

**ACG Legal Task Force: The application of law in cross-border transactions**  
**【QUESTIONNAIRE】**

- **Contact Information of your organization**

Organization Name:

Contact person and title:

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Function: CSD、CCP、CSD/CCP、Other(Please specify:        )

**Part I. The current status of the domestic laws for securities settlement**

- Questions in Part I. are prepared for the basic comprehension of the overall legal framework regarding the securities settlement in your country. Answers about these questions will be an important basis for an accurate understanding of answers about questions in Part II, III and IV.

- Laws related to the securities settlement

Q1. Do you have any laws which regulate depository, settlement, etc. of securities in your country?

Yes

(Please specify the name of the law. \*if possible, with link of the English translated version:        )

No (= depository, settlement, etc. of securities are regulated only by the regulations and rules of CSD)

Note:
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- Securities holding system

Q2. Please describe an outline of the securities holding system of your country and illustrate your securities holding system in the Answer Sheet (separately attached PowerPoint format sheet).

(To see the example of securities holding system, please see the slide 8 of Appendix I)

Note:

- Securities regulated by the domestic law

Q3. Under your country's domestic law(s), which financial products are settled via securities holding system of CSD (=system stated in Q2)?

(Multiple answers allowed)

- Stock ( Listed  Non-listed)
- Government Bond ( Listed  Non-listed)
- Corporate Bond ( Listed  Non-listed)
- Stock issued by foreign company ( Listed  Non-listed)
- Bonds issued by foreign company ( Listed  Non-listed)
- Other securities (Please specify: \_\_\_\_\_ )

Note:

- Legal conditions for cross-border transaction

**Please note:**

- **Question 4 ~ 42 are prepared on assumption of stocks only.**  
**\* In cases where you do not handle stocks, please answer about the main securities you handle (e.g. government bonds).**
- **The following questions are conducted in respect to your country's domestic law(s). However, in cases where there are any regulation(s) and rule(s) other than domestic law(s), stipulating the points which questions are asking about, please describe these in the note section prepared for each question.**

<Inbound cross-border transaction>

- "Inbound cross-border transaction" here means the case where foreigners invest in, or acquire, stocks handled by the CSD in your country.

Q4. Under your country's domestic law(s), what kinds of participation to your

country's securities holding system (stated in Q2) are allowed for foreign financial institutions?

- Participation under the same condition with your country's intermediaries (What kinds of condition? Please specify:      )
- Participation under the unequal condition with your country's intermediaries (What kinds of condition are required especially for foreign financial institutions? Please specify:      )
- Foreign financial institutions are not allowed to participate in your country's securities account holding structure in any abovementioned ways.(i.e. Foreign financial institutions are only allowed to hold accounts opened by domestic intermediaries.)

Note:

Q5. Under your country's domestic law(s), what kinds of participation in your country's securities account holding structure are allowed for foreign investors (individual / institutional)?

(Multiple answers allowed)

- Participation by having account opened by CSD as a beneficial owner of stocks (Type 1 of Slide 9 of Appendix I)
- Participation by having account opened by intermediaries as a beneficial owner of stocks (Type 2 of Slide 9 of Appendix I)
- Participation through omnibus account at intermediaries (Type 3 of Slide 9 of Appendix I)
- Participation through omnibus account at CSD (Type 4 of Slide 9 of Appendix I)
- Other status (Please specify:      )

\* "Omnibus account" in this questionnaire means an account where the rights relating to stocks held by more than one person are recorded together.

Note:

Q6. Please describe an outline of the inbound cross-border settlement operation flow (in case where CSD is involved) and illustrate your inbound cross-border settlement operation flow in the Answer Sheet (separately attached PowerPoint

format sheet).

(To see the example of securities holding system, please see the slide 10 of Appendix I)

Note:

<Outbound cross-border transaction>

- “Outbound cross-border transaction” here means the case where domestic investors invest in foreign stocks.

Q7. Do you (as a CSD) settle foreign stocks?

Yes

> What kind of foreign stocks?

