"THE RULES OF INTERMEDIATED SECURITIES IN HUNGARY IN LIGHT OF THE UNIDROIT HARMONIZATION EFFORTS"

by

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Introduction

In the context of the present topic, securities can be briefly defined as negotiable financial instruments, which represent monetary/pecuniary value attributable to the rights incorporated thereby against their issuers. In the world of modern finances, the methods of holding the securities went through a great deal of change. It started out as a direct relationship between the issuer who emitted such device generally with the purpose to get hold of additional financial resources to enhance its business, and the investor, who by laying out money typically either sought to acquire a stake in the issuer's business or a yielding, pecuniary claim against the issuer with a perspective of greater return than the disbursed purchase price, or some sort of a combination of the two. In the context of this paper it is needless to specify all methods available in nowadays capital markets for investors to handle their securities, nevertheless it must be observed that the said direct relationship has been overcome to great extent by a practice where the investors are connected with the issuers only through a chain comprised of various participants. This is what is called indirect holding of securities. The participants of the said financial chain are mostly financial entities, such as banks, investment firms, brokers and with a somewhat different role, clearing houses as well. They are the intermediaries, as they play an intermediate role between the issuer and the investor by permanently managing the securities on a professional basis and within the applicable legal framework. The idea is that this technique should unburden the investors and enhance the liquidity of securities on the market. Securities handled with the above-described method are the so-called intermediated securities.

This paper scrutinizes from a civil and financial law perspective under the two chosen legal regimes, that of one international legal organization and a national sovereign, the applicable regulations to intermediated securities. In particular, the objective here is to

provide a comprehensive analysis on the substantial rules of law applicable to the holding of intermediated securities under the laws of Hungary in comparison to the rules the Convention on Substantive Rules for Intermediated Securities (hereafter the "*Geneva Convention*" or the "*Convention*").[1] The Geneva Convention was brought to existence by the International Institute for the Unification of Private Law (hereinafter referred to as "*UNIDROIT*"), the Rome based independent intergovernmental organization of 61 member states for legal unification. The Convention was adopted in Geneva, Switzerland on 9 October 2009.

In many different fields of law which directly relate to global economics and particularly to cross border transactions, it is quite common from time to time that a need from the economic actors' side for some extent of harmonization arises in order to facilitate and enhance the regular functioning of the particular business sector, to eliminate or decrease legal exposure and to provide greater protection and stability for system participants. It is especially true in times of market crisis. Similarly to most other developed or emerging markets worldwide, the financial sector of Hungary too was heavily affected by the global credit crunch, although it managed to avoid massive collapse of financial institutions. The Hungarian market is relatively small and very much exposed to disturbances of the global capital markets. Most of the Hungarian-based banks, as the major players of the financial sector, are owned by foreign financial corporations mainly of Western Europe roots. Any financial struggle of the mother companies could make an imminent impact the Hungarian subsidiaries, on the fragile domestic market.

Undoubtedly, securities play a preeminent role in the capital markets, and the majority of them are indeed held via intermediaries these days. Any irregularities or disturbances in

[1]Official denomination: UNIDROIT CONVENTION on Substantive Rules for Intermediated Securities (Geneva, 9 October 2009). Full text is available at http://www.unidroit.org/english/conventions/2009intermediatedsecurities/convention.pdf

connection with this system of holding can have quite a deep impact on the economy as a whole. If there is a chance that a more harmonized legal regime in this respect can reduce systematic risks of another financial crisis, due consideration should be given by all participating governments whether or not it is worth to submit their national jurisdiction to such supra-national legislation. Accordingly, the ultimate objective of this paper is to deliver a conclusion in light of the present state of advance of Hungary's legal system, if it were advisable to adopt the Geneva Convention or if the current applicable legislation could be considered sufficient for the foreseeable future and consequently joining the adoption process of the Geneva Convention would not convey significant benefits from a legal perspective.

This is not such an obvious question, as perhaps one may assume. The fact is that the overwhelming majority of the participant states of UNIDROIT have not yet signed the Geneva Convention. Moreover, Hungary did, albeit deliberately, not take part in drafting process of the Convention and consequently did not have a say when the legal regime of the Convention was formulated. On the other hand, it is fair to say that certain legislation in the financial sector rather similar to those of the Geneva Convention has already been in place for a while. The standard of financial legislation enacted since the beginning of the millennium, starting with the Capital Markets Act[2] became effective in 2002 and other related governmental decrees is generally not perceived with a negative attitude among the scholars and legal and financial professional in Hungary, as opposed to many other fields of the domestic law deemed more outworn.[3]

The method employed herein was the analysis and comparison of primer legal sources that is of course the rules of the Convention on one hand and the most relevant legislative instruments, most prominently the provisions of the Civil Code and the Capital Markets Act

[2] Act CXX of 2001 on Capital Markets

[3] Just think of the reluctance of replacement of the over 50 years Civil Code, or the anomalies around the substitution of the 60-year old Constitution from the Communist area.

under the Hungarian regime. Additionally, the legal literature, available on the subject given the quite novelty of the Geneva Convention, was also studied. In this regard, that most important piece the collection of Gullifer and Payne of studies from various authors on securities intermediation in light of the proposed convention regime.[4] As for the Hungarian part, the studies and commentaries of legal scholars furnished in relation to the legislation on capital markets were of particular interest.

[4] Louise Gullifer and Jennifer Payne – Intermediated Securities (Oxford and Portland, Oregon, 2010)

Chapter 1

The General Notion of Intermediated Securities and the UNIDROIT Harmonization Efforts

This Chapter will introduce by large the concept and the field of application of intermediated securities and its connection with dematerialization, and why they are important economically and then move to review the risks related such holding technique and the approach taken by UNIDROIT to facilitate a more harmonized legal regime for this financial instrument.

1.1 Intermediated Securities and Dematerialization

Having started the trend in the late sixties and the early seventies across the Atlantic, over the course of the last two decades Europe has also seen the rise of dematerialization of securities. Following the path of Western Europe, the finance sector of the emerging markets of Central- Eastern Europe begun to move toward replacing conventional paper-based security instruments with those of dematerialized form and as a consequence the affected legal regimes started to put relevant legislation in place, reshaping or developing financial laws in a significant extent.

