angaben über den Inhalt dieser Kollisionsnormen.

[4] Ein Mehrrechtsstaat kann jederzeit erklären, dass, sofern nach Artikel 4 die Rechtsordnung einer seiner Gebietseinheiten anzuwenden ist, die Rechtsordnung dieser Gebietseinheit nur Anwendung findet, wenn der massgebliche Intermediär innerhalb dieser Gebietseinheit eine Geschäftsstelle hat, welche die in Artikel 4 Absatz 1 Satz 2 genannte Bedingung erfüllt. Diese Erklärung hat keine Wirkung in Bezug auf Verfügungen, die vor dem Wirksamwerden dieser Erklärung getroffen wurden.

Détermination de la loi applicable en relation avec un Etat à plusieurs unités

[1] Si le titulaire de compte et l'intermédiaire pertinent ont convenu que la loi applicable est la loi d'une unité territoriale d'un Etat à plusieurs unités,

a) la référence à «l'Etat» dans la première phrase de l'article 4(1) vise cette unité territoriale;
b) les références à «cet Etat» dans la deuxième phrase de l'article 4(1) visent l'Etat à plusieurs unités concerné.

[2] Pour l'application de la présente Convention,

a) la loi en vigueur dans une unité territoriale d'un Etat à plusieurs unités vise aussi bien la loi de cette unité territoriale que, dans la mesure où elle est applicable dans cette unité territoriale, la loi de l'Etat à plusieurs unités concerné;
b) si la loi en vigueur dans une unité territoriale d'un Etat à plusieurs unités désigne la loi d'une autre unité territoriale du même Etat comme étant la loi régissant l'opposabilité par voie de dépôt public, d'inscription publique ou d'enregistrement public, la loi qui régit cette question est la loi de cette autre unité territoriale.

[3] Un Etat à plusieurs unités peut, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, faire une déclaration énonçant que si, en vertu de l'article 5, la loi applicable est la loi de cet Etat à plusieurs unités ou de l'une de ses unités territoriales, les règles de conflit internes en vigueur dans cet Etat à

plusieurs unités détermineront si ce sont les règles de droit matériel de cet Etat à plusieurs unités ou d'une unité territoriale spécifique de cet Etat à plusieurs unités qui s'appliquent. Un Etat à plusieurs unités qui fait une telle déclaration doit communiquer les informations relatives au contenu de ces règles de conflit internes au Bureau Permanent de la Conférence de La Haye de droit international privé.

[4] Un Etat à plusieurs unités peut, à tout moment, faire une déclaration précisant que si la loi applicable en vertu de l'article 4 est la loi de l'une de ses unités territoriales, la loi de cette unité territoriale s'applique uniquement si l'intermédiaire pertinent a un établissement dans cette unité territoriale qui remplit la condition prévue à la deuxième phrase de l'article 4(1). Une telle déclaration n'a aucun effet sur un transfert effectué avant que la déclaration ne prenne effet.

Determinazione della legge applicabile per Stati a più unità

[1] Se il titolare del conto e l'intermediario di pertinenza hanno convenuto che la legge applicabile è la legge di una determinata unità territoriale di uno Stato a più unità:

a) i riferimenti allo «Stato» nel primo periodo dell'articolo 4, paragrafo 1 vanno intesi come riferimenti a tale unità territoriale;
b) i riferimenti a «tale Stato» nel secondo periodo dell'articolo 4, paragrafo 1 vanno intesi come riferimenti allo Stato a più unità.

[2] Per l'applicazione della presente convenzione:

a) la legge in vigore in un'unità territoriale di uno Stato a più unità include sia la legge di tale unità territoriale sia, nella misura in cui essa è applicabile in tale unità territoriale, la legge dello Stato a più unità interessato;
b) se la legge in vigore in un'unità territoriale di uno Stato a più unità designa la legge di un'altra unità territoriale dello stesso Stato come la legge che disciplina l'opponibilità tramite deposito pubblico, registrazione pubblica o iscrizione pubblica, la legge che disciplina tale questione è la legge di quest'altra unità territoriale.

[3] Uno Stato a più unità può, al momento della firma, della ratifica, dell'accettazione, dell'approvazione o dell'adesione, fare una dichiarazione secondo cui se a norma dell'articolo 5 la legge applicabile è la legge di tale Stato a più unità o di una delle sue unità territoriali, le norme sui conflitti interni di leggi in vigore in tale Stato a più unità determinano se si applicano le norme materiali di tale Stato a più unità o di un'unità territoriale specifica di tale Stato a più unità. Uno Stato a più unità che fa una siffatta dichiarazione deve comunicare le informazioni relative al contenuto di queste norme sui conflitti interni di leggi al Bureau permanente della conferenza dell'Aia di diritto internazionale privato.

[4] Uno Stato a più unità può in qualunque momento fare una dichiarazione precisando che se la legge applicabile a norma dell'articolo 4 è la legge di una delle sue unità territoriali, la legge di tale unità territoriale si applica unicamente se l'intermediario di pertinenza ha un ufficio in tale unità territoriale che soddisfi la condizione prevista nel

secondo periodo dell'articolo 4, paragrafo 1. Tale dichiarazione non ha alcun effetto su un trasferimento effettuato prima che la dichiarazione diventi efficace.

Determination of the Applicable Law for Multi-Unit States

When determining the applicable law, Art. 12 HSC takes into account the particularities of States composed of two or more territorial units as defined in Art. 1(1)(m) HSC. Multi-unit States are States with more than one legal system within their territory, i.e. mainly federal States.[1] 1

In accordance with Art. 12(1) HSC, if the parties to an account agreement have chosen the law of one specified territorial unit of a multi-unit State in accordance with Art. 4(1) HSC, the law of that territorial unit is applicable. For example, if the parties have chosen the law of New York State, that law is applicable and not that of the United States of America. 2

In accordance with Art. 12(2)(a) HSC, the rules governing federalism within multi-unit States are applicable. For instance, if the law of New York State is applicable, this refers to both the law of New York State and any other federal law of the United States in force in New York State that applies to the issue at hand by virtue of a rule of American federalism. Pursuant to Art. 12(2)(b) HSC, if the law of a territorial unit designates the law of another territorial unit within the same State as governing perfection by means of public deposit, public filing, or public registration, the law of that other territorial unit governs the matter. For instance, if the law of New York State is applicable, but according to this law a security interest in an intermediated security must be deposited at the place where the debtor is located, and the debtor in question is domiciled in New Jersey, the law of New Jersey State will apply to perfection of the security interest. 3

In accordance with Art. 12(3) HSC, a multi-unit State may require that its domestic conflict of law rules apply if the applicable law is determined pursuant to Art. 5 HSC, by means of a declaration.[2] This provision allows for a sort of internal choice of law rule *(renvoi)* within multi-unit States. 4

In accordance with Art. 12(4) HSC, a multi-unit State may declare that the requirement for a qualifying office in Art. 4(1) HSC is fulfilled only if the relevant intermediary has an office within the territorial unit whose law was chosen by the parties to an account agreement. In the absence of such a declaration,[3] the requirement of a qualifying office is fulfilled if the intermediary has an office anywhere in the multi-unit State. 5

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1 See Cmt. Art. 20 HSC N 1–2.
2 See Cmt. Art. 22 HSC N 1.
3 See Cmt. Art. 22 HSC N 1.

