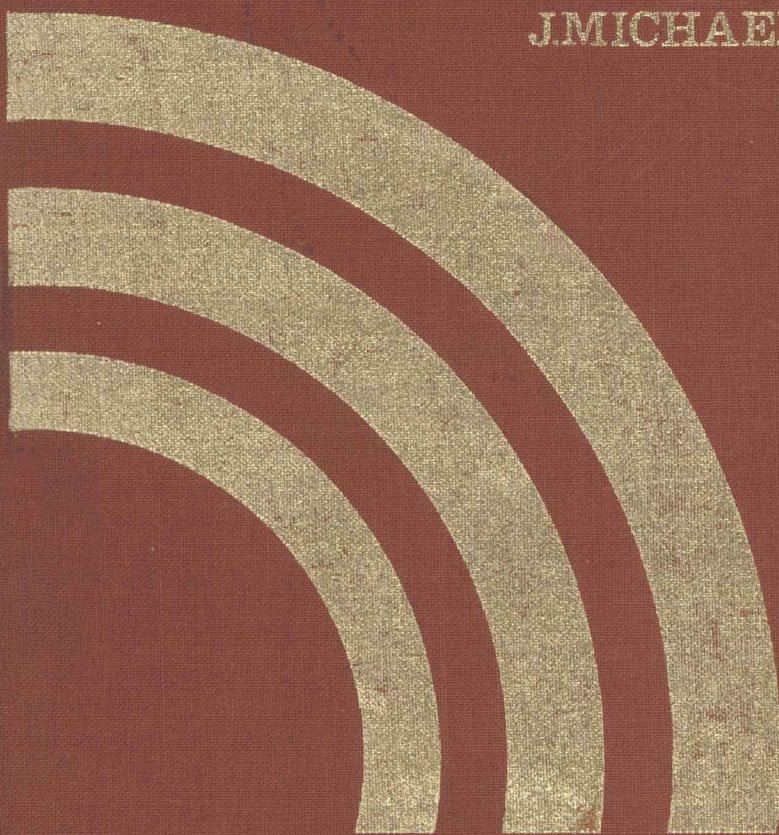


THE SECTION ON BUSINESS LAW OF THE
INTERNATIONAL BAR ASSOCIATION

Comparative Survey of Securities Laws

edited by

J. MICHAEL ROBINSON



Kluwer

The Netherlands

INTERNATIONAL BAR ASSOCIATION

Comparative Survey of Securities Laws

A review of the securities and
related laws of fourteen nations

Edited by

J. MICHAEL ROBINSON

Written by

Members of the COMMITTEE 'Q' – SECURITIES ISSUES & TRADING
of the Section on Business Law
of the International Bar Association

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Foreword

The Section on Business Law of the International Bar Association is greatly indebted to the Editor, J. Michael Robinson and to John Gauntlett, the Chairman of the Committee on Issues and Trading in Securities, and his Vice-Chairmen, Blaise Pasztory, Robert Briner and the members of the Committee who have contributed, for their joint efforts in preparing this first book of their committee.

It will make a valuable addition to the libraries of all practising lawyers because it has been written by practising lawyers, with the knowledge and experience of their own daily work and the understanding of what a practitioner is looking for.

I am confident that this book will prove of real assistance to practitioners world-wide, as have previous publications of other Committees of the Section on Business Law. I wish it great success.

I hope that you may wish to join the Section on Business Law and thereby make contact and work with lawyers with similar interests in commercial law.

WALTER OPPENHOF
Chairman of the Section
on Business Law

Editor's Introduction

I have great pleasure in presenting reports from fourteen countries.

In the best tradition of many institutions of higher learning which trace their origins to some medieval ale house, this project has its genesis in a bar.

At the October, 1977 Business Law Section meeting in Atlanta, Georgia, one of Committee Q's Vice-Chairmen, Blaise Pasztory and I were discussing the great divergence in legal and economic systems and how the attendant different philosophies often give rise to communication problems. In a moment of weakness at the end of a long day, your Editor agreed to assemble a survey of securities laws from the members of Committee Q, initially as an update to several reports received by Mr. Pasztory in 1972.

It soon became apparent that the 1972 reports lacked a consistent structure from which to update. Also there weren't many of them. This led to a quantum leap to a much expanded project: a survey of securities and related laws and markets in several principal countries. By a survey I conceived a broad overview of the system by a practicing lawyer experienced in his system, able to impart an understanding of its general philosophy and mechanics to other practitioners.