But what is dematerialization exactly and why is this of relevance in the context of the present topic of intermediated securities? In the field of financial law, this phenomenon construes the substitution of securities issued in paper-form by so called book-entry securities being credited to and held in security accounts. Nowadays, dematerialized securities concerns the overwhelming majority of the securities listed on the regulated markets in the US and the EU. In many jurisdictions, like in Hungary, the issuance of new shares by publicly listed

companies is only allowed in dematerialized form.[5] Given the overwhelming increase in issuance of security devices, especially taking dematerialized forms, in the global capital markets, the burden of the investors purchasing these securities substantially grew, especially when it came to handling their financial assets on a regular basis. Therefore more efficient techniques of holding (including transferring, disposing of and collateralizing) dematerialized[6] securities by the investors became necessary in order to enhance liquidity of these securities and the capital markets overall. Moreover, from the security issuers' perspective, facilitating the registration of the securities (such as employing a central securities depository for this purpose) and acceleration transfers (debits and credits) from one holder to another is also a great relief in global trading.

So what happened was that investors started to abandon holding their stocks, shares, bonds and other investment securities directly, as a system was developed which shifted direct holdings toward an indirect chain of holdings through various participants, on one end of which stood the issuer and on the other the investor (being the ultimate owner/beneficiary) and in-between are, at least in the examined systems, necessarily a central depository and one or more tiers of intermediaries[7], most typically brokers, banks, investment firms or other financial institutions, implementing the book entries of securities which are made electronically into security accounts. Nevertheless, placing these intermediaries into the link between the issuer and the investor has naturally given rise to the need for the respective jurisdictions of rethinking the rights, duties and responsibilities of the relevant actors, especially those conferred or imposed on the intermediaries.

[5] See Section 6 (3) of the Capital Markets Act

[6] To be noted that besides dematerialization, the so called immobilization of global note bears interest in terms of intermediation, which however will not be covered by the present thesis given the fact that this technique is not being employed in the Hungarian financial regime.

[7] It is noteworthy that in some systems it is possible for the investors to hold a direct account at the central depository institution, but this is not the case in Hungary.

It should be noted that the function of the central securities depository is in fact substantial in many legal regimes, since the dematerialization of securities issued by large corporations is mostly implemented through such a national institution holding the notary function in terms of keeping a central registry of virtually all book entries of securities. In contrast, banks and investment firms are acting as intermediaries between issuers and investors for the custody of these securities in the respective security accounts. This is called the transparent system[8] as opposed to non-transparent systems, where the transfer simply takes place in the books of the lowest-tier intermediary[9]. From an economic point of view the system of securities intermediation entails global (and to a lesser extent also local) custodians and securities brokers to hold and trade huge volumes of securities on behalf of their customers and at the same time, the involved computerized records have largely replaced paper share and stock certificates[10]. The forgoing is briefly why dematerialized securities are frequently termed as intermediated securities.

1.2 Intermediation Related Risks

As already pointed out, legal harmonization efforts are often triggered by the exception of the market to reduce risks which arise out of the different approaches taken the by diverse legal systems, and such expectations strengthens when economy is struggling. It is of particular interest, that the global "credit crunch" struck at the same time when the finalization of the Geneva Convention was on the agenda and hence, at least in theoretically, the drafters had the opportunity to take into account the lessons which were learnt from the

[8] Hungary maintains an indirect, transparent system.
[9] Louise Gullifer, *Ownership of Securities – The Problems Caused by Intermediation (Gullifer & Payne: Intermediated Securities*), (Oxford and Portland, Oregon, 2010), 7
[10] The Law Commission: Property Interest in Intermediated Securities: http://www.lawcom.gov.uk/investment_securities.htm

market crisis. Nonetheless, one could raise the question that besides the economic crisis, what are the risks connected particularly to intermediated holding of securities even in "peacetime" which would call for harmonization. Beyond general *issuer* risks in financial markets (these are briefly whether the issuer will go bankrupt and/or its securities will rise or fall, or whether debt will be repaid) Mooney and Kanda indentify[11] *intermediary* risks, i.e. such risk which are necessarily imposed on securities account holders simply by the nature of intermediation, that the intermediary will become financially distressed and will not have sufficient amount of securities at hand to duly satisfy all account holder claims. This is what is often called shortfall. Intermediation moreover carries the risk of incidental errors made in omission or commission on the detriment of account holders.

Furthermore, one significant issue is the matter of ownership, title or interest in the securities taken therein by the investor, which could particularly achieve eminence in case of shortfall caused by financial distress or insolvency of the respective intermediary, i.e. whether the respective securities will fall within the liquidation assets and can be relatively easily reclaimed (protection against the intermediary's insolvency, rights against the intermediary). As one may assume, different jurisdictions have different legal (more precisely doctrinal and practical) answers to these issues. The foregoing was of merely a set of examples to point out why the international community may aspire to a greater degree of harmonization.

1.3 The Adoption Process of the Geneva Convention

UNIDROIT, as the Rome based independent intergovernmental organization of 61 member states for legal unification, has decided to take an initiative of developing a model

[11] Charles W Mooney, Jr and Hideki Kanda: *UNIDROIT (Geneva) Convention: Core Issues* , *(Gullifer & Payne: Intermediated Securities*), (Oxford and Portland, Oregon, 2010), 72

law on the substantive (in a general sense that is basic, but not background/doctrinal) rules of intermediated securities, which contemplated with a great deal of ambition to deliver either a direct source of law, or at least to provide paragon of regulations and thus hopefully influence national legislations, thereby converging the respective legal regimes on this issue.

After more than two years of study and work, beginning in 2005 UNIDROIT held four meetings of a committee of governmental experts to develop the text of the draft of the Convention. These efforts were followed by two conferences[12] hosted by the government of Switzerland in Geneva. The second and final session[13] was held on 5-9 October 2009, where the final text of the Geneva Convention, as decided to be called by the conference, in original in English and French, was adopted[14]. Despite the said ambitious efforts taken, to date Bangladesh remains the only country to have actually signed the Geneva Convention.[15]

1.4 Recent Developments of 2010-2011

The officials of UNIDROIT expressed views that the execution and ratification of the Geneva Convention will be likely to speed up upon the adoption of the "Official

[12] All the convention documents are available under the official UNIDROIT web site, at http://www.unidroit.org/english/conventions/2009intermediatedsecurities/main.htm;