Art. 13

Uniform interpretation	**In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.**
Einheitliche Auslegung	Bei der Auslegung dieses Übereinkommens sind sein internationaler Charakter und die Notwendigkeit zu berücksichtigen, seine einheitliche Anwendung zu fördern.
Interprétation uniforme	Pour l'interprétation de la présente Convention, il sera tenu compte de son caractère international et de la nécessité de promouvoir l'uniformité de son application.
Interpretazione uniforme	Nell'interpretazione della presente convenzione si tiene conto del suo carattere internazionale e della necessità di promuovere la sua applicazione uniforme.

Uniform Interpretation of the HSC

1 Art. 13 HSC adopts a general principle of treaty interpretation by recalling that the HSC must be interpreted autonomously. This means that the forum's rules of interpretation cannot be invoked to interpret the HSC. This rule is intended to maintain a uniform interpretation of the HSC among the Contracting States.

Art. 14

Review of practical operation of the Convention	**The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission to review the practical operation of this Convention and to consider whether any amendments to this Convention are desirable.**
Überprüfung der praktischen Durchführung des Übereinkommens	Der Generalsekretär der Haager Konferenz für Internationales Privatrecht beruft in regelmässigen Abständen eine Spezialkommission zur Prüfung der praktischen Wirkungsweise des Übereinkommens und zur Beratung darüber ein, ob Änderungen dieses Übereinkommens zweckmässig sind.
Examen du fonctionnement pratique de la Convention	Le Secrétaire général de la Conférence de La Haye de droit international privé convoque périodiquement une Commission spéciale afin d'examiner le fonctionnement pratique de la présente Convention et l'opportunité d'apporter des modifications à celle-ci.
Esame del funzionamento pratico della convenzione	Il segretario generale della conferenza dell'Aia di diritto internazionale privato convoca periodicamente una commissione speciale per esaminare il funzionamento pratico della presente convenzione e l'opportunità di apportarvi modifiche.

Review of the Practical Operation of the HSC

Art. 14 HSC provides for a regular monitoring mechanism for the HSC. This provision makes it possible to clarify the interpretation of the HSC and to initiate a process of revision, if necessary. 1

Chapter IV: Transition Provisions

Art. 15

Priority between pre-Convention and post-Convention interests	**In a Contracting State, the law applicable under this Convention determines whether a person's interest in securities held with an intermediary acquired after this Convention entered into force for that State extinguishes or has priority over another person's interest acquired before this Convention entered into force for that State.**
Rangverhältnis zwischen vor und nach Inkrafttreten des Übereinkommens entstandenen Rechten	In einem Vertragsstaat bestimmt die nach diesem Übereinkommen anzuwendende Rechtsordnung, ob ein Recht einer Person an Intermediär-verwahrten Wertpapieren, das nach Inkrafttreten dieses Übereinkommens für diesen Staat entstanden ist, ein konkurrierendes Recht, das vor Inkrafttreten des Übereinkommens für diesen Staat entstanden ist, zum Erlöschen bringt oder ihm gegenüber Vorrang hat.
Priorité entre droits nés avant et après l'entrée en vigueur de la Convention	Dans un Etat contractant, la loi applicable en vertu de la présente Convention détermine si le droit d'une personne sur des titres détenus auprès d'un intermédiaire acquis après l'entrée en vigueur de la présente Convention pour cet Etat, a pour effet d'éteindre ou de primer le droit d'une autre personne acquis avant l'entrée en vigueur de la présente Convention pour cet Etat.
Priorità tra i diritti sorti prima e dopo l'entrata in vigore della convenzione	In uno Stato contraente la legge applicabile a norma della presente convenzione determina se il diritto di una persona su strumenti finanziari detenuti presso un intermediario acquisito dopo l'entrata in vigore della presente convenzione per tale Stato pone nel nulla o prevale sul diritto di un'altra persona acquisito prima dell'entrata in vigore della presente convenzione per tale Stato.

Application of the Law Designated by the HSC to Determine the Priority among Rights Arising Before and After its Entry into Force

1 Pursuant to Art. 15 HSC, the law designated by the HSC determines whether an interest in an intermediated security acquired after the HSC entered into force for a given State extinguishes or has priority over a competing interest acquired before the HSC entered into force for that State.

2 This provision has particular importance for third parties to a security interest in intermediated securities. In order to maintain its interest, a third party must perfect the interest it acquired under the old law in accordance with the conditions laid down by the new law designated by the HSC. Art. 15 HSC thus has the effect

of leaving unprotected or even compromising the rights of third parties with a security interest in intermediated securities.[1]

To illustrate the operation of Art. 15 HSC, let us take an *example* where an investor grants Creditor 1 a security interest in all the securities credited to his securities account maintained by his intermediary located in State A, without transferring the securities to the creditor's account. Creditor 1 perfects his security interest in accordance with the law of State B, which applies at the time. Subsequently, the HSC enters into force in State A. The law of State A henceforth applies to rights in intermediated securities credited to the investor's securities account, provided that the account agreement between the investor and his intermediary validly designates the law of State A. Later, the investor grants a second security interest in the same securities in favor of Creditor 2. This creditor perfects his security interest in accordance with the law of State A. Pursuant to Art. 15 HSC, the law of State A determines whether the rights of Creditor 2 prevail over those of Creditor 1. To avoid losing his rights in the securities, Creditor 1 must make sure that his security interest also fulfils the perfection requirements of the law of State A at the time when the HSC enters into force in that State. 3

The Explanatory Report specifies that this situation should not arise in practice, given the publicity that has surrounded the drafting of the HSC.[2] Intermediaries are expected to adapt their account agreements in advance to ensure compliance with the HSC.[3] Art. 15 HSC presumes that financial market actors will spontaneously take all necessary measures to ensure the perfection of dispositions made before the entry into force of the HSC. 4

Since the HSC entered into force in Switzerland on 1 January 2010,[4] the law designated by the HSC now determines whether or not a right in an intermediated security acquired after that date has priority over a right in the same security acquired before that date. It makes no difference if the HSC has not yet entered into force at international level.[5] 5

1 *Cashin Ritaine*, p. 92.
2 *Goode/Kanda/Kreuzer*, N 15-5.
3 All the more so since the HSC also applies to account agreements entered into before its entry into force (Art. 16(1) HSC).
4 See Cmt. Art. 19 HSC N 2.
5 *Goode/Kanda/Kreuzer*, N 15-2.

