

KLUWER LAW INTERNATIONAL

International Securities Law Handbook

Third Edition

Editors
**Marcus Best and
Jean-Luc Soulier**

A World Law Group
Publication



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Law & Business

INTERNATIONAL SECURITIES LAW HANDBOOK

Third Edition

Edited by

Marcus Best and Jean-Luc Soulier

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FOREWORD

This book on international securities laws is the third edition of the first work in what is now a series of handbooks published by Kluwer Law International in cooperation with the member firms of the World Law Group. Other titles in the series include:

- International Business Acquisitions (3rd edition, Kluwer 2007);
- International Expatriate Employment Handbook (Kluwer, 2006);
- International Employee Equity Plans (Kluwer 2003, now being updated); and
- International Civil Procedure (Kluwer 2003).

Like its companions, this work is intended as an easily accessible desk reference for lawyers, business executives and others concerned with multinational or cross-border transactions. In the present case, the intention is to provide a guide to international securities markets and to the regulation of the offer and trading of securities and other types of regulated investments in a number of jurisdictions.

Concept to Publication

The laws and legal practices, requirements and pitfalls relevant to cross-border securities trading and transactions are national in character. This reflects not only historical differences in the development of national systems, but also differences in government policies (particularly in relation to investor protection). Corporations are increasingly looking beyond their own borders to seek new capital and to diversify their shareholder base. Mutual funds, hedge funds and other investment vehicles, pension and superannuation funds, insurance companies and other institutional investors have dramatically increased their participation in foreign equity and derivative markets. Active stock markets now exist and attract foreign investments in many cities where the concept of foreign private investment through a regulated public market barely existed as little as twenty years ago.

There is therefore a need for a clear understanding of the different approaches taken in other jurisdictions if a company is to be able to offer its securities (whether for the purpose of fundraising, in connection with an initial public offering and

listing of its securities, or as consideration for a takeover offer) in a manner that is compliant with all relevant laws. This calls for a clear understanding of the legal requirements of each jurisdiction in which the securities are to be promoted or offered. Legal practitioners, in-house counsel, investment bankers and many others involved in fundraising and takeover activity need a user-friendly source of information covering the most important jurisdictions. This book was designed to meet this need.

Genesis of the Publication

The first edition of this book was conceived and implemented by the International Corporate Transactions Practice Group of the World Law Group under the editorship of Karl-Eduard von der Heydt of the firm that is now CMS Hasche Sigle and Stanley Keller of Palmer & Dodge (now Edwards Angell Palmer & Dodge LLP). The style and design was substantially revised and updated for the second edition, to incorporate a number of new elements and to make it easier for the reader to find the relevant information. The new outline was developed by the editors of the second and third editions, Marcus Best of Minter Ellison and Jean-Luc Soulier of Soulier (who both contributed to the first edition) in consultation with the WLG Handbook series editor, Michael Whalley.

In addition to the editors, and those who worked with them and are acknowledged in the Editors' Preface, individual lawyers in each of the WLG member firms have contributed substantial amounts of their time and expertise to the preparation of the country-by-country analysis. Those contributions and the effort required to complete a work of this nature, despite competing client, business and personal demands, are recognized and greatly appreciated.

The World Law Group

Since this book is the result of a cooperative effort by many World Law Group member firms, a brief description of the Group is in order. The World Law Group is a non-exclusive network of leading law firms. Member firms are independent and autonomous, and each firm is solely responsible for its own work.

There are currently 47 member firms with more than 10,500 lawyers working in some 260 offices in major international business centres. The primary purpose of the World Law Group is to develop, maintain and coordinate the capabilities and resources required to provide high quality, efficient legal services to international clients located throughout the world. We believe that bringing together in one group the legal knowledge, experience, resources and contacts of independent firms that represent the best in their jurisdictions is the ideal way to accomplish this objective.