[13] 50 States, 13 international Organizations, the European Community and the European Central Bank participated in the final session of the Diplomatic Conference. On 9 October 2009, 37 States (Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Cameroon, Canada, Chile, Czech Republic, Egypt, Estonia, Finland, France, Germany, Greece, India, Ireland, Italy, Japan, Luxembourg, Malta, Netherlands, Nigeria, Poland, Portugal, Korea, Russian Federation, Senegal, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America and Zimbabwe) as well as the European Community signed the Final Act (available at http://www.unidroit.org/english/conventions/2009intermediatedsecurities/finalact.pdf) and one State (Bangladesh) signed the Convention. As one can see, Hungary was not among the involved states – source: http://www.unidroit.org/english/conventions/2009intermediatedsecurities/overview.htm;

[14] Charles W Mooney, Jr and Hideki Kanda: *UNIDROIT (Geneva) Convention: Core Issues* , *(Gullifer & Payne: Intermediated Securities*), (Oxford and Portland, Oregon, 2010), 70

[15] see *Status of the UNIDROIT Convention on Substantive Rules for Intermediated Securities - Signatures, Ratifications, Acceptances, Approvals, Accessions* at http://www.unidroit.org/english/implement/i-2009-intermediatedsecurities.pdf

Commentary"[16] which shall accompany this legal instrument. The Official Commentary was prepared for the purpose of reflecting policy choices and relevant matters considered by the conference to have relevance on this subject matter. According to the Annual Report of 2010 of UNIDROIT[17], the Official Commentary has been circulated among the involved governments as from 12 August 2010 and no comments were returned which would have required significant amendments or restructuring of the revised draft Official Commentary. As a result, the UNIDROIT Secretariat envisaged that the revised final version of the Official Commentary could be issued within the first quarter of 2011[18].

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[16] For the draft Official Commentary see http://www.unidroit.org/english/conventions/2009intermediatedsecurities/conference/conferencedocuments2009/conf11-2-005-e.pdf

[17] see http://www.unidroit.org/english/documents/2010/ag67-02-e.pdf

[18] as at the date of 31 October 2010, closing date of the UNIDROIT Annual Report of 2010

Chapter 2

The Specific Rules of the Geneva Convention and the Hungarian Legal Regime

This Chapter will focus on the general idea of the primarily examined legal instrument, the Geneva Convention. This will be followed by the brief introduction of the Hungarian concept related to intermediated securities. Subsequently, the specific provisions of the Convention will be reviewed comparatively with the corresponding Hungarian financial laws.

2.1 The Functional Approach of the Geneva Convention

The Geneva Convention is often characterized[19] as an instrument taking the "functional approach" (as opposed to doctrinal). This is because, as already pointed out, the various legal regimes (particularly the countries of civil and common law) inherently take fundamentally different legal doctrines assigned to the holding of securities, and hence the participants of this UNDROIT initiative envisaged at the outset that any effort toward statutory uniformity was simply pointless.

Accordingly, the Geneva Convention opted for leaving the underlying legal concepts and background regulations to non-Conventional laws and adopted the functional approach, which is perhaps best described by *Mooney* and *Kanda* as one

> "*based on the idea that the Convention should specify the operative results that arise in the transactions and settings within its scope, but should not attempt to*

[19] e.g. by Gullifer in *Ownership of Securitites (Gullifer & Payne: Intermediated Securities*) (Oxford and Portland, Oregon, 2010), 7; or by Herber Kronke, former Secretary General of UNIDROIT *in Geneva Securities Convention* (Oxford and Portland, Oregon, 2010), 247

override (and harmonize among states) the whole of the underlying domestic legal doctrine that is the vehicle for producing those results"[20].

There seems to be a fair degree of consensus between the writers examined for the purpose of this paper, that this functionality is an efficient method to bring together the rather differing private laws, and through this approach compromise between the competing jurisdictions is more likely to be attained.

2.2 Material Issues Covered by the Geneva Convention

First and foremost, the Geneva Convention deals with intermediated securities, which by definition are "*securities, credited to a securities account or rights or interests in securities resulting from the credit of securities to a securities account*" [21]. Securities on the other hand are "*any shares, bonds or other financial instruments or financial assets (other than cash) which are capable of being credited to a securities account and of being acquired and disposed of in accordance with the provisions of this Convention*"[22]. More precisely, the Geneva Convention concerns intermediated securities credited to a securities account[23] which is maintained by the *intermediary* for the benefit of an *account holder*, which gives us the two most prominent actors of this regime. The former means "*a person (including a central securities depository) who 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*"[24], whereas the latter is "*a person in whose name an intermediary maintains a*

[20] Charles W Mooney, Jr and Hideki Kanda: *UNIDROIT (Geneva) Convention: Core Issues , (Gullifer & Payne: Intermediated Securities*), (Oxford and Portland, Oregon, 2010), 75
[21] Geneva Convention Art 1 (b)
[22] Geneva Convention Art 1 (a)
[23] Whereas securities account means an account maintained by an intermediary to which securities may be credited or debited under Art 1 (c) of the Geneva Convention
[24] Geneva Convention Art 1 (d)

securities account, whether that person is acting for its own account or for others (including in the capacity of intermediary)"[25].

Having adopted the functional approach, not surprisingly the Geneva Convention refrains from regulating all issues of substantive law related to the securities in their complexity, and very often leaves room for doctrines of different legal systems. This is already reflected in the definition produced for intermediated securities, which includes, besides the securities themselves, the *rights or interests*[26] in those securities resulting from the crediting of the securities into the bank account. The wording implies that the drafter sought compromise between the common law and civil law concepts, particularly in consideration of the existing difference between the rules of proprietary law under these kinds of jurisdictions. It is noteworthy that the Convention refrained from making reference to proprietary rights and it cites "ownership" only three times in the whole text, always in the context of granting collaterals over the securities. It could be attributed to the fact that doctrinally speaking property rights in securities do not exist in the United States, but much rather a contractual-based interest therein.

In accordance with the foregoing, the issues covered by the Geneva Convention, structured into Chapter I-VII, touches only certain aspects of the rights and interests related to securities, such as rights of the account holder, transfer, disposition, system integrity and collateralization. These are put together into four groups of issues, covered by Chapter II-V, which chapters will be scrutinized hereunder. It is to be noted that Chapter I provides for the definitions whereas Chapter VI-VII for the transitional and final provisions. By thier nature, these three chapters will only be examined to the extent necessary in connection with the material legal issues under Chapter II-V.