Art. 16

Pre-Convention account agreements and securities accounts

[1] References in this Convention to an account agreement include an account agreement entered into before this Convention entered into force in accordance with Article 19(1). References in this Convention to a securities account include a securities account opened before this Convention entered into force in accordance with Article 19(1).

[2] Unless an account agreement contains an express reference to this Convention, the courts of a Contracting State shall apply paragraphs (3) and (4) in applying Article 4(1) with respect to account agreements entered into before the entry into force of this Convention for that State in accordance with Article 19. A Contracting State may, at the time of signature, ratification, acceptance, approval or accession, make a declaration that its courts shall not apply those paragraphs with respect to account agreements entered into after the entry into force of this Convention in accordance with Article 19(1) but before the entry into force of this Convention for that State in accordance with Article 19(2). If the Contracting State is a Multi-unit State, it may make such a declaration with respect to any of its territorial units.

[3] Any express terms of an account agreement which would have the effect, under the rules of the State whose law governs that agreement, that the law in force in a particular State, or a territorial unit of a particular Multi-unit State, applies to any of the issues specified in Article 2(1), shall have the effect that such law governs all the issues specified in Article 2(1), provided that the relevant intermediary had, at the time the agreement was entered into, an office in that State which satisfied the condition specified in the second sentence of Article 4(1). A Contracting State may, at the time of signature, ratification, acceptance, approval or accession, make a declaration that its courts shall not apply this paragraph with respect to an account agreement described in this paragraph in which the parties have expressly agreed that the securities account is maintained in a different State. If the Contracting State is a Multi-unit State, it may make such a declaration with respect to any of its territorial units.

[4] If the parties to an account agreement, other than an agreement to which paragraph (3) applies, have agreed that the securities account is maintained in a particular State, or a territorial unit of a particular Multi-unit State, the law in force in that State or territorial unit is the law applicable to all the issues specified in Article 2(1), provided that the relevant intermediary had, at the time the agreement was entered into, an office in that State which satisfied the condition specified in the second sentence of Article 4(1). Such an agreement may be express or implied from the terms of the contract considered as a whole or from the surrounding circumstances.

Vor Inkrafttreten des Übereinkommens geschlossene Kontovereinbarungen und eröffnete Depotkonten

[1] Bezugnahmen in diesem Übereinkommen auf eine Kontovereinbarung schliessen auch eine Kontovereinbarung ein, die vor Inkrafttreten des Übereinkommens nach Artikel 19 Absatz 1 geschlossen wurde. Bezugnahmen in diesem Übereinkommen auf ein Depotkonto schliessen auch ein Depotkonto ein, das vor Inkrafttreten des Übereinkommens nach Artikel 19 Absatz 1 eröffnet wurde.

[2] Sofern nicht in einer Kontovereinbarung ausdrücklich auf dieses Übereinkommen Bezug genommen wird, wenden die Gerichte eines Vertragsstaats für die Zwecke der Anwendung des Artikels 4 Absatz 1 auf Kontovereinbarungen, die vor Inkrafttreten des Übereinkommens für diesen Staat nach Artikel 19 geschlossen wurden, die Absätze 3 und 4 an. Ein Vertragsstaat kann bei der Unterzeichnung, der Ratifikation, der Annahme, der Genehmigung oder dem Beitritt erklären, dass seine Gerichte diese Absätze nicht anwenden im Hinblick auf Kontovereinbarungen, die zwar nach Inkrafttreten des Übereinkommens nach Artikel 19 Absatz 1, jedoch vor seinem Inkrafttreten für diesen Staat nach Artikel 19 Absatz 2 geschlossen wurden. Ist der Vertragsstaat ein Mehrrechtsstaat, so kann er eine solche Erklärung in Bezug auf jede seiner Gebietseinheiten abgeben.

[3] Ausdrückliche Bestimmungen in einer Kontovereinbarung, die nach der für diese massgebenden Rechtsordnung die Anwendung der in einem bestimmten Staat oder einer Gebietseinheit eines bestimmten Mehrrechtsstaats geltenden Rechtsordnung auf eine der in Artikel 2 Absatz 1 genannten Fragen zur Folge hätten, haben die Wirkung, dass diese Rechtsordnung für alle in Artikel 2 Absatz 1 genannten Fragen massgebend ist, sofern der massgebliche Intermediär bei Abschluss der Vereinbarung eine Geschäftsstelle in diesem Staat hatte, welche die in Artikel 4 Absatz 1 Satz 2 genannte Bedingung erfüllte. Ein Vertragsstaat kann bei der Unterzeichnung, der Ratifikation, der Annahme, der Genehmigung oder dem Beitritt erklären, dass seine Gerichte diesen Absatz nicht anwenden im Hinblick auf eine in diesem Absatz beschriebene Kontovereinbarung, in der die Parteien ausdrücklich vereinbart haben, dass das Depotkonto in einem anderen Staat geführt wird. Ist der Vertragsstaat ein Mehrrechtsstaat, so kann er eine solche Erklärung in Bezug auf jede seiner Gebietseinheiten abgeben.

[4] Haben die Parteien einer Kontovereinbarung, auf die Absatz 3 nicht anwendbar ist, vereinbart, dass das Depotkonto in einem bestimmten Staat oder einer Gebietseinheit eines bestimmten Mehrrechtsstaats geführt wird, so ist auf alle in Artikel 2 Absatz 1 genannten Fragen die in diesem Staat oder dieser Gebietseinheit geltende Rechtsordnung anzuwenden, sofern der massgebliche Intermediär bei Abschluss der Vereinbarung eine Geschäftsstelle in diesem Staat hatte, welche die in Artikel 4 Absatz 1 Satz 2 genannte Bedingung erfüllte. Eine solche Vereinbarung kann ausdrücklich erfolgen oder sich aus der Gesamtheit der Vertragsbestimmungen oder aus den Begleitumständen ergeben.

Conventions de compte conclues et comptes de titres ouverts avant l'entrée en vigueur de la Convention

[1] Toute référence dans la présente Convention à une convention de compte vise également une convention de compte conclue avant l'entrée en vigueur de la présente Convention conformément à l'article 19(1). Toute référence dans la présente Convention à un compte de titres vise également un compte de titres ouvert avant l'entrée en vigueur de la présente Convention conformément à l'article 19(1).

[2] A moins qu'une convention de compte ne contienne une référence expresse à la présente Convention, les tribunaux d'un Etat contractant appliqueront les paragraphes (3) et (4) pour les besoins de l'application de l'article 4(1) aux conventions de compte conclues avant l'entrée en vigueur de la présente Convention dans cet Etat conformément à l'article 19. Un Etat contractant peut, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, faire une déclaration selon laquelle ses tribunaux n'appliqueront pas lesdits paragraphes aux conventions de compte conclues après l'entrée en vigueur de la présente Convention conformément à l'article 19(1), mais conclues avant l'entrée en vigueur de la présente Convention dans cet Etat conformément à l'article 19(2). Si l'Etat contractant est un Etat à plusieurs unités territoriales, il peut faire une telle déclaration pour l'une de ses unités territoriales.

