



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 47

(2008, chapter 20)

**An Act respecting the transfer of
securities and the establishment of
security entitlements**

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EXPLANATORY NOTES

This Act is modelled on the Uniform Securities Transfer Act that was approved by the Uniform Law Conference of Canada and adhered to by all the Canadian provinces and territories. Its purpose is to provide a suppletive legal framework for certain private law aspects of the transfer of securities and the establishment of security entitlements to financial assets.

The Act applies to the performance of duties imposed by law or contract that are involved in the process of transferring securities or establishing security entitlements. It first specifies its scope of application and what is meant by the transfer of a security and the establishment of a security entitlement, and defines the terms “transfer”, “issuer” and “securities intermediary” as well as other basic concepts that must be grasped in order to understand the new legislation, including the concepts of “security” and “financial asset”. Its general provisions address a certain number of elements that are common to or incidental outgrowths of security transfers and security entitlement acquisitions.

The Act then establishes a system of rules for the transfer of securities purchased and held within a legal relationship binding the investor and the issuer directly, with no intermediary. The rules reflect the fact that, in today’s world, securities are often disembodied in the sense that an actual paper certificate is not issued. They determine how securities are to be transferred and specify the rights of purchasers, the endorsements or instructions required for a transfer to be made, and the warranties made to purchasers, most notably, by those making endorsements or originating instructions. The rules also set terms and conditions for the registration of transfers of securities on issuers’ transfer books, and the duties of issuers in that regard.

The Act establishes a system of rules for the establishment of security entitlements to financial assets, purchased and held within a legal relationship binding the investor, called the entitlement holder, and a securities intermediary. The rules determine how security entitlements are to be established and specify the rights of purchasers and the warranties made to entitlement holders by securities intermediaries as well as those made to securities intermediaries by endorsers, originators of instructions and originators of entitlement orders. They also set out the duties owed by securities intermediaries to entitlement holders.

The Act furthermore amends the Civil Code to introduce special rules for movable hypothecs granted on securities or security entitlements when delivery is effected by the creditor obtaining control of the securities or entitlements in accordance with the new legislation. It introduces new conflict of laws rules for securities and security entitlements, and particularly for the security regime applicable to them. It extends the rules in the Code of Civil Procedure on the seizure of company shares to include all securities and security entitlements. Lastly, it makes consequential amendments to a number of statutes.

LEGISLATION AMENDED BY THIS ACT:

- Civil Code of Québec (1991, chapter 64);
- Charter of Ville de Montréal (R.S.Q., chapter C-11.4);
- Cities and Towns Act (R.S.Q., chapter C-19);
- Code of Civil Procedure (R.S.Q., chapter C-25);
- Municipal Code of Québec (R.S.Q., chapter C-27.1);
- Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01);
- Companies Act (R.S.Q., chapter C-38);
- Act respecting municipal debts and loans (R.S.Q., chapter D-7);
- Securities Act (R.S.Q., chapter V-1.1).

Bill 47

AN ACT RESPECTING THE TRANSFER OF SECURITIES AND THE ESTABLISHMENT OF SECURITY ENTITLEMENTS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND SCOPE

1. The purpose of this Act is to establish a legal framework for certain private law aspects of the transfer of securities and the establishment of security entitlements to financial assets, as part of an effort by the Canadian provinces and territories to harmonize their laws on the matter.

2. The provisions of this Act pertaining to the rights and obligations arising out of a transfer of securities or the establishment of security entitlements to financial assets are suppletive provisions.

However, the obligations of good faith, prudence, diligence and reasonableness applicable in carrying out those provisions may not be disclaimed by the parties, but the parties may establish standards of conduct whose observance will be considered to imply the performance of those obligations, so long as such standards are not manifestly unreasonable.

3. Unless the context indicates otherwise, a person who is required by a statute, law, rule, agreement or judgment to put a security or financial asset in the possession of another person satisfies that requirement by delivering the security to that other person or causing that other person to acquire a security entitlement to the financial asset as set out in this Act.