[25] Geneva Convention Art 1 (e)
[26] *emphasize added*

2.3 The Legal Substance of Securities under the Hungarian Law

Similar to many other branches of law in Hungary, most prominently he civil law and company law[27], the core legal concept applicable to securities tend to follow the German school. The official commentary[28] of the Act CXX on Capital Markets (hereafter: Capital Markets Act) assigns the essence of the securities that it differs from other instruments furnished with regard to an legal relationship, in a way that they not only verify the existence of such legal relationship but in fact embody (incorporate) the underlying subjective right, inasmuch as the respective right cannot be transferred, assigned, exercised or proved in the absence of the security instrument, as a result of which securities are *quasi* identical to the right they meant to incorporate. This view, generally taken by the Hungarian scholars, seems to correspond to what *Micheler* observes in relation to intermediated securities, namely that under modern German law securities are classified as tangibles and the particular right to which the paper document (securities certificate, nevertheless this applies to dematerialized securities as well) concerns is materialized therein[29]. In case of transfer, the acquirer (new owner) not only becomes entitled to the security instrument (as if to the title of an object) but also to the rights it embodies, and the obligee (the issuer) cannot assert against the new owner of any claims they may have against the previous owner of that security. Moreover the law

[27] as well as the commercial law, or at least what can be generally classified as such under the Hungarian legal regime, given the fact that no separate commercial code exist due to which many scholars debate the very existence of commercial law in Hungary. Nonetheless, commercial issues as well are dealt with, though in various statutory instruments in Hungary.

[28] Dr. György Wellmann: *Introductory study on securities and their transferring (Captial Market Act – Commentary for the practice)* (HVG Orac - Budapest, 2002), 4

[29] Eva Micheler: *The Legal Nature of Securities (Gullifer & Payne: Intermediated Securities*), (Oxford and Portland, Oregon, 2010), 137

protects *bona fide* acquirer of the securities, in a sense that only the formal requirements pertaining to the security instrument must be met, but good title of the seller is not a legal requisite. This means basically that securities *per se* constitute a self-sufficient legal relationship[30], the content and extent of which is determined by the given security instrument itself[31].

In the Hungarian legal regime, the formal definition of securities, without however laying down its legal substance as outlined above, is provided for in the Civil Code:

> *a security is a document bearing the requisites prescribed by legal regulation or data recorded, registered, and forwarded in some other way, as specified by legal regulation, and the printing and issuing of which, or publication in such form, is permitted by legal regulation*[32]

Accordingly, one can see that on the basic level of the Civil Code an instrument in order to be recognized as securities is subject to such qualification by the (other sectorial) laws applicable to the particular instrument.[33] Subsequently, the Civil Code categorizes securities into those of "bearer" or "registered" nature, much alike to most of the jurisdiction worldwide. Also not surprisingly, registered securities are the ones which can be issued either in paper or dematerialized forms, this is so at least theoretically, as it depends on the specific security instrument. [34]

2.4 What are Intermediated Securities in Hungary from a Legal Perspective?

[30] In this context it is noteworthy that Micheler very aptly remarks that the literal English translation of the German *Werpapier* would be "paper of value" (*ibid*). This very much the case with the Hungarian term *értékpapír*.
[31] Dr. György Wellmann: *Introductory study on securities and their transferring (Captial Market Act – Commentary for the practice)* (HVG Orac - Budapest, 2002 - in Hungarian), 5
[32] Section 338/A (2) of Act IV of 1959 on the Civil Code (hereafter *Civil Code*)
[33] The Hungarian law recognizes over a dozen type of securities such as promissory note (*váltó*), share (*részvény*), check (*csekk*), bond (*kötvény*), compensation note (*kárpótlási jegy*), mortgage bond (*jelzálog levél*), etc, regulated by sectorial provisions, only some can be issued in dematerialized form, and hence be subject to intermediated holding in securities account, most prominently shares and bonds (and derivatives deriving from various underlying securities).
[34] Section 338/A (3) of the Civil Code

At the outset of this subsection, it must be pointed out that the applicable Hungarian law, as opposed to the Geneva Convention, does not attribute a specific definition to the term of intermediated securities. In fact, when one examines the most important piece of legislation in the present context, which is the Capital Markets Act, and its, at least semi-official[35] English translation, only the "securities intermediary" can be found defined[36] in a certain form. Briefly, securities intermediaries under the Capital Market Act are investment firms and credit institutions (and in specific cases, the central depository as well) who maintain *securities accounts for holders of securities*[37].

Should one compare the foregoing with the text of the afore-cited Article 1 (a), (b) and (d) of the Geneva Convention it would follow that in terms of intermediated securities under the Hungarian legal regime we must look for (i) securities, (ii) which are capable of being credited to a securities account and of being acquired and disposed of accordingly, and are in fact (iii) credited to a securities account which are (iv) maintained by a person who in the course of a business or other regular activity maintains securities accounts. Subject to the foregoing, the statutory regulations applicable to securities issued in dematerialized from, which are by their nature capable of being subject to holding in securities account must be put under review. Such regulations are those of the Civil Code, the Business Act[38], and most of all the Capital Markets Act as well as certain government decrees.

[35] Basically the only available English and German translations of certain statutory regulations are issued and updated by *CompLex Kiadó Kft.* on a regular basis, and are the only ones commonly used and cited by legal professionals, hence practically they attained a somewhat official status.

[36] Section 140 (1) of the Capital Markets Act: „*Securities accounts for holders of securities shall be maintained by investment firms and credit institution, while securities accounts to record the securities held by the persons specified in Subsection (1) of Section 335/A shall be maintained by the central depository (hereinafter referred to collectively as "securities intermediary*".

[37] *emphasize added*

[38] Act 4 of 2006 on Business Associations. However this Act only concerns shares in terms of securities, which, given the general analysis of the securities in the present paper, will not be reviewed herein.

2.5 The Rules of the Hungarian Civil Code on Securities

Under the legal regime of Hungary, normally one is entitled to enforce, dispose of or collateralize the rights incorporated by the security instrument only in possession thereof and as far as the entitlement to the said actions is concerned, the Civil Code uses the term beneficiary (*jogosult*) with respect to rights afforded by a negotiable instrument (i.e. security). In terms of registered and dematerialized securities the person is considered as beneficiary in the eyes of the law on whose securities account the instrument is registered in respect of dematerialized securities[39]. Possession of dematerialized securities, which are only a set of data apparent in electronic form, obviously cannot be treated in the same way as traditional physical possession. Since the foremost typical act concerning dematerialized securities is transferring (that is both credit and debit in the present context) the legislator deemed necessary to expressly stipulate on a "Civil Code-level" that dematerialized securities are considered to be transferred when credited to the securities account of the transferee in accordance with the regulations laid down in specific other legislation. Beyond this, the Civil Code is silent on the issue and refers it to "other legislation", namely to the Capital Markets Act which contains more detailed rules of dematerialized securities held in securities account.