(Multiple answers allowed)

Foreign stocks listed to domestic exchanges

Foreign stocks not listed to domestic exchanges

Other (Please specify:        )

No

Note:

Q8. When your answer for Q7 was “Yes”, do your country’s domestic law(s) regulate foreign stocks handled by CSD differently from domestic stocks in regard to settlement procedure, stockholder’s rights, etc.?

Yes

> How? (Multiple answers allowed)

Less legal rights are admitted to foreign stocks stockholders  
(Which rights?:        )

Less legal protection for foreign stock stockholders in case of  
intermediary’ bankruptcy

(Please specify:        )

Other (Please specify:        )

No

Note:

Q9. Please describe an outline of the outbound cross-border settlement operation flow (in case where CSD is involved) and illustrate your outbound cross-border settlement operation flow in the Answer Sheet (separately attached PowerPoint format sheet).

(To see the example of securities holding system, please see the slide 11 of Appendix I)

Note:

## Part II. Role and function of securities accounts

➤ Questions in Part II are prepared for the gap analysis of ACG members' countries domestic law(s) regulating structures of securities accounts, effects of credit/debit of stocks to a securities account, etc. Please answer the following questions based on your country's domestic law(s).

- Structure of securities account

(Please refer to the slide 13 of Appendix I)

Q10. Under your country's domestic law(s), are intermediaries obliged to segregate their clients' stocks from their own stocks?

- Yes (How the segregation conducted? Please specify:      )
- No

Note:

Q11. When your answer for Q10 was "Yes", are clients' stocks segregated by account holder?

- Yes
- No (e.g., clients' securities are held in the omnibus account)

Note:

Q12. When your answer for Q10 was "No", how do participants distinguish clients' stocks from their own?

Note:

- Role and function of securities account

Q13. Under your country's domestic law(s), does acquisition or disposition of stocks and security interest (pledge) become effective by credit or debit to a securities account of an account holder?

Yes

No

Note:

Q14. When your answer for Q13 was "Yes", under your country's domestic law(s), is an acquisition of stocks and security interest (pledge) by credit or debit to a securities account of an account holder effectuated and perfected against third parties?

Yes

No

> When your answer here was "No", what kinds of other legal/operational methods are required to make the acquisition of stocks and security interest (pledge) effectuated and perfected against third parties?

(Please specify: )

Note:

Q15. For acquisition or disposition of stocks and security interest (pledge), are there any methods other than debit and credit to a securities account (e.g. contracts between an account holder and his/her intermediary) under your country's domestic law(s)?

Yes (Laws and articles: )

No

Note:

Q16. When your answer for Q15 was “Yes”, what kinds of other legal/operational methods are required?

Please specify:

Note:

Q17. When your answer for Q15 was “Yes”, under your country’s domestic law(s), is an acquisition of stocks and security interest (pledge) by the methods other than debit and credit to a securities account of an account holder (e.g. contracts between an account holder and his/her intermediary) effectuated and perfected against third parties?

Yes

No

> When your answer here was “No”, what kinds of other legal/operational methods are required to make the acquisition of stocks and security interest (pledge) effectuated and perfected against third parties?

(Please specify:        )

Note:

Q18. When your answer for Q13 and Q15 were both “Yes”, under your country’s domestic law(s), how is the priority of acquisition and disposition of stocks or security interest?

Credit/debit to securities accounts is given priority over other methods

Other methods are given priority over credit/debit to securities accounts

Other (Please specify:        )

Note:

- Acquisition by an innocent person  
(Please refer to the slide 14 of Appendix I)

Note: “Innocence” here means the condition where acquirer does not know (i) that another person actually has an interest in stocks and that the credit to the acquirer’s securities account violates the rights of that other person, or (ii) an

earlier defective credit.

Q19. Does your country's domestic law(s) have a special rule on protection of "innocent/good faith acquisition/bona-fide purchase" for stocks?

Yes

No

Note:
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Q20. When your answer for Q19 was "Yes", what kinds of conditions are required to be protected as an innocent, good faith or bona fide person?