[3] Toute clause expresse d'une convention de compte qui conduirait en vertu des règles de l'Etat dont la loi régit cette convention, à appliquer la loi en vigueur dans un Etat, ou dans une unité territoriale d'un Etat à plusieurs unités, à toute question mentionnée à l'article 2(1), aura pour effet que cette loi régit toutes les questions mentionnées à l'article 2(1), si l'intermédiaire pertinent avait, lors de la conclusion de la convention, un établissement dans cet Etat remplissant la condition prévue à la deuxième phrase de l'article 4(1). Un Etat contractant peut, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, faire une déclaration selon laquelle ses tribunaux n'appliqueront pas le présent paragraphe aux conventions de compte visées au présent paragraphe et dans lesquelles les parties ont expressément convenu que le compte de titres est maintenu dans un autre Etat. Si l'Etat contractant est un Etat à plusieurs unités territoriales, il peut faire une telle déclaration pour l'une de ses unités territoriales.

[4] Lorsque les parties à une convention de compte, autre que celles visées au paragraphe (3), ont convenu que le compte de titres serait maintenu dans un Etat ou dans une unité territoriale d'un Etat à plusieurs unités, la loi en vigueur dans cet Etat ou cette unité territoriale s'applique à toutes les questions mentionnées à l'article 2(1), si l'intermédiaire pertinent avait, lors de la conclusion de la convention, un établissement dans cet Etat remplissant la condition prévue à la deuxième phrase de l'article 4(1). Un tel accord peut être exprès ou résulter de manière implicite des dispositions du contrat dans son ensemble ou des circonstances extérieures à celui-ci.

Accordi sui conti conclusi e conti titoli aperti prima dell'entrata in vigore della convenzione

[1] Ogni riferimento nella presente convenzione a un accordo sul conto include un accordo sul conto concluso prima dell'entrata in vigore della presente convenzione conformemente all'articolo 19, paragrafo 1. Ogni riferimento nella presente convenzione a un conto titoli include un conto titoli aperto prima dell'entrata in vigore della presente convenzione conformemente all'articolo 19, paragrafo 1.

[2] Salvo che l'accordo sul conto contenga un riferimento esplicito alla presente convenzione, i tribunali di uno Stato contraente devono applicare i paragrafi 3 e 4 ai fini dell'applicazione dell'articolo 4, paragrafo 1 agli accordi sui conti conclusi prima dell'entrata in vigore della presente convenzione per tale Stato conformemente all'articolo 19. Uno Stato contraente può, al momento della firma, della ratifica, del- l'accettazione, dell'approvazione o dell'adesione fare una dichiarazione secondo la quale i suoi tribunali non applicheranno i predetti paragrafi agli accordi sui conti conclusi dopo l'entrata in vigore della presente convenzione conformemente all'articolo 19, paragrafo 1, ma prima dell'entrata in vigore della presente convenzione per tale Stato conformemente all'articolo 19, paragrafo 2. Se lo Stato contraente è uno Stato a più unità territoriali, può fare tale dichiarazione per una qualsiasi delle sue unità territoriali.

[3] Ogni clausola espressa dell'accordo sul conto che porterebbe, secondo le norme dello Stato la cui legge disciplina tale accordo, ad applicare la legge in vigore in uno Stato, o in una unità territoriale di uno Stato a più unità, a tutte le questioni indicate dall'articolo 2, paragrafo 1 ha per effetto che tale legge disciplina tutte le questioni indicate dall'articolo 2, paragrafo 1, purché l'intermediario di pertinenza abbia avuto, al momento della conclusione dell'accordo, un ufficio in tale Stato che soddisfaceva la condizione prevista nel secondo periodo dell'articolo 4, paragrafo 1. Uno Stato contraente può al momento della firma, della ratifica, dell'accettazione, dell'approvazione o dell'adesione fare una dichiarazione secondo la quale i suoi tribunali non applicheranno il presente paragrafo agli accordi sui conti di cui al presente paragrafo nei quali le parti abbiano convenuto espressamente che il conto titoli è tenuto in un altro Stato. Se lo Stato contraente è uno Stato a più unità territoriali, può fare tale dichiarazione per una qualsiasi delle sue unità territoriali.

[4] Se le parti dell'accordo sul conto, diverso dall'accordo cui al paragrafo 3, hanno convenuto che il conto titoli è tenuto in un determinato Stato, o in un'unità territoriale di uno Stato a più unità, la legge in vigore in tale Stato o in tale unità territoriale è la legge applicabile a tutte le questioni indicate dall'articolo 2, paragrafo 1 purché l'intermediario di pertinenza avesse, al momento della conclusione dell'accordo, un ufficio in tale Stato che soddisfaceva la condizione prevista nel secondo periodo dell'articolo 4, paragrafo 1. Tale accordo può essere espresso o risultare implicitamente dalle disposizioni del contratto nel suo insieme o dalle circostanze del caso.

Application of the HSC to Account Agreements Entered into and Securities Accounts Opened Before its Entry into Force

1 Pursuant to Art. 16(1) HSC, the HSC also applies to account agreements entered into and securities accounts opened before its entry into force. This rule is intended to prevent, as far as possible, the need for financial intermediaries to update all their account agreements after the entry into force of the HSC.[1] It presumes that financial market actors will adapt to the provisions of the HSC even before its entry into force.

2 Art. 16 HSC establishes a complex transitional system.[2] First, if an account agreement entered into before the entry into force of the HSC contains a choice of law that fulfils the requirements specified in Art. 4 HSC, this provision applies in determining the law applicable to rights in intermediated securities that are credited to the securities account which it governs. Secondly, in the absence of a valid choice of law within the meaning of Art. 4 HSC, Art. 16(3) and (4) HSC provide two rules of interpretation that make it possible nonetheless, under certain conditions, to recognize that a choice of law exists within the meaning of Art. 4 HSC. Thirdly, these two rules of interpretation cannot be used if the account agreement refers expressly to the HSC by way of anticipation (Art. 16(2) HSC). In such a case, the conditions of Art. 4 HSC must be satisfied before a valid choice of law can be recognized.