2.6 The Registration of Dematerialized Securities in Hungary

Like many other countries, Hungary also has a central securities depository with a monopoly of keeping the records of the dematerialized securities. This entity is KELER Zrt. (hereafter *KELLER*), an indirectly state-owned private company limited by shares[40]. In case of

[39] see Section 338/C (1) - (2) of the Civil Code

[40] The Hungarian state has a majority via the Hungarian National Bank holding 53.33% of the shares, whereas the Budapest Stock Exchange holds 46.67% of shares. The latter operates as a private limited company (Zrt.) with private owners. The majority shareholder in the BSE through CEESEG AG is basically the Vienna Stock Exchange. http://www.keler.hu/keler/keler.main.page

issuance of dematerialized securities, KELLER is obliged to open a central securities account[41] and credit the securities of the issuer thereon. The central accounts are maintained under the agreement between the issuer and KELLER. The basis for the distribution of the securities to investors is the document form of the securities furnished by the issuer and deposited at KELLER. All transfers of securities between intermediaries are recorded on the central securities accounts thereby KELLER can keep a central registry of all book entries occurred vis-à-vis different intermediaries. Thus it can also oversee that number securities kept on the respective accounts and the aggregate of securities on the central securities accounts would not diverge from the total of securities issued in the given series.[42] Accordingly, Hungary can be categorized as a transparent system in terms of holding dematerialized securities.

2.8 Rights of the Account Holder and the Transfer of Securities under the Convention

The above are the titles of Chapter II and III of the Convention, which rather concisely, provides for the topmost rights of accounts holders and the permitted methods of transfer of intermediated securities. These rights of the account holder, who can also be an intermediary provided that acting on its own account, derive from the fact of crediting the security instrument to the securities account. Said rights are briefly as follows[43]:

[41] In compliance with the provisions of Government Decree 284/2001. (XXII. 26.) *on the techniques and safety regulations of creation and forwarding and of dematerialized securities and the opening and maintenance of securities account, central depository account and client account.*
[42] Dr. Péter Wollner: *Rules of Operational Stage of Investment Service Providers and Commodity Exchange Service Providers (Captial Market Act – Commentary for the practice)* (HVG Orac - Budapest, 2002), 4 – in Hungarian language
[43] see Article 9 of the Geneva Convention

- the right to receive and exercise any rights attached to the securities, including dividends, other distributions and voting rights[44];
- the right to effect a disposition by credit and debit or by other method allowed under the Geneva Convention[45];
- the right, by instructions to the relevant intermediary, to cause the securities to be held otherwise than through a securities account[46];
- unless otherwise provided in the Geneva Convention, such other rights, including rights and interests in securities, as may be conferred by the non-Convention law;

Pursuant to the last bullet point, these rights conferred upon the account holder shall not be interpreted as an exhaustive list, as those may further be supplemented by any other non-Convention law under the respective jurisdiction. This is already a vivid example, which can be observed through the whole text, that the Geneva Convention is generally permissive to other applicable laws, which is attributable to the above construed functional approach and the reluctance to strive for complete harmonization as correctly pointed out by *Mooney* and *Kanda*[47]. It is clear that the drafters considered the most fundamental rights of the account holders to be the entitlement for dividends, other distributions and the right to vote (practically in the general meetings of the issuer), moreover the right to make use (credit, debit, encumber) of their securities and if they wish, the freedom to hold the security in an other form than on securities account. The latter however applies only to the extent permitted by the relevant law. This is important as certain forms of securities in certain jurisdictions cannot be held otherwise. This is the case for instance with dematerialized securities in Hungary, as we will see hereunder.

[44] if the account holder is not an intermediary or is an intermediary acting for its own account or) in any other case, if so provided by the non-Convention law – Article 9, 1. a (i)-(ii)
[45] See Article 11 and 12 of the Geneva Convention
[46] Subject to the extent permitted by the applicable law, the terms of the securities and, to the extent permitted by the non-Convention law, the account agreement or the uniform rules of a securities settlement system – Article 9, 1. a (i)-(ii).
[47] see Charles W Mooney, Jr and Hideki Kanda: *UNIDROIT (Geneva) Convention: Core Issues* , *(Gullifer & Payne: Intermediated Securities*), (Oxford and Portland, Oregon, 2010), 84

Chapter II additionally imposes a general obligation upon the intermediaries with respect to the foregoing insofar as setting forth that they must take appropriate measures to enable the account holders to receive and exercise the said rights. For this purpose, a set of minimum requirements is established, as intermediaries must to *at least*[48]

- protect securities credited to a securities account[49];
- allocate securities or intermediated securities to the rights of its account holders so as to be unavailable to its creditors[50];
- give effect to any instructions given by the account holder or other authorized person[51];
- not dispose of securities credited to a securities account without authorization[52];
- regularly pass on to account holders information relating to intermediated securities, including information necessary for account holders to exercise rights[53];
- regularly pass on to account holders dividends and other distributions received in relation to intermediated securities[54].

The emphasized text reveals that this is an indicative list only and often subject to national rules of law. Moreover, these are not absolute obligation, as the text of the Convention goes on stating that it does not require the relevant intermediary to establish a securities account with another intermediary or to take any action that is not within its power[55].

As for the transfer of intermediated securities, the Convention sets forth as the primary method for acquisition and disposition (i.e. buying and selling) the credit and debit of securities to and from that account holder's securities account. For acquisition it excludes the imposition of any further requirements from non-Convention law to render the acquisition

[48] *Emphasize added* - see Article 10 - 2.
[49] "as provided in Article 24" "- Article 10 - 2. a)
[50] "as provided in Article 24" "- Article 10 - 2. b)
[51] "as provided by the non-Convention law, the account agreement or the uniform rules of a securities settlement system"- Article 10 - 2. c)
[52] "as provided in Article 15" "- Article 10 - 2, d)
[53] "if provided by the non-Convention law, the account agreement or the uniform rules of a securities settlement system" - Article 10 - 2. d)
[54] if provided by the non-Convention law, the account agreement or the uniform rules of a securities settlement system
[55] Article 10 - 3

effective against third parties[56]. It is not clear why this rule is not explicatively extended to disposition, however as a crediting presupposes also a debiting, most likely it is to be applied for dispositions as well. The credit/debit rule applies to the grant of security interest or "limited interest"[57], as denominated therein[58]. Moreover it permits without limitation the net basis accounting of crediting and debiting of securities of the same description[59].