WLG Practice and Industry Groups have been established in several areas, including Employee Benefits, International Taxation, Litigation and International Dispute Resolution, International Corporate Transactions, Internet/IP, Privacy, Anti-trust and Competition, Labour and Employment, and Finance and Banking. These Practice Groups bring together lawyers with similar interests and clientele to share information and ideas, to work on projects such as this book and to establish effective working relationships, which are necessary for providing quality international legal services to our respective clients.

It should be remembered, however, that, although it constitutes a comprehensive survey of the relevant issues encountered by cross-border securities offers and issues, this book is not a substitute for taking specific advice from legal counsel in the relevant jurisdictions, who should always be consulted about the application of applicable laws and regulations to specific matters or proposals.

Michael Whalley, Handbook Series Editor
The World Law Group

EDITORS' PREFACE

Since the publication of the second edition of this reference book in 2005, significant changes have occurred in the field of securities law at the international as well as national levels. The focus has been to provide investors with greater protection, allow as much transparency as possible in securities transactions, and ease the gathering of information on the securities themselves and the participants involved.

The objective of this handbook is to continue in the tradition of its previous editions, specifically to provide lawyers and market participants worldwide an accessible reference book containing key elements of securities laws and regulations. For consistency purposes and ease of reference, country chapters appear alphabetically and address the same topics in the same order.

This handbook does not nor does it intend to cover all issues related to foreign securities investment, as its primary purpose is to provide a basic understanding of the legal environment of the different countries. As such, this handbook is not a substitute for specific advice from lawyers experienced in the subject matter in the relevant jurisdictions. It is a tool through which the reader may be able to better formulate his/her needs and interact with foreign counsel, as necessary.

The editors would like to thank Ben Chaung and George Kosmas of Minter Ellison, Sandra Vreedenburgh of Soulier and Shelley Boyes of the World Law Group, who gave invaluable assistance in the editing of this new edition.

Marcus Best, Minter Ellison
Jean-Luc Soulier, Soulier
October 2009

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Marcus Best

Marcus Best is a corporate partner in the leading Australian law firm of Minter Ellison. He has specialized for more than eighteen years in business and securities law, and has extensive experience in international cross-border securities law and commercial transactions. Marcus has been a co-contributor to *Butterworths Australian Corporation Law Service*, authored the chapter on securities law in Australia for previous editions of this handbook, and served as editor of the second edition of this handbook.

Jean-Luc Soulier

Jean-Luc Soulier is the managing partner of Soulier, a leading mid-sized international law firm in France. He practises in all aspects of corporate, commercial and securities law, and has significant experience in cross-border transactions and international business acquisitions. Jean-Luc has contributed to several English publications, including *International Business Acquisitions* (also published by Kluwer), co-authored the chapter on securities law in France for previous editions of this handbook, and served as editor of the second edition of this handbook.

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INTRODUCTION

In recent years, financial markets have become more integrated than at any other time in their history, as cross-border activity and linkages between economies and their financial markets continue to increase.

Deregulation of interest and exchange rates and technological developments have facilitated a quantum shift in the speed and volume of information flows. Together with the expansion of the funds management industry (which has involved, in many cases, the adoption of global market indices), this has stimulated a marked increase in international capital flows, as investors seek to maximize the returns on their assets and diversify their investment risk on a global basis.

The increase in trade between countries has also encouraged a greater interdependence in financial markets as financial derivatives are frequently used to manage the financial risks inherent in international trade and investment.

With an ever-increasing market capitalization and the important role played by cities worldwide in global financial markets, it has become vital to be aware of the legal framework affecting the securities markets in as many jurisdictions as possible.

In the past, the integration of financial markets has been impeded by a lack of regulatory harmonization. The trend, however, appears to be shifting towards harmonization, especially in the European Union and the adoption of the MiFID, Transparency, Abuse and Accounting Directives. The focus increasingly appears to be on proper market functioning and consumer protection. With the usual problems of differing tax and stamp duty regimes, inconsistent national rules, limitations on market access, protectionist barriers and restrictions on the ownership and sale of securities, there continues to be a push for the development of certainty in international standards for financial markets.