3 Art. 16(3) HSC sets out the first rule of interpretation as follows: if the account agreement was entered into before the entry into force of the HSC, and the parties to the agreement expressly designated the law applicable for at least one of the issues specified in Art. 2(1) HSC, that law governs all issues falling within the scope of the HSC. For example, if an account agreement (or one of its annexes) provides that securities credited to the account are automatically pledged in favor of the intermediary to secure a loan to the investor to buy securities, and it is expressly specified that the pledge is subject to a particular law, this choice of law may be extended to all the other issues falling within the scope of the HSC.[3] But the condition that there must be an express choice of law is not sufficient: the intermediary must, moreover, have a qualifying office in the State whose law has been chosen by the parties.[4] The latter requirement must be fulfilled at the time of signing the account agreement in which the choice of law is made. If the conditions of Art. 16(3) HSC are satisfied, the designation of the law applicable to one of the issues falling within the scope of the HSC is interpreted as a choice of law that is valid for all issues falling within its scope. Art. 4 HSC thus applies to determining the law governing the issues falling within the scope of the HSC. This

1 *Goode/Kanda/Kreuzer*, N 16-1.
2 *Bernasconi/Sigman,* Hague Securities Convention, pp. 137–140; *Deguée/Devos,* p. 29; *Girsberger*, Swiss Prospects, pp. 110–111.
3 The same view is held by: *Girsberger/Hess*, p. 1007.
4 See Cmt. Art. 4 HSC N 11–14.

rule of interpretation follows from the principle according to which the same law must apply to all rights in an intermediated security.[5]

Art. 16(4) HSC sets out the second rule of interpretation as follows: if the conditions for the application of Art. 16(3) HSC are not satisfied, but an account agreement was concluded before the entry into force of the HSC in which the parties specify the State in which the securities account is maintained, the law of that State is applicable to all issues specified in Art. 2(1) HSC. The application of this law presupposes, however, that the relevant intermediary has a qualifying office in that State at the time of signing the account agreement.[6] The agreement as to the place where the securities account is maintained may be express or may result implicitly from the terms of the account agreement or from external circumstances present at the time the agreement is signed. This condition will always be met in practice, since an indication in the account agreement of the office that maintains the account is sufficient[7] and account agreements generally indicate at least the address of the intermediary that maintains the securities account. If the conditions of Art. 16(4) HSC are satisfied, the designation of the State where the securities account is maintained is interpreted as a choice of law within the meaning of Art. 4 HSC. This provision may therefore apply to determining the law governing the issues falling within the scope of the HSC. 4

If the conditions for neither of these two rules of interpretation are satisfied, the applicable law will be determined by means of Art. 5 HSC. The same is true if the account agreement expressly refers ahead to the HSC and the conditions of Art. 4 HSC are not satisfied. 5

The Contracting States may make special declarations concerning the application of Art. 16 HSC.[8] Switzerland has not made any such declaration. 6

5 See Cmt. Art. 4 HSC N 4.
6 See Cmt. Art. 4 HSC N 11–14.
7 The same view is held by: *Girsberger/Hess*, p. 1007; *Peyer,* p. 968.
8 See Cmt. Art. 22 HSC N 1.

Chapter V: Final Clauses

Art. 17

Signature, ratification, acceptance, approval or accession

[1] This Convention shall be open for signature by all States.

[2] This Convention is subject to ratification, acceptance or approval by the signatory States.

[3] Any State which does not sign this Convention may accede to it at any time.

[4] The instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, Depositary of this Convention.

Unterzeichnung, Ratifikation, Annahme, Genehmigung oder Beitritt

[1] Dieses Übereinkommen liegt für alle Staaten zur Unterzeichnung auf.

[2] Dieses Übereinkommen bedarf der Ratifikation, Annahme oder Genehmigung durch die Unterzeichnerstaaten.

[3] Jeder Staat, der dieses Übereinkommen nicht unterzeichnet, kann ihm jederzeit beitreten.

[4] Die Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunden werden beim Ministerium für Auswärtige Angelegenheiten des Königreichs der Niederlande, dem Depositar dieses Übereinkommens, hinterlegt.

Signature, Ratification, Acceptation, Approbation ou Adhésion

[1] La présente Convention est ouverte à la signature de tous les Etats.

[2] La présente Convention est sujette à ratification, acceptation ou approbation des Etats signataires.

[3] Un Etat qui ne signe pas la présente Convention peut y adhérer à tout moment.

[4] Les instruments de ratification, d'acceptation, d'approbation ou d'adhésion seront déposés auprès du Ministère des Affaires Etrangères du Royaume des Pays-Bas, Dépositaire de la présente Convention.

Firma, ratifica, accettazione, approvazione o adesione

[1] La presente convenzione è aperta alla firma di tutti gli Stati.

[2] La presente convenzione sarà ratificata, accettata o approvata dagli Stati firmatari.

[3] Uno Stato che non abbia firmato la presente convenzione può aderirvi in qualunque momento.

[4] Gli strumenti di ratifica, accettazione, approvazione o adesione saranno depositati presso il Ministero degli Affari esteri del Regno dei Paesi Bassi, depositario della presente convenzione.

Signature, Ratification, Acceptance, Approval, and Accession to the HSC

Art. 17 HSC specifies that the HSC is open for signature by all States, without distinction between Member States and non-members of the Hague Conference on Private International Law.[1] Each State has a choice between two different methods for becoming a Contracting State to the HSC. The first method consists in signing the HSC and then depositing an instrument of ratification, acceptance, or approval of the HSC. The second consists in depositing an instrument of accession to the HSC. In both cases, the deposit is made to the Depositary of the HSC, namely, the Ministry of Foreign Affairs of the Kingdom of the Netherlands. 1

Switzerland used the first method: it signed the HSC on 5 July 2006 and ratified it on 14 September 2009. 2

[1] *Cashin Ritaine*, pp. 86–87.

Art. 18

Regional Economic Integration Organisations

[1] A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

[2] The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the Depositary in writing specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary in writing of any changes to the distribution of competence specified in the notice in accordance with this paragraph and any new transfer of competence.

[3] Any reference to a "Contracting State" or "Contracting States" in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

Organisationen der regionalen Wirtschaftsintegration

[1] Eine Organisation der regionalen Wirtschaftsintegration, die von souveränen Staaten gebildet wird und für bestimmte durch dieses Übereinkommen erfasste Fragen zuständig ist, kann dieses Übereinkommen ebenso unterzeichnen, annehmen, genehmigen oder ihm beitreten. Die Organisation der regionalen Wirtschaftsintegration hat in diesem Fall die Rechte und Pflichten eines Vertragsstaats in dem Umfang, in dem sie für Fragen zuständig ist, die durch dieses Übereinkommen erfasst sind. Sofern in diesem Übereinkommen die Zahl der Vertragsstaaten massgeblich ist, zählt die Organisation der regionalen Wirtschaftsintegration nicht als weiterer Vertragsstaat zusätzlich zu ihren Mitgliedstaaten, die Vertragsstaaten sind.

[2] Die Organisation der regionalen Wirtschaftsintegration notifiziert dem Depositar bei der Unterzeichnung, der Annahme, der Genehmigung oder dem Beitritt schriftlich die durch dieses Übereinkommen erfassten Fragen, für die ihr von ihren Mitgliedstaaten die Zuständigkeit übertragen wurde. Die Organisation der regionalen Wirtschaftsintegration notifiziert dem Depositar schriftlich umgehend jede Veränderung in der Verteilung der in der Notifikation nach diesem Absatz bezeichneten Zuständigkeit sowie jede neu übertragene Zuständigkeit.