Article 12 of the Convention provides for the so-called "other method" of acquisition and disposition. These are more detailed rules for granting interest or limited interest and meant to take into account Common law approaches where the grant of interest can be implemented also by means other than crediting/debiting, specifically by agreement between the account holder and a third person favored by such agreement. Additionally, any other techniques for transfer permitted by non-Convention law are also allowed[60]. This basically means, that albeit the Convention establishes the method of transfer it perceives most common, i.e. credit/debit, and also regulates to some certain extent agreements to give control over securities accounts, which are used in the US more frequently, it does not to any degree limit the application of any other method of transfer recognized by the domestic laws of the signatory states.

[56] Article 11 – 1 -3
[57] The Conventions does not specify this term more than "*a limited interest other than security interest*" – see Article 9 - 3
[58] Article 11 – 4
[59] Securities of the same description are per definition of the Convention, securities are those issued by the same issuer and (i) are of the same class of shares or stock; or (ii) in the case of securities other than shares or stock, they are of the same
currency and denomination and are treated as forming part of the same issue
[60] Article 13

2.8 The Specific rules of the Capital Markets Act

As already indicated, this legislative instrument provides in details for the rules of dematerialized securities[61], and particularly for their holdings in securities account. Hence, it gives us the core attributes of the dematerialized securities; accordingly these are registered securities with no serial number, where the name and other identification information of the holder is contained in the securities account[62]. Another important legal term is "securities account", which is per definition is a set of records on dematerialized securities and other related rights maintained on behalf of the *owner*[63] of the security. This rule is however complemented later insofar as "*unless evidenced to the contrary, the holder* [64]*of a security shall be the person on whose account it is registered*"[65], meaning that this legal presumption can be subject to proving the contrary. Nevertheless, the cited rules imply that the Hungarian legal regime is on the platform of the ownership phenomenon (as opposed to security interest or trust/beneficiary), likewise most civil law jurisdictions. Should we contrasts these provisions with the abovementioned definition for securities intermediary under the Capital Markets Act, one can see that it already resembles to the legal regime of the Geneva Convention, insofar as here as well we are dealing with such kind of securities which are held at securities account maintained by a rather similarly defined group of persons (finical institutions and the like and also the central securities depository in specific cases).

[61] as per the technical definition of Section 5 (1) 29.) of the Capital Markets Act dematerialized securities "*shall mean an electronic instrument identifiably containing all material information of securities, which are recorded, transmitted and registered electronically as defined in this Act and in specific other legislation*"

[62] see Section 7(3) of the Capital Markets Act

[63] emphasize added

[64] it is at any rate noteworthy that albeit this is only the Complex translation, first the English text uses the denomination of „*owner*" of the security, but later it is the „*holder*" of securities (or "*holder*" of account), the latter is the identical term employed in the Geneva Convention. In the original language however it is always "*értékpapír-tulajdonos*", (or "*számlatulajdonos*"), i.e. the *owner*.

[65] Section 138 (2) of the Capital Markets Act

As opposed to that, the account holder is defined rather vaguely on the Capital Markets Act, only indirectly by the provisions on entering into an account agreement. It layis down that a securities account contract shall stipulate the securities intermediary's commitment to the administration of securities owned by the other party *(the account holder)*[66] under the securities account as contracted[67]. This implies that the account holder is the person who (i) owns the securities and (ii) enters into securities account contract with the intermediary. The definition offered by the Convention for the account holder, i.e. a person in whose name an intermediary maintains a securities account, whether that person is acting for its own account or for others, seems to be more precise and appropriate description.

2.9 Rights of the Account Holder and Transfer of Securities under the Capital Markets Act

The rights and obligations of the intermediary and the account holder are stipulated in the Capital Markets Act[68], though in a far less structuralized fashion comparing to the Convention regime. For the sake of transparent analysis, these will be summarized similarly as above;

- The securities intermediary must:
  - execute the account holder's legitimate instructions;
  - keep the account holder informed concerning all transactions to and from the account, as well as on the balance of the account;
  - record all transactions to and from a securities account in a statement and shall send this confirmation to the account holder;

[66] Emphasize added
[67] Section 140 (2) of the Capital Markets Act
[68] Section 140-143 in particular

- supply an account statement indicating the transactions in the securities account whenever one is requested by the account holder;

- the account holder of record, or a person duly authorized by the account holder is entitled to control securities account;
- control of jointly owned securities recorded on a securities account shall be exercised by the owners jointly, or by a common representative
- control of a securities account whose holder is adjudicated in bankruptcy or liquidation, or is undergoing dissolution can be exercised only by the bankruptcy trustee, the receiver or the liquidator, as the case may be.

The difference from the content of Article 9-10 of the Geneva Convention is quite apparent. Common attribute is, as far as the duty of the intermediary is concerned, that it has to accept the instructions of and to keep adequately informed the account holder[69], apart from this however the Capital Market Act is silent on, for instance the account holder's right to dividends and distributions.[70] As for the exercise of voting right (with respect to dematerialized shares), as the legal system treats this as a right against the company of which share is held, dogmatically this entitlement in set forth in the Business Act not here. Notwithstanding this, the Capital Market Act, as opposed to the Convention regime, provides for the possibility of the intermediary acting as a nominee of the account holder upon a contractual basis. Accordingly[71]

> *a securities intermediary, a custodian, and a clearing house may act as an attorney in fact on behalf of a shareholder (hereinafter referred to as "nominee") under written authorization signed by the shareholder (…) in order to exercise the shareholder's rights in limited companies in its own name but on behalf of the shareholder. A nominee shall have powers to exercise all rights of the principle shareholder for*

[69] Similar to Article 10 - 2 c) and e) of the Convention
[70] Article 10 - 1 a) of the Convention. However it does not mean that the Hungarian legal regime does not grant such rights to the security holders, only they are incorporated in relevant laws assigned to the different type of securities, for instance in Act IV of 2006 on Business Associations as to shares, or in Gov. Decree 285/2001. (XII.26.) on Bonds in respect of bond.
[71] Section 151 (1) – (2) of the Capital Markets Act

which the authorizing shareholder is entitled (…) with respect to shares placed in a securities account that is maintained by the nominee or which are deposited with the nominee.

This issue is not covered by the Convention at all. Although one can argue that the convention, as many other issues, meant to leave this for the domestic laws, functionally it feels much related to the substantial law of the intermediated securities, and perhaps the Convention could have expressed an opinion on this matter.

