

QUESTIONS ON DEMATERIALISATION

1. What is the nature of the entitlement to securities held (cross-border) on an account with a securities settlement system (possibly through several tiers of relationships) located in your jurisdiction: a) where the securities are fully dematerialised, and b) where the securities are immobilised with a custodian in the jurisdiction of issuance. Is the nature of the entitlement (also depending on whether the securities are fully dematerialised or only immobilised): a) a traceable proprietary right to individualised or the relevant underlying securities or to book-entry securities, or b) a fractional or co-property right that is legally traceable to an actual pool of fungible securities, or c) a co-ownership right in a notional pool of securities (meaning that the pool is represented by book-entries on the books of the SSS, not by the underlying securities certificates, and that the participants' rights are legally traceable neither to the individual underlying securities nor to the pool of underlying securities), or d) a mere contractual claim.
2. What is the nature of the registration into an account (i.e. does it create or does it prove the right on securities) with a securities settlement system located in your jurisdiction, depending on the type of securities held?
3. What measures (e.g. segregation, insurance) are taken (law or rules of the CSD) to protect holders of dematerialised/immobilised securities held in a securities settlement system located in your jurisdiction? Can the entitlement to dematerialised/immobilised securities held in a securities settlement system located in your jurisdiction be challenged in the event of insolvency proceedings against this CSD or against any of the other financial intermediaries intervening in the multi-tier holding of such securities?
4. Does the attachment of dematerialised/immobilised securities held in a securities settlement system located in your jurisdiction, by creditors of a participant in such system pose any particular problems? Is the account in the books of the CSD and in the name of the participant simply blocked or is there an attempt to reach other intermediaries in the chain of the multi-tier holding and/or the issuer?
5. In the absence of any explicit statutory provisions, is it possible for corporates to issue dematerialised securities on the basis of freedom of contract?

6. Would there be any particular restrictions \ concerns in case an entity not domiciled or resident in your jurisdiction were to chose the laws of your jurisdiction to govern its issuance of dematerialised securities? Would there be any restrictions as to where such dematerialised securities could be cleared and settled?