No Gross Negligence (*)	& With consideration (***)	& Credit to securities a/c	<input type="checkbox"/>
		& No credit to securities a/c	<input type="checkbox"/>
	& Without consideration	& Credit to securities a/c	<input type="checkbox"/>
		& No credit to securities a/c	<input type="checkbox"/>
No Negligence (**)	& With consideration (***)	& Credit to securities a/c	<input type="checkbox"/>
		& No credit to securities a/c	<input type="checkbox"/>
	& Without consideration	& Credit to securities a/c	<input type="checkbox"/>
		& No credit to securities a/c	<input type="checkbox"/>

Other (Please specify: \_\_\_\_\_ )

(\*) No gross negligence:

The condition where acquirer has no severe fault to believe that stocks acquired by crediting to acquirer's securities account or any other methods (described in Q15) belong to him or herself.

(\*\*) No negligence:

The condition where acquirer has no fault to believe that stocks acquired by crediting to acquirer's securities account or any other methods (described in Q15) belong to him or herself.

(\*\*\*) With consideration:

The condition where acquirer pays money or others in consideration for acquiring stocks

Note:
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Q21. When your answer for Q19 was “Yes”, what kinds of effects are recognized in respect to acquisition by an innocent person?

(Multiple answers allowed)

- Acquisition of stocks by an innocent person with no cancel or invalidation of the credit, no lack of perfection against third parties, etc.
- No liability of acquirer to anyone who would benefit from the invalidity or reversal of the defective credit.
- Other (Please specify: \_\_\_\_\_ )

Note:

Q22. Does acquisition by an innocent person modify the priorities order described in Q18?

- Yes (Please specify below)
- No

Note:

- Cancel, unwind and provisional credit

Q23. Under your country’s domestic law(s), when are rights in respect of stocks effectively transferred from the transferor (seller) to the transferee (buyer)?

- At the moment of debit to transferor (seller)’s securities account opened with its direct upper intermediary (Laws and articles: \_\_\_\_\_ )
- At the moment of credit to transferee (buyer)’s securities account opened with its direct upper intermediary (Laws and articles: \_\_\_\_\_ )
- Other (Please specify: \_\_\_\_\_ )

Note:

Q24. Does your country’s domestic law(s) stipulate invalidation or reversal of securities settlement conducted by debit/credit to securities accounts or any other methods answered for Q15?

- Yes (Laws and articles: \_\_\_\_\_ )
- No

Note:

Q25. When your answer for Q24 was “Yes”, under which circumstances does your domestic law(s) approve invalidation or reversal?

(Multiple answers allowed)

- In the case of erroneous credit by intermediaries
- In the case of invalid instruction by account holders
- Other (Please specify:        )

Note:

Q26. Does your country’s domestic law(s) stipulate provisional credit?

- Yes (Laws and articles:        )
- No

Note:

Q27. When your answer for Q26 is “Yes”, do any legal rights in respect of stocks is given by provisional credit?

- Yes (Laws and articles:        )
- No

Note:

Q28. When your answer for Q27 is “Yes”, what kind of legal rights in respect of stocks will be given by provisional credit?

- Same legal rights given by the regular credit
- Other (Please specify:        )

Note:

### Part III. Rights of account holders

➤ Questions in Part III are prepared for the gap analysis of ACG members’ countries

domestic law(s) regulating account holder's rights against intermediaries, issuers and the third parties.

Note: "Account holder" here means a person in whose name an intermediary maintains a securities account. (For the relationship between account holder and his/her intermediary, please refer to the slide 16 of Appendix I)

Q29. In respect to the stocks acquired by credit to a securities account of an account holder (if the account holder is an intermediary, in respect to the stocks credited to its own account, not to its customer account), what kinds of rights are given to the account holder?

(Multiple answers allowed)

- Rights to receive and exercise any rights attached to the stocks other than rights to receive dividends (e.g. distributions, voting rights, etc.)
- Rights to instruct his/her intermediary to dispose of the stocks
- Rights to receive dividends
- Other rights (Please specify:        )

Note:
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Q30. When your answer for Q29 is "Rights to receive and exercise any rights attached to the stocks other than rights to receive dividends", against which parties can the account holder claim such rights with perfection?