[3] Eine Bezugnahme in diesem Übereinkommen auf einen «Vertragsstaat» oder «Vertragsstaaten» gilt gleichermassen für eine Organisation der regionalen Wirtschaftsintegration, wenn der Zusammenhang dies erfordert.

Organisations régionales d'intégration économique

[1] Une organisation régionale d'intégration économique constituée par des Etats souverains et ayant compétence sur certaines matières régies par la présente Convention peut également signer, accepter et approuver la présente Convention ou y adhérer. En pareil cas, l'organisation régionale d'intégration économique aura les mêmes droits et obligations qu'un Etat contractant, dans la mesure où cette organisation a compétence sur des matières régies par la présente Convention. Lorsque le nombre d'Etats contractants est pertinent dans la présente Convention, l'organisation régionale d'intégration économique n'est pas comptée comme Etat contractant en plus de ses Etats membres qui sont des Etats contractants.

[2] Au moment de la signature, de l'acceptation, de l'approbation ou de l'adhésion, l'organisation régionale d'intégration économique notifie au Dépositaire par écrit les matières régies par la présente Convention pour lesquelles ses Etats membres ont délégué leur compétence à cette organisation. L'organisation régionale d'intégration économique doit notifier sans retard au Dépositaire, par écrit, toute modification intervenue dans la délégation de compétence précisée dans la notification faite en vertu du présent paragraphe, ainsi que toute nouvelle délégation de compétence.

[3] Toute référence à «Etat contractant» ou «Etats contractants» dans la présente Convention s'applique également à une organisation régionale d'intégration économique, lorsque le contexte requiert qu'il en soit ainsi.

Organizzazioni regionali di integrazione economica

[1] Un'organizzazione regionale d'integrazione economica costituita da Stati sovrani e avente competenza su talune materie disciplinate dalla presente convenzione può anch'essa firmare, accettare e approvare la presente convenzione o aderirvi. In tal caso l'organizzazione regionale di integrazione economica avrà gli stessi diritti e obblighi di uno Stato contraente nella misura in cui tale organizzazione ha competenza su materie disciplinate dalla presente convenzione. Quando il numero di Stati contraenti è rilevante nella presente convenzione, l'organizzazione regionale di integrazione economica non è computata come Stato contraente in aggiunta ai suoi Stati membri che siano Stati contraenti.

[2] Al momento della firma, dell'accettazione, dell'approvazione o dell'adesione, l'organizzazione regionale di integrazione economica notifica per iscritto al depositario le materie disciplinate dalla presente convenzione per le quali i suoi Stati membri le hanno delegato la loro competenza. L'organizzazione regionale di integrazione economica notifica per iscritto senza indugio al depositario qualunque modifica intervenuta nella delega di competenza precisata nella notifica fatta in

virtù del presente paragrafo, nonché qualunque nuova delega di competenza.

[3] Ogni riferimento a «Stato contraente» o «Stati contraenti» nella presente convenzione si applica altresì ad un'organizzazione regionale di integrazione economica quando il contesto lo richieda.

Regional Economic Integration Organizations

1 Art. 18 HSC allows regional economic integration organizations constituted by sovereign States to accede to the HSC on the same terms as States. This provision applies in particular to the European Community, which has competence to enter into international conventions in this area.

2 However, only States may ratify the HSC. For this reason, regional economic integration organizations will not count as Contracting States in addition to their member States with regard to reaching the required number of three Contracting States for the HSC to enter into force.[1]

[1] See Art. 19 HSC.

Art. 19

Entry into force

[1] This Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Article 17.

[2] Thereafter this Convention shall enter into force

a) for each State or Regional Economic Integration Organisation referred to in Article 18 subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b) for a territorial unit to which this Convention has been extended in accordance with Article 20(1), on the first day of the month following the expiration of three months after the notification of the declaration referred to in that Article.

Inkrafttreten

[1] Dieses Übereinkommen tritt am ersten Tag des Monats in Kraft, der auf einen Zeitabschnitt von drei Monaten nach Hinterlegung der dritten Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunde gemäss Artikel 17 folgt.

[2] Danach tritt dieses Übereinkommen wie folgt in Kraft:

a) für jeden Staat oder jede Organisation der regionalen Wirtschaftsintegration nach Artikel 18, der oder die das Übereinkommen später ratifiziert, annimmt, genehmigt oder ihm beitritt, am ersten Tag des Monats, der auf einen Zeitabschnitt von drei Monaten nach Hinterlegung seiner oder ihrer Ratifikations-, Annahme-, Genehmigungs- oder Beitrittsurkunde folgt;

b) für jede Gebietseinheit, auf die dieses Übereinkommen nach Artikel 20 Absatz 1 erstreckt worden ist, am ersten Tag des Monats, der auf einen Zeitabschnitt von drei Monaten nach der Notifikation der in jenem Artikel genannten Erklärung folgt.

Entrée en vigueur

[1] La présente Convention entrera en vigueur le premier jour du mois suivant l'expiration d'une période de trois mois après le dépôt du troisième instrument de ratification, d'acceptation, d'approbation ou d'adhésion prévu par l'article 17.

[2] Par la suite, la présente Convention entrera en vigueur:

a) pour chaque Etat ou organisation régionale d'intégration économique au sens de l'article 18 ratifiant, acceptant, approuvant ou y adhérant postérieurement, le premier jour du mois suivant l'expiration d'une période de trois mois après le dépôt de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion;

b) pour les unités territoriales auxquelles la présente Convention a été étendue conformément à l'article 20(1), le premier jour du mois suivant l'expiration d'une période de trois mois après la notification de la déclaration visée dans ledit article.

Entrata in vigore

[1] La presente convenzione entra in vigore il primo giorno del quarto mese successivo al deposito del terzo strumento di ratifica, di accettazione, di approvazione o di adesione di cui all'articolo 17.

[2] Successivamente la presente convenzione entra in vigore:
a) per ciascuno Stato o organizzazione regionale di integrazione economica ai sensi dell'articolo 18 che ratifica, accetta, approva o aderisce successivamente, il primo giorno del quarto mese successivo al deposito del suo strumento di ratifica, di accettazione, di approvazione o di adesione;
b) per le unità territoriali alle quali la presente convenzione è stata estesa conformemente all'articolo 20, paragrafo 1, il primo giorno del quarto mese successivo alla notifica della dichiarazione di cui al predetto articolo.

Entry into Force of the HSC

1 Pursuant to Art. 19(1) HSC, the HSC will enter into force on the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance, approval, or accession. Thereafter it will enter into force for each new State acceding to the HSC on the expiration of a period of three months after the deposit of its instrument of ratification, acceptance, approval, or accession (Art. 19(2) HSC).