Furthermore, the Capital Market Act is also silent on the account holder's the right to hold his securities otherwise than in securities account, but with a good reason, as under Hungarian laws dematerialized securities, the only form of securities which can, and be subject to intermediated holdings in Hungary in the Convention sense, can only be held via securities accounts.[72] Moreover the intermediary's duty of protection of the account holder (basically against shortfall as follows from Article 24 of the Convention) and the obligation of allocation (i.e. holding the account holders' securities by the intermediary in appropriate manner and separated as required by the Convention) as making the securities unavailable for its creditors and not making unauthorized disposition[73] are not provided for. The latter restriction however can be easily concluded from other sources of law, most of all from the account holder's civil ownership rights to the securities in a civil law sense, which give the exclusive right of disposition over the concerned assets. The rules in connection with the control of the account are obviously of such nature which the Convention meant to leave to national laws (notwithstanding its regulations regarding control agreements).

As far as the transfer of intermediated securities is concerned, the Hungarian law is clear on the issue stipulating that the title to dematerialized securities must take place through

[72] as follows from Section 338/B or 338/C (1)- 2. of the Civil Code
[73] to Article 10 - 2 a) b)and d) respectively

securities accounts.[74] Accordingly, it can observed that the permitted means of transferring dematerialized securities between securities accounts is limited in comparison to the regime of the Geneva Convention, as only the credit/debit method via securities accounts is possible in Hungary.

Chapter III of the Convention also addresses the issues of innocent acquisition of securities. This notion means that unless an acquirer of securities actually knows or ought to know, at the relevant time, that another person has an interest in the securities and that the credit (or grant of interest) violates the rights of that other person in relation to its interest, the acquisition of right over the securities is not affected, the innocent acquirer is not liable and the acquisition is not rendered invalid[75]. Notwithstanding, this does not apply to gratuitous acquisitions or those granted as a gift[76]. This meets with the civil law perception also applied in Hungary[77] that grants good title for *bona fide* purchasers[78] on commercially sold goods, even if it the seller's title was defective and does not reverse the acquisition, but it incurs personal claim of third person, whose right was violated, against the seller.

2.10 System Integrity under the Geneva Convention and corresponding Hungarian Rules

Chapter IV of the Convention is called "*Integrity of the Intermediated Holding System*". This Chapter covers various matters pertinent basically to the stability of the securities holding system and the protection of the account holders. First off, it addresses the treatment of rights and interest of account holders under Article 11-12 in case of insolvency of

[74] In accordance with Section 138 (1) of the Capital Markets Act
[75] Article 18 – 1 a)-c)
[76] Article 18 – 3
[77] See Section 118, and for bearer securities Section 119 of the Civil Code
[78] as already outlined with respect to the acquisition of securities in Hungary in the foregoing.

the intermediary prescribing that they shall be effective against the insolvency administrator as well as the creditors of the intermediary[79]. This is strengthened by the rules of allocation, insofar as securities allocated to the rights of the accountholders shall not form part of the property of the intermediary which is available for its creditors[80]. This reflects the well-accepted principle that the intermediary is a custodian, merely holding the property which in fact belongs to someone else, thus should not be reachable for its creditors[81]. This idea corresponds with the Hungarian insolvency laws inasmuch as the account holders have ownership title over the handled securities, therefore it cannot form part of the insolvency assets[82] of the intermediary. Moreover all rights, either that of the account holder or anyone else's, which had arisen previously against the intermediary shall survive the declaration of insolvency/liquidation. They are however not "self-effective", as it seems to be under the Convention, but are subject to due registration within the statutory deadline, failure of which result in subordination in ranking order of claims or even forfeiture[83].

The Chapter again confirms the intermediaries' obligation to give effect to the instructions of the account holders, and none else, subject to however a series of exception (agreements to the contrary, interest in the securities other than the account holder, judgments, award, etc)[84]. Moreover, for the avoidance of shortfalls, it prescribes for intermediaries with respect to each description of securities to hold or have available securities and intermediated securities of an aggregate number or amount equal to the aggregate number or amount of securities of that description credited to securities accounts that it maintains for its account

[79] Article 21 of the Convention
[80] Article 25 1-2
[81] Charles W Mooney, Jr and Hideki Kanda: *UNIDROIT (Geneva) Convention: Core Issues* , *(Gullifer & Payne: Intermediated Securities*), (Oxford and Portland, Oregon, 2010), 123
[82] The scope of assets that belongs an entity is determined by the Act C of 2000 on accounting and the scope of the Liqudation Act is limited to the debtor's assets only.
[83] Section 37 (1) of Act XLIX of 1991on Bankruptcy Proceedings, Liquidation Proceedings
[84] Article 23

holders or itself. Also, the Convention establishes a loss-sharing regime in case of shortfall due to the intermediaries' insolvency prescribing proportionality among accountholders if the affected securities were not allocated into to single account holder[85]. As regards set-offs between the issuer of securities and holder thereof in own account, the Convention establishes that in case of the issuers' insolvency exercising setoff by the securities holders is not prevented by the fact that securities were held through intermediaries[86].

The reviewed Hungarian statutory provisions do not address explicit rules on shortfalls, but on one hand, intermediaries normally does not have the right to dispose of securities without the account holders' consent, and on he other, all transfers between different intermediaries must be reported to the central securities depositary. In case of insolvency of the intermediaries, the general insolvency regime is applicable here as well. It is noteworthy, that that under the Capital Markets Act, the Investment Protection Fund indemnifies, besides cash-counts, also lost securities up to the amount of € 20,000 per person and per account[87]

2.11 The Rules of Collateralization under the Convention

Chapter V of the Geneva Convention addresses some specific issues pertinent to the situation where, in the context of the Convention, collateral provider88 gives collateral securities89 to the collateral taker90. Conceptually, the provision of collateral may be

[85] Article 26 - 2
[86] Article 30
[87] Section 217 of the Capital Markets Act
[88] *an account holder by whom an interest in intermediated securities is granted under a collateral agreement* - Article 31 – 3 (e)
[89] *intermediated securities delivered under a collateral Agreement* - Article 31 – 3 (e)
[90] *a person to whom an interest in intermediated securities is*

implemented under two kinds of collateral agreements. First by granting security interest91 over the concerned item or secondly by transferring title92 which results the collateral taker's gaining of full ownership. However, the second alternative can be opted out. In fact, the whole chapter itself is elective by the contracting states, or can be declared inapplicable in certain aspects, such as for collateral agreements entered into by natural persons, or with respect to securities not permitted to be traded on regulated markets[93].