(Multiple answers allowed)

- Direct upper intermediary of the account holder
- Indirect upper intermediary of the account holder
- CSD
- Issuer
- Insolvency administrator and creditors in an insolvency proceeding of (direct or indirect, as the case may be) upper intermediary of the account holder
- Other (Please specify:        )

Note:
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Q31. When your answer for Q29 was "Rights to instruct his/her intermediary to

dispose of the stocks”, against which parties can the account holder claim such rights with perfection?

(Multiple answers allowed)

- Direct upper intermediary of the account holder
- Indirect upper intermediary of the account holder
- CSD
- Other (Please specify:        )

Note:

Q32. When your answer for Q29 was “Rights to receive dividends”, against which parties can the account holder claim such rights with perfection?

(Multiple answers allowed)

- Direct upper intermediary of the account holder
- Indirect upper intermediary of the account holder
- CSD
- Issuer
- Insolvency administrator and creditors in an insolvency proceeding of intermediary of the account holder
- Other (Please specify:        )

Note:

Q33. When your answer for Q29 was “Other rights”, against which parties can the account holder claim such rights with perfection?

(Multiple answers allowed)

- Direct upper intermediary of the account holder
- Indirect upper intermediary of the account holder
- CSD
- Issuer
- Insolvency administrator and creditors in an insolvency proceeding of intermediary of the account holder
- Other (Please specify:        )

Note:

Q34. In respect to the stocks acquired by the methods other than credit to a securities account (if the acquirer is an intermediary, in respect to the stocks acquired for its own, not for its customer), what kinds of rights are given to the acquirer?

(Multiple answers allowed)

- Rights to receive and exercise any rights attached to the stocks other than rights to receive dividends (e.g. other distributions, voting rights, etc.)
- Rights to instruct to dispose of the stocks
- Rights to receive dividends
- Other rights (Please specify:        )

Note:
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Q35. When your answer for Q34 was “Rights to receive and exercise any rights attached to the stocks other than rights to receive dividends”, against which parties can the acquirer claim such rights with perfection?

(Multiple answers allowed)

- Direct upper intermediary of the transferor of stocks
- Indirect upper intermediary of the transferor of stocks
- CSD
- Issuer
- Insolvency administrator and creditors in an insolvency proceeding of the transferor’s intermediary
- Other (Please specify:        )

Note:
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Q36. When your answer for Q34 was “Rights to instruct to dispose of the stocks”, against which parties can the acquirer claim such rights with perfection?

(Multiple answers allowed)

- Direct upper intermediary of the transferor of stocks
- Indirect upper intermediary of the transferor of stocks
- CSD
- Other (Please specify:        )

Note:
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Q37. When your answer for Q34 was “Rights to receive dividends”, against which parties can the acquirer claim such rights with perfection?

(Multiple answers allowed)

- Direct upper intermediary of the transferor of stocks
- Indirect upper intermediary of the transferor of stocks
- CSD
- Issuer
- Insolvency administrator and creditors of in an insolvency proceeding of transferor’s intermediary
- Other (Please specify:        )

Note:
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Q38. When your answer for Q34 was “Other rights”, against which parties can the acquirer claim such rights with perfection?

(Multiple answers allowed)

- Direct upper intermediary of the transferor of stocks
- Indirect upper intermediary of the transferor of stocks
- CSD
- Issuer
- Insolvency administrator and creditors in an insolvency proceeding of transferor’s intermediary
- Other (Please specify:        )

Note:
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#### **Part IV. Obligations of intermediaries**

- Questions in Part IV are prepared for the gap analysis of obligations which intermediaries must fulfill under the ACG members’ countries domestic law(s).
- Obligations of intermediaries

Q39. Under your countries’ domestic law(s), what kind of obligations (including obligations arise from contracts) do intermediaries have to fulfill?