2 Switzerland was the first State to ratify the HSC, depositing its instrument of ratification on 14 September 2009. It was followed by the Republic of Mauritius on 15 October 2009. Since no other State has ratified the HSC, it has not yet entered into force at international level. The HSC did, however, enter into force for Switzerland on 1 January 2010, having been incorporated directly into Swiss Private International Law Act (Art. 108*c* SPILA). The HSC will thus apply as a national law in Switzerland until it enters into force at international level.[1] Thereafter it will have international treaty status.

3 Since only States may ratify the HSC,[2] the deposit of an instrument of acceptance, approval, or accession by a regional economic integration organization does not count for the purposes of Art. 19(1) HSC. Hence, should the European Community accede to the HSC it will not be regarded as a Contracting State for the purpose of reaching the required number of three Contracting States for the HSC to enter into force. Only EU Member States which have ratified the HSC (once they are allowed to do so) may count for the purpose of the entry into force of the HSC.

[1] See Conflict of Laws – Prel. Remarks N 9.
[2] See Cmt. Art. 18 HSC N 2.

Art. 20

Multi-unit States

[1] A Multi-unit State may, at the time of signature, ratification, acceptance, approval or accession, make a declaration that this Convention shall extend to all its territorial units or only to one or more of them.

[2] Any such declaration shall state expressly the territorial units to which this Convention applies.

[3] If a State makes no declaration under paragraph (1), this Convention extends to all territorial units of that State.

Mehrrechtsstaaten

[1] Ein Mehrrechtsstaat kann bei der Unterzeichnung, der Ratifikation, der Annahme, der Genehmigung oder dem Beitritt erklären, dass dieses Übereinkommen sich auf alle seine Gebietseinheiten oder nur auf eine oder mehrere derselben erstreckt.

[2] In dieser Erklärung sind ausdrücklich die Gebietseinheiten zu benennen, in denen dieses Übereinkommen Anwendung findet.

[3] Gibt ein Staat keine Erklärung nach Absatz 1 ab, so erstreckt sich dieses Übereinkommen auf alle Gebietseinheiten dieses Staates.

Etats
à plusieurs unités

[1] Un Etat à plusieurs unités peut, au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion, faire une déclaration ayant pour effet que la présente Convention s'appliquera à toutes ses unités territoriales ou uniquement à l'une ou à plusieurs d'entre elles.

[2] Ces déclarations devront indiquer expressément les unités territoriales auxquelles la présente Convention s'applique.

[3] Si un Etat ne fait pas de déclaration en vertu du paragraphe (1), la présente Convention s'appliquera à l'ensemble du territoire de cet Etat.

Stati a più unità

[1] Uno Stato a più unità può, al momento della firma, della ratifica, dell'accettazione, dell'approvazione o dell'adesione fare una dichiarazione secondo la quale la presente convenzione si applica a tutte le sue unità territoriali o unicamente ad una o alcune di loro.

[2] Le predette dichiarazioni indicano espressamente le unità territoriali alle quali la presente convenzione si applica.

[3] Se uno Stato non fa alcuna dichiarazione a norma del paragrafo 1, la presente convenzione si applicherà a tutte le unità territoriali di tale Stato.

Scope of the HSC for Multi-Unit States

1 Art. 20 HSC permits multi-unit States to make a declaration that the HSC shall extend either to all their territorial units or only to one or more of them.[1] In the absence of such a declaration, the HSC extends to all territorial units of such States.

2 The concept of a multi-unit State is defined in Art. 1(1)(m) HSC and refers to States having more than one legal system within their territory, i.e. mainly federal States. These include Switzerland, Canada, the United States of America, China, the Russian Federation, Denmark, Australia, Spain, and the United Kingdom.[2] Switzerland has not made any particular declaration based on its status as a multi-unit State.

[1] See Cmt. Art. 22 HSC N 1.
[2] *Cashin Ritaine*, pp. 89–91.

Art. 21

Reservations	**No reservation to this Convention shall be permitted.**
Vorbehalte	Vorbehalte zu diesem Übereinkommen sind nicht zulässig.
Réserves	Aucune réserve à la présente Convention n'est admise.
Riserve	Alla presente convenzione non è ammessa alcuna riserva.

No Reservations to the HSC

The HSC does not permit Contracting States to make any reservations whatsoever (Art. 21 HSC). However, Contracting States may make declarations specifying the scope of the HSC within their territory (Art. 22 HSC). 1

Art. 22

Declarations

For the purposes of Articles 1(5), 12(3) and (4), 16(2) and (3) and 20
a) any declaration shall be notified in writing to the Depositary;
b) any Contracting State may modify a declaration by submitting a new declaration at any time;
c) any Contracting State may withdraw a declaration at any time;
d) any declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned; any declaration made at a subsequent time and any new declaration shall take effect on the first day of the month following the expiration of three months after the date on which the Depositary made the notification in accordance with Article 24;
e) a withdrawal of a declaration shall take effect on the first day of the month following the expiration of six months after the date on which the Depositary made the notification in accordance with Article 24.

Erklärungen

Für die Zwecke des Artikels 1 Absatz 5, des Artikels 12 Absätze 3 und 4, des Artikels 16 Absätze 2 und 3 sowie des Artikels 20 gilt Folgendes:
a) Jede Erklärung wird dem Depositar schriftlich notifiziert;
b) jeder Vertragsstaat kann eine Erklärung jederzeit durch Abgabe einer neuen Erklärung ändern;
c) jeder Vertragsstaat kann eine Erklärung jederzeit zurücknehmen; jede bei der Unterzeichnung, der Ratifikation, der Annahme, der Genehmigung oder dem Beitritt abgegebene Erklärung wird gleichzeitig mit dem Inkrafttreten dieses Übereinkommens für den betreffenden Staat wirksam; jede später abgegebene Erklärung und jede neue Erklärung wird am ersten Tag des Monats wirksam, der auf einen Zeitabschnitt von drei Monaten nach dem Tag folgt, an dem der Depositar sie nach Artikel 24 notifiziert hat;
d) eine Rücknahme einer Erklärung wird am ersten Tag des Monats wirksam, der auf einen Zeitabschnitt von sechs Monaten nach dem Tag folgt, an dem der Depositar sie nach Artikel 24 notifiziert hat.
e) eine Rücknahme einer Erklärung wird am ersten Tag des Monats wirksam, der auf einen Zeitabschnitt von sechs Monaten nach dem Tag folgt, an dem der Depositar sie nach Artikel 24 notifiziert hat.

Déclarations

Aux fins des articles 1(5), 12(3) et (4), 16(2) et (3), et 20:
a) toute déclaration doit être notifiée par écrit au Dépositaire;
b) tout Etat contractant peut à tout moment modifier une déclaration en faisant une nouvelle déclaration;
c) tout Etat contractant peut retirer une déclaration à tout moment;
d) toute déclaration faite au moment de la signature, de la ratification, de l'acceptation, de l'approbation ou de l'adhésion prend effet simultanément avec l'entrée en vigueur de la présente Convention pour l'Etat concerné; toute déclaration faite à un moment ultérieur

et toute nouvelle déclaration prendra effet le premier jour du mois suivant l'expiration d'un délai de trois mois après la date de la notification faite par le Dépositaire conformément à l'article 24;

e) un retrait d'une déclaration prendra effet le premier jour du mois suivant l'expiration d'un délai de six mois après la date de la notification faite par le Dépositaire conformément à l'article 24.

