

# ACG Legal Task Force Progress in 2012

Presentation for the 16<sup>th</sup> ACG General Meeting  
September 21, 2012  
Bali, Indonesia



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# What the LTF Does in 2012

- **Research Program of this year: coordinated by JASDEC**
  - ✓ Theme: Legal Application in cross-border securities transactions
  - ✓ Outlines: Study recent growth of the cross-border transactions, to make an overview for analyzing gaps of domestic and international private law among ACG members
  - ✓ Research Steps
    - ◆ Conference Call for the detailed explanation about each content --March 15
    - ◆ Distributing market survey--March 12
    - ◆ Organizing researches among members--May to August
    - ◆ First draft--Discussions and amendments--Final version
    - ◆ 14 institutions submitted their answers-- By the end of August
      - CCDC (China), SD&C (China), HKSCC (Hong Kong), CDSL (India), NSDL (India), KSEI (Indonesia), JASDEC (Japan), KSD (Korea), MSCH&CD (Mongolia), PDTC (Philippine), SGX(Singapore), TDCC (Taiwan), TSD (Thailand), VSD(Vietnam)
  - ✓ Details: see presentation from JASDEC ( coming soon)



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# What the LTF Does in 2012

- Attending UNIDROIT Conference held in Brazil
  - ✓ SD&C is the co-chair of the Committee
  - ✓ On behalf of ACG
- Organizing the legal session of the 14<sup>th</sup> ACG Cross Training Seminar
  - ✓ Taking the chair of LTF seminar
  - ✓ Reporting on UNIDROIT Conference
  - ✓ Interim Report of the research survey results this year
- CPSS-IOSCO Assessment Methodology and Disclosure Framework for the PFMI (the Principles for Financial Market Infrastructures)
  - ✓ The final report of PFMI was published on April 16, 2012
  - ✓ Seeking ACG members' comments



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# What the LTF Does in 2012

## ➤ New Research Program in 2013

- ✓ Theme: The application of title transfer collateral agreement in securities markets
- ✓ Suggested by SD&C, approved by our members through survey
- ✓ Outlines
  - Brief introduction of collateral transactions in certain jurisdictions.
  - Two main choices: a security collateral agreement or a title transfer collateral agreement
  - Effectiveness in certain legal conditions
  - Analyses on the agreement items



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# Introduction on UNIDROIT Conference

- The 2th meeting of the Committee on Emerging Markets Issues, Follow-Up and Implementation
- Held in Rio de Janeiro (Brazil) on 27 and 28 March
- Topics of the meeting
  - ✓ promoting investor confidence and enhancing legal certainty for securities trading in emerging markets
- The Committee is co-chaired by Brazil and China.
- **Members:** Argentina, Cameroon, Chile, France, Greece, India, Japan, Nigeria, Republic of Korea, South Africa, United States of America and the European Community, etc.
- **Observers:** Indonesia, European Central Bank, European Issuers, Hague Conference on Private International Law, Trade Association for the Emerging Markets and ACG, etc.



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# Introduction on UNIDROIT Conference

## ➤ Items

- ✓ Colloquium on financial markets law
- ✓ Consideration of the reception given to the UNIDROIT Convention on Substantive Rules for Intermediated Securities in the various countries, in particular in emerging countries
- ✓ Consideration of legislative measures to implement the Convention and incorporate it in domestic law
- ✓ Presentation of the Official Commentary on the Convention
- ✓ Consideration of follow-up activities to promote the Convention
- ✓ Information on current work of UNIDROIT on netting of financial instruments and possible future work by UNIDROIT in the area of capital markets



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# Introduction on UNIDROIT Conference

- Consideration of follow-up activities to promote the Convention
  - ✓ Organize activities to promote awareness and understanding of the Convention
  - ✓ Establish a working group including ten countries: Brazil, China, India, Russia, South Africa, etc.
  - ✓ Assess its continued effectiveness in light of relevant contemporary developments in market circumstances and trends in market regulation
  - ✓ Encourage the Convention's early entry into force
  - ✓ Encourage the Convention's signature, ratification, acceptance, approval and accession by States and Regional Economic Integration Organizations.



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# Introduction on Research Theme of this year

## ➤ Background

- ✓ current trend: emergence of cross-border securities transactions
- ✓ the legal framework of conflict law in cross-border securities transactions

## ➤ Purpose

- ✓ Contribute to the legally safe settlement of the cross-border transaction by recognizing the difference of legal frameworks of Asia-Pacific region

## ➤ Reference

- ✓ The Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary (2006) – Hague Securities Convention
- ✓ The UNIDROIT convention on substantive rules applicable to intermediated securities (2009) – Geneva Securities Convention



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# Analysis Structure (quoted from JASDEC'S report)

## Part V: International private laws & approaches for global initiatives

Conflict of laws rule

Approaches for global initiatives

## Part I: The current status of the national laws for securities settlement

Laws related to securities settlement

Securities regulated by the domestic law

Issuer

CSD

Legal conditions for cross-border transaction

- Inbound cross-border transaction
- Outbound cross-border transaction

Securities holding system

## Part II: Role and function of securities accounts

Structure of securities accounts / Segregation

Role and function of securities accounts

Cancel, unwind and provisional credit

Acquisition by innocent person

Intermediary

Account holder

## Part IV: Obligations of intermediaries

Obligation of intermediaries

Shortfall of balance in securities accounts

## Part III: Rights of account holders

Rights of account holders

Perfection against related parties



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# What the LTF will do next

- **Arrangement of today's meeting**
  - ✓ Reporting on the main research outcomes
  - ✓ Sharing research outcomes among members
- **New Research Program in 2013**
  - ✓ Theme: The application of title transfer collateral agreement in securities markets---suggested by SD&C
  - ✓ Call for consent of members
  - ✓ Outlines: (to be discussed)
    - Collateral transactions
    - Security collateral agreement
    - Title transfer collateral agreement
    - Conclusions



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# What the LTF will do next

## ➤ New Research Program Outlines

### ✓ Collateral Transactions

- Brief introduction of collateral transactions in certain jurisdictions
- Practices and Definition
- Markets Overview

### ✓ Security collateral Agreement

- Definition: a security collateral agreement or a title transfer collateral agreement
- Two main choices
  - security collateral agreement
  - title transfer collateral agreement

### ■ Legislations



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# What the LTF will do next

## ➤ New Research Program Outlines

### ✓ Title Transfer Collateral Agreement

- Characters

- Legal parties

- Effectiveness in certain law conditions

- Analyses on the agreement items

- Key issues (see next page)

### ✓ Conclusions



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# What the LTF will do next

## ➤ Key issues

- ✓ Does the law in your market permit a title transfer collateral agreement to take effect in accordance with its terms? If so, please specify.
- ✓ Briefly describe rights and duties of the collateral taker and the collateral provider.
- ✓ After what event(s) is the collateral taker entitled to realise the collateral securities ?
- ✓ Does the collateral agreement, or of a set of connected agreements have close-out netting provision?
- ✓ After what event(s) may a close-out netting provision be operated?



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# Q&A Time

- Any other suggestions on next year's research program outlines?
- What topics are you interested in regarding our research program?
- How to enhance LTF activities?



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WE HIGHLY APPRECIATE ALL  
MEMBERS' CONTRIBUTIONS !

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