(Multiple answers allowed)

- Take appropriate measures to enable its account holders (i.e., its customers) to receive and exercise the rights specified in Part III.
- Protect stocks credited to a securities account
- Allocate stocks to the account holders in accordance with account holders' rights so as to be unavailable to its creditors
- Give effect to any instructions given by the account holder or other authorized person
- Not dispose of stocks credited to a securities account without authorization
- Regularly pass on to account holders information relating to stocks
- Regularly pass on to account holders dividends and other distributions received in relation to stocks
- Other (Please specify: \_\_\_\_\_ )

Note:
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- Shortfall of balance in securities accounts

(Please refer to the slide 18 of Appendix I)

Note: "Shortfall of balance in securities accounts" here means the amount of stocks which an intermediary credits for its account holders is less than the amount of stocks which its upper-intermediary credits for the intermediary's account holders.

Q40. Under your country's securities holding system, is it possible that the shortfall of balance in securities accounts occurs?

Yes

> Has it ever happened?  Yes  No

No

> In order to avoid the shortfall of balance in securities accounts, what kind of countermeasure is taken? Please specify:

Note:
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Q41. When your answer for Q40 was "Yes", what kinds of measures are prepared for addressing the shortfall of balance in securities accounts?

(Multiple answers allowed)

- The law obliges the intermediary to allocate its own balance for the shortfall in its account holders' securities accounts (Solution 1 of Slide 18 of Appendix I)
- The law obliges the intermediary to obtain the shortfall in its account holders' securities accounts (Solution 2 of Slide 18 of Appendix I)
- Pro rata allocation of the balance by debiting account holders in accordance with the amount of shortfall (Solution 3 of Slide 18 of Appendix I)
- Adjustment of the balance by unwinding the instructions
- Other (Please specify:            )
- There is no measure prepared to address the shortage of balance in a securities account.

Note:

Q42. In case where an intermediary falls into bankruptcy with the shortfall of balance in securities accounts, how the loss arisen from such a shortfall is allocated?

- Pro rata allocation in accordance with the balance of each account holder
- Other (Please specify:            )

Note:

**Part V. Conflict of laws rule & approaches for global initiatives**

- Questions in Part V are prepared to understand your country's framework of the conflict of laws rule as well as the current approach taken for the global initiatives such as the Hague securities convention and UNIDROIT Convention, etc.
- Conflict of laws rule of your country

Q43. Do you have any conflict of laws rule in your country?

- Yes (Please specify the name of the law. \*if possible, with link of the English translated version:            )
- No



Q44. When your answer for Q43 is “Yes”, does such a conflict of laws rule specifically stipulate rules in relation to cross-border securities settlement?

- Yes (Articles:        )
- No

Q45. When your answer for Q44 is “Yes”, which law is applied as the governing law?

- The law of the state where the issuing company is established (lex corporationis)
- The law of the state where the relevant securities are deposited (lex situs)
- The law of the state where the relevant intermediary’s office is located (PRIMA: the Place of the Relevant Intermediary Approach)
- The state’s law determined between relevant intermediary and account holder upon a contract. The selected law has to be the law of the state where relevant intermediary’s office is located.
- Third state’s law which determined by relevant intermediaries and account holders upon a contract
- Other principle (Please specify:        )

Q46. In regard to the cross-border securities transaction and settlement, have you ever found any legal issues related to the CSD or relevant parties in your country?

- Yes  
(Please specify:        )
- No

- Approaches for global initiatives

Q47. Have any regulators or public institutions discussed about Hague or UNIDROIT Convention in your country? (For the outline of Hague and UNIDROIT conventions, please refer to the slide 20 of Appendix I )

- Yes
  - Which organization(s) was involved in the discussions?  
(        )
  - To adopt the laws and conventions, what kind of issues were pointed out?  
(        )

No

Q48. Can these answers you provided be shared with the website outside of ACG (e.g. UNIDROIT website, etc.)?

Yes

If the organization name is not published, yes

No

Thank you very much for your cooperation.

Due date of this questionnaire is set on **Friday, May 4, 2012**.

For inquiry, please contact JASDEC ([n-watanabe@jasdec.com](mailto:n-watanabe@jasdec.com)).

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