A significant step in this direction occurred on 4 April 2007 with the completion of the merger between the NYSE Group and Euronext, thereby forming NYSE Euronext, the first global stock exchange. NYSE Euronext operates exchanges in the United States as well as throughout Europe, notably in Amsterdam, Brussels, Lisbon, London and Paris. The United States remains the leader in equities and exchange-traded derivatives but Europe has now emerged as a new major financial marketplace, joining the ranks of Tokyo, Bombay, Hong Kong, Sao Paulo, Singapore and

Sydney in playing an important role in the global trading of securities. The legal framework affecting securities markets in each of these, and other, jurisdictions is discussed in this handbook.

The development of common regulatory standards, both at the regional and international level, continues to be critical as it is expected to enhance the interdependence, and consequently the efficiency, of financial markets.

As significant differences still exist in the regulation of securities and financial markets around the world, it is useful for professional advisers and market participants to have access to an overview of the legal framework in which key markets operate. This handbook aims to provide such an overview.

The chapter for each of the thirty-five jurisdictions covered deals with the subjects of most interest to overseas investors and their advisers in a consistent format, so that information on specific issues can be easily found. Comparisons can also be made between the treatment of particular issues by different jurisdictions.

The following is a brief description of the issues covered, and of the scope of the commentary in each case.

1. Description of the Securities Markets

Many jurisdictions will trade debt and equity securities and derivatives through a number of different markets and those markets may also be duplicated in different geographical regions within the same country. The historical tendency of stock markets to operate in a number of major cities within a single country was the result of the need for brokers and market makers to transact business with each other physically by open outcry. This has given way to a concentration of markets as electronic trading and dematerialized holdings become more prevalent.

Securities markets can also be structured in different ways, depending on the extent of government regulation, the ownership of the market itself by either its participants or the public at large, and the nature of the securities traded on it. For example, most jurisdictions have separate markets dealing with derivatives (which often compete with the principal securities market in that jurisdiction) and more sophisticated markets will also have multi-tiered equity securities exchanges dealing with different segments of the market (examples being the NASDAQ market in the United States and the Alternative Investment Market in London).

2. The Listing/Market Authority

Legislative requirements may prescribe the qualifications for organizations that are able to establish and operate certain securities markets. The organizations that operate these securities markets, such as stock exchanges, may also adopt rules

governing companies and securities that are listed on their exchanges. Examples of the types of issues that may be covered by listing rules include the requirements to maintain listing on the securities market and the disclosure of price-sensitive information.

In addition, listing authorities may adopt rules that regulate the activities of participants in their securities markets, such as stockbrokers, in respect of, among other things, accounts, trading, delivery and settlement of transactions.

3. The Regulatory Authority

The regulation of securities markets is essential in ensuring public confidence in their stability, transparency and efficiency. Securities markets in the jurisdictions covered in this handbook are generally subject to significant regulation. The focus of regulatory activity includes such matters as the enforcement of company and financial services laws, consumer protection, prudential regulation to ensure the soundness and stability of financial institutions and markets, and restrictions on capital market flows.

4. Principal Laws Regulating the Securities Markets

Securities markets in economically developed jurisdictions generally operate within a comprehensive legislative framework. In each jurisdiction covered in this handbook, there are generally key items of legislation that deal with various aspects of the securities markets, including: the establishment and operation of banks, other financial institutions and regulatory bodies; the provision of financial services and financial products; consumer protection; and foreign investment in securities markets.

5. Participants in the Securities Markets: Requirements for Licensing

Some jurisdictions require participants in securities markets, such as stockbrokers and financial advisers, to be licensed in order to provide financial services to investors. Examples of the types of financial services that may be required to be licensed include the provision of advice to investors in relation to the acquisition of securities and other types of financial products, the issuing and dealing of securities, the underwriting of securities issues and the provision of custodial services in relation to securities.

A regime for the licensing of securities market participants is important to ensure that these participants are adequately resourced, qualified and trained in order to provide the types of services that they hold themselves out as being able to provide to investors.