This change in direction was, in your Editor's respectful opinion, consistent with the best purposes of the IBA Business Law Section and its unique role as a comparative law forum for practicing business lawyers.

The next step, (and your Editor's only substantive contribution beyond the Canadian report) was the design of a question and answer outline for all rapporteurs. The aim was that readers would be able to make a comparative analysis of the systems. Also where possible, standard headings and sub headings following the outline have been superimposed on the reports.

An editor should not be so impertinent as to suggest to the leading members of the securities bars in fourteen countries how to write reports on their own securities laws. Therefore, the question and answer format was a guideline only permitting each rapporteur to write his own report in a style and of a length suitable to him and the pressures of his work. The only requirement was to follow the basic skeleton of the outline. An edited text of the outline follows this general introduction.

I trust readers will appreciate why the following reports are not fully researched and footnoted analyses of specific laws often found in more traditionally scholarly journals.

The survey does something, however, which your Editor believes has not been attempted before. It provides a 'feel' for how securities markets are regulated (including self regulation) by particular countries and into what basic philosophy of regulation that country falls. This is, in your Editor's view, no less important. Because of the diversity of the reports, however, a synthesis was not possible.

Of necessity, such a wide canvas must be painted with a broad brush. In future, it might be desirable to follow up this report (or supplementary reports) with details of specific topics but I will leave this enormous job to those who come after me.

A comment several years ago at a Business Law Section meeting illustrates the great diversity which is a fundamental strength of the IBA and a major reason why this survey was attempted.

At a Committee Q meeting, one of our colleagues was explaining some rather arcane pronouncement by the United States Securities and Exchange Commission dealing with the minutia of financial disclosure in public statements of companies whose securities were registered with the S.E.C. The speaker was very well informed but the complexity of the topic and its somewhat narrow application appeared to cause it to be lost on many listeners whose eyes were visibly glazing over.

When the explanation was finished and the Chairman asked for responses from other countries, one of our more outspoken and articulate members from the Netherlands bar commented that the exposition was most able but of little significance to the Dutch (and probably many other European) securities lawyers. Published financial statements, said the Dutch member, tended to be limited to a few lines for the assets, a few lines for the liabilities and a line for the result of subtracting the one from the other.

The Dutch member briefly explained that tax and other considerations had led to the development of disclosure in quite another direction from that to which the S.E.C. had turned (or pushed) corporations subject to its jurisdiction. The riposte of the U.S. speaker to this comment, although not intended to be unkind, tended to categorize Dutch securities law somewhere in the low range of the laws of developing nations.

At this juncture a wag at the back of the room was heard to comment (in a stage whisper) that it should be remembered that the U.S. Securities and Exchange Commission did not exist before the crash of 1929 but the Dutch had been quite efficiently regulating their Amsterdam stock market when the Indians owned Manhattan.

I am sure my American colleagues will forgive my telling this little story on one of their colleagues. I know they appreciate how easy it is to become absorbed in the statutory and other regulation of securities markets in the United States. The story does illustrate, however, the necessity for appreciation of the many routes to the same destination. A securities law system will reflect basic legal and economic philosophies of a country. Appreciating the vast differences among these philosophies should be the keystone of an effective international law practice.

The reader should appreciate that the real work for this book has been done by the rapporteurs to whom your Editor, every member of the Business Law Section and, indeed, the whole IBA owes heartfelt thanks. The rapporteurs are amongst the most experienced and senior at the securities bars of their respective countries. They willingly gave considerable amounts of time and effort to this project.

John Gauntlett, your Chairman, and Blaise Pasztory and Robert Briner, your Vice-Chairmen of Committee Q should also be thanked for their continuing support of this project, for encouraging me to press it forward and for arranging for its publication through one of the most prestigious international law and financial publishers, Kluwer of Holland.

Toronto, Canada, November 30, 1979.

Outline

This outline is designed for use by the rapporteur of each country and has been prepared on a question and answer basis to assist in standardizing presentation of the topic, not to restrict the nature and extent of the reports.

It is hoped that if each rapporteur completes each question, if only with a brief summary answer or 'not applicable' response, a comparative analysis of the laws will be possible to the maximum benefit of all members.

On consideration of the topic, it was felt that it could not meaningfully be confined to current developments since 1972. First, the reports provided in 1972 were not as comprehensive as those contemplated for 1978. Second, a comparison of recent developments would not be meaningful without an outline of the existing legal systems regulating securities and securities markets.