Dichiarazioni

Ai fini dell'articolo 1, paragrafo 5, dell'articolo 12, paragrafi 3 e 4, dell'articolo 16, paragrafi 2 e 3 e dell'articolo 20:

a) ogni dichiarazione sarà notificata per iscritto al depositario;
b) ogni Stato contraente può modificare in qualsiasi momento una dichiarazione facendo una nuova dichiarazione;
c) ogni Stato contraente può ritirare in qualsiasi momento una dichiarazione;
d) ogni dichiarazione fatta al momento della firma, della ratifica, dell'accettazione, dell'approvazione o dell'adesione ha efficacia simultaneamente all'entrata in vigore della presente convenzione per lo Stato in questione; ogni dichiarazione effettuata in un momento successivo e ogni nuova dichiarazione ha efficacia il primo giorno del quarto mese successivo alla notifica fatta dal depositario conformemente all'articolo 24;
e) il ritiro di una dichiarazione ha efficacia il primo giorno del settimo mese successivo alla notifica fatta dal depositario conformemente all'articolo 24.

Declarations Regarding the Scope of the HSC in Contracting States

Art. 22 HSC stipulates the procedure for making special declarations authorized by the HSC. These declarations are intended to specify the scope of the HSC within the territory of the States who make them.[1] Switzerland has not made any declaration. 1

[1] *Cashin Ritaine*, pp. 87–88.

Art. 23

Denunciation

[1] A Contracting State may denounce this Convention by a notification in writing to the Depositary. The denunciation may be limited to certain territorial units of a Multi-unit State to which this Convention applies.

[2] The denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which the notification is received by the Depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the Depositary.

Kündigung

[1] Jeder Vertragsstaat kann dieses Übereinkommen durch eine an den Depositar gerichtete schriftliche Notifikation kündigen. Die Kündigung kann sich auf bestimmte Gebietseinheiten eines Mehrrechtsstaats beschränken, auf die das Übereinkommen angewendet wird.

[2] Die Kündigung wird am ersten Tag des Monats wirksam, der auf einen Zeitabschnitt von zwölf Monaten nach Eingang der Notifikation beim Depositar folgt. Ist in der Notifikation für das Wirksamwerden der Kündigung ein längerer Zeitabschnitt angegeben, so wird die Kündigung nach Ablauf des entsprechenden Zeitabschnitts nach Eingang der Notifikation beim Depositar wirksam.

Dénonciation

[1] Tout Etat contractant pourra dénoncer la présente Convention par une notification par écrit au Dépositaire. La dénonciation pourra se limiter à certaines unités territoriales d'un Etat à plusieurs unités auxquelles s'applique la Convention.

[2] La dénonciation prendra effet le premier jour du mois suivant l'expiration d'une période de douze mois après la date de réception de la notification par le Dépositaire. Lorsqu'une période plus longue pour la prise d'effet de la dénonciation est spécifiée dans la notification, la dénonciation prendra effet à l'expiration de la période en question après la date de réception de la notification par le Dépositaire.

Denuncia

[1] Ogni Stato contraente può denunciare la presente convenzione mediante una notifica scritta al depositario. La denuncia può limitarsi a alcune unità territoriali di uno Stato a più unità alle quali si applica la convenzione.

[2] La denuncia ha efficacia il primo giorno del tredicesimo mese successivo alla data di ricezione della notifica da parte del depositario. Quando nella notifica è indicato un periodo più lungo per l'entrata in vigore della denuncia, quest'ultima ha efficacia alla scadenza del predetto periodo a decorrere dalla data di ricezione della notifica da parte del depositario.

Denunciation of the HSC

Art. 23 HSC stipulates the procedure for leaving the HSC. A Contracting State may leave the HSC only by way of a denunciation. 1

Art. 24

Notifications by the Depositary

The Depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded in accordance with Articles 17 and 18, of the following

a) the signatures and ratifications, acceptances, approvals and accessions referred to in Articles 17 and 18;
b) the date on which this Convention enters into force in accordance with Article 19;
c) the declarations and withdrawals of declarations referred to in Article 22;
d) the notifications referred to in Article 18(2);
e) the denunciations referred to in Article 23.

Notifikationen durch den Depositar

Der Depositar notifiziert den Mitgliedern der Haager Konferenz für Internationales Privatrecht sowie den anderen Staaten und Organisationen der regionalen Wirtschaftsintegration, die nach den Artikeln 17 und 18 das Übereinkommen unterzeichnet, ratifiziert, angenommen oder genehmigt haben oder ihm beigetreten sind,

a) jede Unterzeichnung, Ratifikation, Annahme und Genehmigung und jeden Beitritt nach den Artikeln 17 und 18;
b) den Tag, an dem dieses Übereinkommen nach Artikel 19 in Kraft tritt;
c) jede Erklärung und jede Rücknahme einer Erklärung nach Artikel 22;
d) jede Notifikation nach Artikel 18 Absatz 2;
e) jede Kündigung nach Artikel 23.

Notifications par le Dépositaire

Le Dépositaire notifiera aux Membres de la Conférence de La Haye de droit international privé, ainsi qu'aux autres Etats et aux organisations régionales d'intégration économique qui ont signé, ratifié, accepté, approuvé ou adhéré conformément aux articles 17 et 18, les renseignements suivants:

a) les signatures et ratifications, acceptations, approbations et adhésions prévues aux articles 17 et 18;
b) la date d'entrée en vigueur de la présente Convention conformément à l'article 19;
c) les déclarations et retraits des déclarations prévues à l'article 22;
d) les notifications prévues à l'article 18(2);
e) les dénonciations prévues à l'article 23.

Notifiche da parte del depositario

Il depositario notifica ai membri della conferenza dell'Aia di diritto internazionale privato nonché agli altri Stati e alle organizzazioni regionali di integrazione economica che hanno firmato, ratificato, accettato, approvato o aderito conformemente agli articoli 17 e 18 le seguenti informazioni:

a) le firme e le ratifiche, le accettazioni, le approvazioni e le adesioni previste agli articoli 17 e 18;
b) la data di entrata in vigore della presente convenzione conformemente all'articolo 19;
c) le dichiarazioni e i ritiri di dichiarazioni previsti dall'articolo 22;
d) le notifiche previste dall'articolo 18, paragrafo 2;
e) le denunce previste dall'articolo 23.

Notifications by the Depositary

Art. 24 HSC specifies the responsibilities of the Depositary of the HSC, namely the Ministry of Foreign Affairs of the Kingdom of the Netherlands. 1