What is further relevant in the event of the collateral provider's insolvency, is that the Convention establishes the collateral takers right to apply close-out netting[94] (practically to account the net result of or set-off the opposing obligations of the parties) or seek satisfaction through the realization of the collateral if the collateral agreements permits so (that is to treat it as own property and setting off its value from the outstanding obligation of the collateral provider).[95] These actions are subject to the occurrence of an enforcement event (default of collateral provider of or other event under the applicable law or agreement which triggers realization or close-out netting[96], and basically accelerates the collateral providers obligation). Moreover, this Chapter addresses (subject to the collateral agreement) the collateral taker's right to use the collateral, which incurs the obligation of the replacement of the original collateral with equivalent collateral or other asset permitted by collateral provider "*if so used or disposed of (…) not later than the discharge of the relevant obligations*".[97] Another prescribed technique of creditor protection, but again subject to the respective collateral provider, is the so called collateral "top-up" by the collateral providers, which imposes an

granted under a collateral agreement - Article 31 – 3 (j)
[91] that is "security collateral agreement" - Article 31 – 3 (b)
[92] "title transfer collateral agreement" Article 31 – 3 (c)
[93] See Article 38
[94] See Article 31 – 3 (j)
[95] See Article 33 – 2
[96] Article 31 – 3 (h)
[97] Article 34 – 1 - 2

obligation upon the collateral provider to deliver additional collateral due the change decrease of value of the original collateral or (objectively defined) increased financial risk of the collateral taker. Furthermore, it gives the right of the collateral taker to substitute the original collateral with other assets of the same value. With respect to employing top up of substitution, the Convention sets forth that these actions "*shall not be treated as invalid, reversed or declared void solely on the basis that they are delivered during a prescribed period before, or on the day of but before, the commencement of an insolvency proceeding in relation to the collateral provider, or after the relevant obligations have been incurred*". This rule meant to tackle avoidance rules, which may apply in various jurisdiction, which entitles the insolvency administrator to consider certain transactions ineffective occurred within a certain deadline before the commencement of the insolvency proceedings, as well as the "zero-hour" principle, which treats the insolvency proceeding retro-effective as from the beginning of the commencement day[98].

It is understood that the application of the aforesaid Geneva rules are rather optional, such is the whole Chapter and are subject to national laws as well as the concerned collateral agreements. Hence the contracting states may "cherry-pick" the provisions they deem fit to their jurisdictions. In contrast, the Hungarian Capital Markets Act is silent on the specific issues of collateralization. It only deals with rules of attachment necessary by virtue of law, court order, administrative measure or contract, underlying some right of a third person, or if so instructed by the account holder, which includes collateralization (particularly putting lien on) the affected securities. In this case, the intermediary must transfer all securities to a subsidiary account and held there until the reason of attachment is ceased to exist. Consequently, these rules concerns only that situation, where the collateralized securities

[98] Charles W Mooney, Jr and Hideki Kanda: *UNIDROIT (Geneva) Convention: Core Issues , (Gullifer & Payne: Intermediated Securities*), (Oxford and Portland, Oregon, 2010), 75

remain, legally speaking, in the possession of the creditor provider (account holder), but disposition over its property is restricted due to the collateralization[99].

[99] As far as rules of collateralization of securities are concerned, primarily the general rules of the Civil Code apply (lien, mortgage, etc). However, these are not substantive rules on intermediated securities within the meaning of the Convention, and the analysis of the fundamental rules of collateralization of the Hungarian legal regime would reach beyond the scope of the present thesis, thereby the author of this paper contents himself with the observation that the reviewed financial laws do address specifically the issue of collateralization of securities.

Conclusions

The ongoing economic distress on the capital markets raises high exceptions against the legislators of the financial laws worldwide. A greater extent of legal protection of investors and market stability is undoubtedly desirable for the global economy. UNIDROIT took the path toward the unification of the legal regime as regards a very important segment of the markets, the intermediated securities which inherently involve cross-border transactions at a large scale. It is clear that the drafters were result-oriented and gave recognition of dissimilar legal concepts in this process in order to attain wide acceptability by the various legal regimes. For the moment, it cannot be stated to the extent of certainty whether or not the Geneva Convention will enjoy success, but it is by all means a useful instrument for studying for the legislators of an emerging economy, such as Hungary, whose market is very much exposed to the global financial trends and whose financial system is underdeveloped to the West.

Unsurprisingly, the Hungarian legal regime in the present subject matter stands on the grounds of the civil law, as in general it treats securities as other (movable) properties in terms of recognizing proprietary ownership therein. The Hungarian legal regime does not employ alternative methods of disposition, those of mostly deriving from common law systems, such as transferring intermediated securities, or granting interest thereon by means other than credit/debit. Albeit Hungary maintains, with the involvement of a central depository, a transparent system for holding of securities appearing in electronic form, it can be concluded that the system does not recognize the notion of intermediated securities explicitly. Hence one must take a functional approach (not in the Convention sense of course) to establish if there is

any instrument, that is concerned by this phenomenon. The answer is dematerialized securities, as they are statutorily subject to securities account holding by in intermediaries. Hungarian laws perceive the question from the practical perspective of the maintenance of securities accounts and provides for the rights and obligations of the intermediaries and the accountholders. Some of this rules correspond with those of the Geneva Convention, nevertheless the reviewed legal sources often deals with technical issue related to the securities account only and fails to address relevant questions which relates to other fields of law, such as insolvency or collateralization, or third person interest in securities. Moreover the reviewed laws do not make any distinction if an intermediary is holding securities for another one, who is not acting in its own account. It seems that the Hungarian legal regime has a somewhat narrow perspective in this respect and has not yet realized that by their nature intermediated holdings carries several contingencies, inherently different from the traditional form of securities.

The functional approach chosen by the creators of the Geneva Convention allows a great flexibility for the participating countries to opt in many cases only for those rules of the model law which they feel fit into their legal regime. As a consequence, the legislators would not be encumbered with many times burdensome harmonization requirements of all related levels of law, which we often see with regard to the EU legislation processes. Consequently, no obstacle or disadvantages was discovered which would suggest Hungary to keep distance from the adoption process. In any case, the issues addressed therein with respect to intermediated securities should be studied by the legislators in Hungary. Even if not joining the Convention, recognition should be given within the domestic legal framework to the pertinent questions not yet addressed in Hungary, hence the model law could serve as a source of ideas for legal modernization.

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