Many questions are supported by an explanatory or example note. Neither this outline nor the notes are intended to restrict rapporteurs.

Part I Outline of Existing Laws

A. LEGAL SYSTEMS GENERALLY

1. What type of legal system is in effect in your country bearing upon securities markets and trading? For example, is it common law, civil code, common law supplemented by statutory code, regulation by governmental agency, self-regulation, etc.?

B. TYPE OF THE REGULATION OF SECURITIES TRADING AND MARKETS

1. Compare degree of regulation in your country by state regulatory agency (e.g. the Securities and Exchange Commission in the U.S.) and self-regulating, private agencies and/or codes (e.g. the 'City' takeover code in the U.K. and informal self-regulation by banks in the Federal Republic of Germany).
2. Describe the nature, extent and legal authority for regulatory powers of stock exchanges, if any.

C. NATURE OF MARKET FOR SECURITIES

1. What type of business infrastructure for issuance in trading of securities exists in your country? For example, are securities issued and traded for fully managed investment portfolios by banks and other major institutions, on the one hand, or are there broad public markets for most types of securities as in, for example, the United States and the U.K.?

2. Is there a substantial 'private' or institutional market where blocks of securities are issued to and/or traded by major financial institutions such as banks, insurance companies, trust companies et al?
3. To what extent is the institutional market described in answer to question C2 exempt from legal control by the regulatory agencies?

D. HOW WOULD YOU CATEGORIZE, ACCORDING TO THE FOLLOWING ARBITRARY DESCRIPTIONS, THE REGULATION OF THE ISSUANCE AND TRADING OF SECURITIES IN YOUR COUNTRY?

Nature of Regulation by Category	Applicable	Not Applicable	Partly Applicable
1. 'Mature' system of national laws regulating issuance and trading with broad public disclosure required			
2. Multiplicity of state or provincial regulatory systems with little uniformity			
3. Multiplicity of state or provincial regulatory systems with considerable uniformity			
4. Virtual absence of national or state or provincial formal legal requirements or informal regulatory systems by private bodies, such as exchanges			
5. Developing system of laws (national or state or provincial) not yet in a 'mature' state and covering only limited particular aspects of securities issuance and trading in response to perceived unregulated abuses			
6. Control 'at the border' over foreign investment in public securities but little internal laws or other regulation			
7. Semi-public regulatory organization (e.g. stock exchange) has a 'mature' system of controls (possibly supplemented by minimum formal legal statutory standards) recognized by national laws			
8. Wholly 'ad hoc' administration by government without clearly defined policy or laws, state or national or provincial			

E. FOREIGN INVESTMENT CONTROLS

What is the basic nature of controls on investment by foreigners?

NOTE: This report is not designed to canvass foreign investment controls but merely to highlight their existence as they may affect 'public' markets. In other words, controls over commencement of new businesses, public or private (e.g. Mexico and Canada) are not properly the subject of this paper. Requirements for disclosure of or governmental approval prior to acquiring 'public' companies, such as exist in the United States or Canada should be briefly outlined here in response to this question.

Further specific questions below may require additional detail (e.g. requirements for public reporting once a certain threshold limit of securities are purchased under U.S. law) but such details are probably better left for more specific questions.

F. GOVERNMENTAL – PRIVATE SECTOR REGULATION INTERREACTION

What is the nature of the reaction between governmental agencies and private or self-regulatory agencies (e.g. stock exchanges). For example, do the two agencies work together on an ad hoc or other informal basis not generally known or publicized or is there a clear set of rules?

G. NEW ISSUES

1. What type of disclosure document, if any, is required? For example, is a 'full, true and plain disclosure' prospectus or similar document applicable (e.g. U.S., Canada and U.K.) or is some more informal offering circular not subject to legal disclosure requirements and/or governmental approvals sufficient?
2. To what extent does the governmental or private regulatory agency, if any, have authority to approve or disapprove the merits of the issue for investment? For example, can the regulatory agency superimpose its judgment that the issue should not be sold or is its role merely to require full disclosure?
3. Mechanically, how is the public distribution accomplished? For example, do stockbrokers or dealers make a distribution among their clients; the public generally; to what extent is the distribution advertised?

H. CONTINUOUS DISCLOSURE

What continuous disclosure requirements affect publicly issued securities?

