

Conference 24 March 2014

Intermediated Securities and Investor Rights

10.00–18.30



Background

Debt and equity securities are frequently held through chains of intermediaries referred to as custodians. These custody chains have become so complex that investors can find it difficult to effectively enforce rights arising out of securities held across borders. In the recent UK decision in *Eckerle v Wickeder Westfalenstahl GmbH*¹ German investors could not exercise rights as shareholders in a UK company. The company was registered in the UK and listed in Germany. Shares were held through a chain of three intermediaries. This occurred notwithstanding the fact that the issuer had made arrangements in its articles taking advantage of the Shareholder Rights Directive 2007 as implemented in the UK.

Unidroit adopted a Convention on Substantive Rules for Intermediated Securities in 2009. The Convention was designed to overcome differences in law and to eliminate some of the legal risk involved in cross border holdings. The work carried out in preparation for the Convention and the Convention itself have improved the understanding of the legal regimes underpinning holding structures. The Convention however has also shown that harmonised substantive legal rules can only make a limited contribution to eliminating legal risk in cross border holding structures.

The European Commission has been trying for years to adopt an instrument harmonising property laws relating to intermediated securities and has recently proposed to harmonise the regulatory regime underpinning custodians.

At the same time the business model of intermediaries has changed. Regulatory changes have caused participants in financial markets to require an increasing amount of collateral. Intermediaries have become involved in facilitating the lending of securities between participants. They also facilitate repurchase transactions. Securities highways have been introduced enabling participants to move securities across borders more quickly. In an event of default this has the potential to make it even more difficult for investors to exercise rights arising out of securities.

The aim of the conference is to determine if against this background the law is able to ensure that securities continue to be negotiable. Is it possible to conclude that holding and lending chains have become so complex and inter-connected that investors are systemically compromised in their ability to exercise rights against issuers? Is it possible to develop a solution that would overcome this problem? To what extent can regulation make a contribution?

¹ UK High Court 23 January 2013 [2013] EWHC 68 (Ch).

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Organiser: Dr Eva Micheler

Places are limited and will be reserved on a 'first come, first served' basis. To register for the workshop, please email: Law.Events@lse.ac.uk

Programme

- 10.00–10.30 **Registration**
- 10.30–11.00 **Setting the Scene**
Professor John Kay, Market Infrastructure and Investor Rights
- 11.00–11.30 David Hertzell (Law Commissioner for England and Wales), Fiduciary Duties and Remoteness: The Law Commission's project on Fiduciary Duties and Investment Intermediaries
- 11.30–12.00 Dr Eva Micheler (LSE), Custody Chains and Remoteness
- 12.30–13.30 **Lunch**
- 13.30–15.30 **The Ability of Private Law to Facilitate the Enforcement of Investor Rights**
Professor Charles W Mooney, Jr (Penn Law, Philadelphia) (chair)
Professor Matthias Lehmann (Martin Luther University, Halle-Wittenberg), Limitations of the Functional Approach Adopted by the UNIDROIT Convention on Intermediated Securities
Dr Philipp Paech (LSE), CCPs, Netting and the Enforcement of Investor Rights
Elena Zaccaria (LSE), Omnibus Accounts and Investor Rights
Sarah Paterson (LSE), Custody Chains and Corporate Rescue
Dr Karin Wallin-Norman (Department of Business Law, Linköping University), The Nordic Systems as a Role Model
- 15.30–16.00 **Coffee**
- 16.00–18.30 **The Ability of Regulation to Facilitate the Enforcement of Investor Rights**
Professor Rüdiger Veil (Bucerius Law School, Hamburg) (chair)
Klaus Löber (Bank for International Settlements), Systemic Risk and Investor Rights – a Global Regulatory Perspective
Dr Pablo Iglesias-Rodriguez (VU University Amsterdam), Regulation of CCPs and the Enforcement of Investor Rights
Dr Matteo Solinas (University of Glasgow), Regulation of Securities Depositories and the Enforcement of Investor Rights
Pierre Beck (Banque centrale du Luxembourg), Target2Securities Project and Investor Rights
- 18.30–20.00 **Drinks**
8th Floor, New Academic Building.



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