CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

AFFAIRES GÉNÉRALES
GENERAL AFFAIRS

Doc. prél. No 15
Prel. Doc. No 15

Juin/June 2001

OBSERVATIONS SUR LE PROGRAMME DE TRAVAIL FUTUR DE LA CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

(Convention sur la loi applicable aux droits réels portant sur des titres intermédiés)

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COMMENTS ON THE FUTURE WORK PROGRAMME OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

(Convention on the Law Applicable to Proprietary Rights in Indirectly Held Securities)

Document préliminaire No 15 de juin 2001
à l'intention de la Dix-neuvième session

Preliminary Document No 15 of June 2001
for the attention of the Nineteenth Session

Doc. prél. No 15 A
Prel. Doc. No 15 A

Juin/June 2001

18 June 2001

Mr H Van Loon
Secretary General
Hague Conference on Private International Law
6 Scheveningseweg 2517
The Hague
Netherlands

Dear Secretary General,

At the Special Commission on General Affairs and Policy of the Hague Conference held in May 2000, the Governments of Australia, the United Kingdom and the United States suggested that work be undertaken by the Hague Conference on the topic of the law applicable to dispositions of indirectly held securities.

The Special Commission determined that the feasibility of this project should be examined by a working group open to all Member States and interested parties. Consequently, the Permanent Bureau prepared a report on the topic and a meeting of experts was held at the Hague in January 2001. In preparation for that meeting, the Permanent Bureau arranged various global conference calls and informal meetings with interested parties, including market participants.

The Australian Government is very pleased with the progress that has been made to date and congratulates the Permanent Bureau on the way it has handled this project. In only a year the Permanent Bureau, and in particular Mr Christophe Bernasconi acting in co-operation with the Legal Expert to the Permanent Bureau Mr Richard Potok, has significantly advanced the project. A thorough preliminary report and drafts of key provisions for a Convention were prepared. More recently, the Permanent Bureau has produced another detailed Report on the results of the working group of experts in January and on the informal work undertaken prior to and after the January meeting. The Australian Government appreciates the fact that the informal working process is embodied in official records, making the process as transparent and open as possible. In the last month, discussions arranged by the Permanent Bureau of various experts have resulted in a new draft of key provisions and we understand that agreement can be expected on provisions that adopt the PRIMA doctrine in a manner that is consistent both with common law and civil law principles.

The Australian Government strongly supports the addition of this topic to the official working agenda of the Hague Conference and proposes that a preliminary draft Convention be prepared on an accelerated basis for consideration by a Diplomatic Conference during 2002. For this goal to be achieved, we believe that the informal work should continue and the Permanent Bureau should organize and conduct informal meetings and conference calls in the manner used to date. The informal work should continue in a way that ensures as much as possible that the process is open to all, is transparent and that official reports keep national delegations informed of developments.

I would be grateful if this letter could be distributed to all the delegations attending Commission I of the 19th Diplomatic Session of the Hague Conference.

Yours sincerely,

David Bennett QC
Solicitor General for Australia

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20. June 2001

Mr Hans Van Loon
Secretary General
Hague Conference on Private International Law
6, Scheveningseweg
2517 KT The Hague
Netherlands

Convention on the Law Applicable to Dispositions of Securities Held through Indirect Holding Systems

Dear Secretary General

According to a decision by the Special Commission on General Affairs and Policy of the Hague Conference in May 2000, The Permanent Bureau has taken up work on the above-mentioned subject. A first report was prepared and a meeting of experts took place in January 2001. In February of this year, Member States of the Conference received the last of several drafts, elaborated at the meeting of experts, in the course of informal meetings with interested parties and during conference calls. The results of the meeting of experts as well as of the informal working process have been reflected in a second extensive report. Furthermore, a revised draft is expected in the near future.

We would like to congratulate the Permanent Bureau on the way it has handled the project until now. The informal working process has shown to be extremely efficient, and has been accompanied by regular and extensive information to the Member States; hence, the informal process has remained as transparent as

possible. The planned Special Commission meeting of January, 2002 will be the next important step of this project.

Informal consultations in Switzerland have shown that the project will likely fill a considerable gap in the legal framework of banking transactions. The principle of PRIMA (Articles 3 and 4 of the draft) was broadly endorsed. However, it was also felt that the respective text should still be clarified.

Given the practical importance to create legal certainty in the field of securities dealings, we think that the draft Convention is going in the right direction. We will continue to support the work on the Convention and, given the importance and the urgency of the project, we hope that it will be finalised soon after the Special Commission Meeting of January, 2002.

In this spirit, we strongly support the formal addition of this topic to the working agenda of the Hague Conference. Furthermore, it would be very welcome if a Diplomatic Conference could still be arranged for 2002.

Yours sincerely,

FEDERAL OFFICE OF JUSTICE
Head, Section for Private
International and Civil Procedural Law

Alexander Markus

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Prel. Doc. No 15 C

Juin/June 2001

ICSA

INTERNATIONAL COUNCILS OF SECURITIES ASSOCIATIONS

Communiqué of the 14th Annual General Meeting, 2001
Paris, France

Extract

The International Councils of Securities Associations (ICSA) met on May 13-15, 2001, in Paris, France, to discuss, initiate and endorse actions affecting their respective capital markets and securities industries, with the goal of maximizing the benefits to investors and firms of technological change and globalization while also promoting the sound growth of the international financial market. Delegates welcomed the Australian Financial Markets Association (AFMA) as a new ICSA member. ICSA is now composed of 15 members representing the securities industry in 11 nations and accounting for the overwhelming majority of the world's equity, bond and derivatives markets.

[…]

ICSA delegates reviewed recent developments in the international effort to provide greater legal certainty for securities held as collateral through multiple tiers of intermediaries. The key question in this area is which jurisdiction's law applies to the proprietary effects of dealings in such indirectly-held securities. ICSA members strongly support the conclusion reached by a meeting of legal experts at the Hague Conference on Private International Law in January 2001. The legal experts concluded that the place of the relevant intermediary approach (PRIMA) is the appropriate conflict of laws rule for disposition of securities held through indirect holding systems. PRIMA is to be the basis of an international convention that is to be adopted in 2002. ICSA endorses PRIMA and supports the work of the Hague Conference on this project. ICSA members agreed to stress the importance of a speedy completion of the Convention with their respective national governments.

[…]

The members of ICSA are as follows:

Association Francaise des Entreprises d'Investissement, France
Australian Financial Markets Association, Australia
Chinese Securities Association, Republic of China
International Banks and Securities Association of Australia, Australia
International Primary Market Association, International (based in London)
International Securities Market Association, International (based in Switzerland)
Investment Dealers Association of Canada, Canada
Italian Association of Financial Intermediaries, Italy
Japan Securities Dealers Association, Japan
London Investment Banking Association, UK
National Association of Securities Dealers, Inc., United States
Securities Industry Association, United States*
Swedish Securities Dealers Association, Sweden
The Bond Market Association, United States
The Korea Securities Dealers Association, Korea

Attending as Observers:

Association Professionnelle des Societes de Bourse, Morocco
Bond Exchange of South Africa, South Africa

*ICSA Secretariat