1. Are there requirements for notification to the public generally or to security holders of material changes in business or financial condition in

addition to requirements for distribution to security holders of periodic financial reports or statements?

2. How frequently must financial reports and similar information be distributed (e.g. annually, semi-annually, quarterly, etc.)?
3. What are the requirements, if any, for providing material information concerning the business and financial condition of the issuer of the securities in connection with the solicitation of proxies from shareholders for meetings or other shareholder actions.
4. How widely quoted is the market for securities publicly after they are distributed. For example, do stock exchanges or other regulatory agencies publish quotations (on a daily, weekly or other basis) of the prices and volumes at which the securities have traded?

I. INSIDER TRADING AND SELF DEALING

What are the controls on insider trading or self dealing, if any?

1. How are insiders defined? For example, are directors, officers and substantial shareholders deemed to be insiders; are persons who are informed by insiders ('tippees') deemed to be insiders?
2. What is the nature of the liability, if any, for insiders trading on the basis of confidential or 'inside' information or other dealing with company securities in conflict of interest with the security holders at large?
3. Is there any requirement for public disclosure by insiders of their transactions in securities?
4. What are the criminal sanctions, if any, for conflict of interest and/or self dealing trading by insiders?

J. THE ROLE OF LEGAL COUNSEL

1. What is the general nature of the involvement by lawyers with the issuance and distribution and/or trading of securities in your country? For example, is there a 'Securities Bar' which assumes a large measure of supervision and/or drafting of documents necessary for issuance of distribution, as in the United States, or is the lawyer's usual role merely advisory?
2. What, if anything, is the liability of the lawyer who assists with the preparation of disclosure documents for issuance of securities, solicitation of proxies or similar documents in connection with securities issuance or trading? Is there any obligation to report to government or 'private' regulatory agencies breaches of law or misleading disclosure when perceived by legal counsel?
3. Are contingent fees (based on a percentage of the award and payable only on a successful result) available to lawyers in suits by security holders (and/or others) against issuers of securities and/or their insiders for civil wrongs and, if so, are such actions frequent?

**K. ACQUISITIONS OF CONTROL OF PUBLIC COMPANIES
(TAKE-OVERS)**

1. What, in general, is the nature of the control, if any, over acquisitions of control (legal or effective control) of 'public' companies by others?
2. Are such acquisitions controlled only in cases where they are resisted by the directors or other managing body of the target company?
3. What controls or mechanisms, if any, exist to ensure shareholders generally (as opposed to a controlling block holder) an opportunity to participate in an offer to security holders generally, for all or a portion of the securities?
4. What disclosure, public or to regulatory agencies only, must be made by an offeror of his intention to make an acquisition and/or of his progress in effecting such purpose?
5. What is the nature of the offering document, if any, which must be sent to public shareholders on a take-over and is a different kind of document needed when the take-over is 'hostile' (opposed by the directors or other managing group of the target company)?
6. Are there any restrictions preventing foreigners from effecting take-overs of public companies more stringent than those affecting nationals?
7. What exemptions are available from disclosure or other laws governing acquisitions of control of public companies? For example, are there exemptions (e.g. Canada and the U.S.) for offers to small groups, security holders of 'private' companies, offers affected through a self-regulatory body such as a stock exchange, etc.?

L. OTHER MATERIAL LAWS OR PRACTICES

Are there other significant aspects of or controls over securities issues and markets in your country not dealt with in the preceding answers?

M. SUPRA NATIONAL CONTROLS

To what extent are securities markets in your country regulated by a supra national entity, e.g. the European Common Market?

1. What is the general nature of the control device by the supra national entity? For example, is there a code approved by treaty setting forth standards for issuance and/or trading of securities or some regulatory agency which exercises control only over the issuance or trading of securities crossing borders of the states within the supra national agency?
2. Is a supra national agency working towards the standardization of securities laws for its member countries, and, if so, in what areas?

Part II Recent Developments in Securities Laws (since 1972)

A. DEVELOPMENTS AFFECTING MAIN AREAS

Which of the fields, if any, dealt with in the preceding items have been affected by recent material developments in securities laws or regulations? Please try to refer to a specific section of Part I by citing it in your answer to this part.

B. PARTICULARS OF DEVELOPMENTS

Please provide a brief description of the nature of the change or development indicated by your answer to the preceding question.

C. FUTURE DEVELOPMENTS

What material developments do you anticipate for your country within the next year; five years?

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