For the purposes of this Act, groups of persons or properties not endowed with juridical personality, such as general, limited or undeclared partnerships, associations that are not legal persons, trusts and funds constituted as patrimonies by appropriation, are considered to be persons.

4. The provisions of this Act are applicable to a clearing agency only to the extent that they do not conflict with the rules adopted by the clearing agency governing legal relationships between the clearing agency and its participants or between participants in the clearing agency. Those rules are effective even if they affect the rights and obligations of a person who does not consent to them.

In this Act, “clearing agency” means any person that carries on activities of a clearing agency or clearing house within the meaning of the Securities Act (R.S.Q., chapter V-1.1) or the securities regulatory law of another province or a territory in Canada, that is authorized to carry on such activities by the Autorité des marchés financiers and that is a securities and derivatives clearing house for the purposes of section 13.1 of the Payment Clearing and Settlement Act (Statutes of Canada, 1996, chapter 6, Appendix) or operates a clearing and settlement system designated under Part I of that Act.

Except for the purposes of the first paragraph, “clearing agency” also means a person that, without being authorized by the Autorité des marchés financiers to carry on activities of a clearing agency or clearing house, is nonetheless recognized as such by the equivalent authority of another province or a territory in Canada and meets the other conditions set out in the second paragraph.

5. This Act is applicable to the State, bodies of the State and any other legal person established in the public interest.

CHAPTER II

GENERAL PROVISIONS

DIVISION I

TRANSFER OF SECURITY, ESTABLISHMENT OF SECURITY ENTITLEMENT AND RELATED CONCEPTS

6. For the purposes of this Act, a security is transferred when a person acquires rights in the security and takes delivery of the security from the issuer or another person and a security entitlement to a financial asset is established when a person acquires rights in a financial asset held by a securities intermediary. A reference in this Act to a purchaser is a reference to a person acquiring rights in a security or financial asset.

The acquisition of rights in a security or financial asset (“purchase”) may result from any act constituting or conveying rights in the security or financial asset, whether by onerous title (“for value”) or by gratuitous title (“not for value”), including an issue, sale, exchange, gift or hypothec, provided only that the act is consensual.

7. For the purposes of this Act, “issuer” means

(1) a person who issues a security represented by a security certificate or who, other than as the person entrusted with authenticating the origin, genuineness and integrity of documents, places or authorizes the placing of the person’s name on a security certificate to evidence a share or similar participation or the person’s duty to perform an obligation represented by the security certificate;

(2) a person who issues a share or similar participation or undertakes to perform an obligation that is an uncertificated security; or

(3) a person who stands surety for or is otherwise bound by the obligations of a person described as an issuer in subparagraph 1 or 2.

“Issuer” also means, with respect to a registration of a transfer of a security, a person on whose behalf transfer books are maintained.

8. Clearing agencies are securities intermediaries within the meaning of this Act, as are dealers, banks, financial services cooperatives, trust companies, savings companies and other persons that in the ordinary course of their business maintain securities accounts for others and are acting in that capacity.

A securities account is an account to which a financial asset is or may be credited in accordance with an agreement under which the securities intermediary maintaining the account undertakes to consider the account holder as being entitled to exercise the rights that constitute the financial asset.

9. For the purposes of this Act,

(1) “security certificate” means a paper certificate only;

(2) “participation” includes any title conferring rights in property or in an enterprise.

DIVISION II

DISTINCTION BETWEEN SECURITY AND FINANCIAL ASSET

§1. — *Security*

10. A security within the meaning of this Act is a share or similar participation in an issuer or an obligation of an issuer

(1) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer;

(2) that is one of a class or series, or by its terms is divisible into a class or series, of shares, participations or obligations; and

(3) that is, or is of a type, dealt in or traded on securities exchanges or financial markets, or that is a medium for investment in the area in which it is issued or dealt in or traded and by its terms expressly provides that it is a security for the purposes of this Act.

A security certificate is in bearer form if it expressly states that the security is payable to the certificate bearer. A security certificate is in registered form if it specifies a person entitled to the security and if a transfer of the security may be registered on books maintained for that purpose by or on behalf of the issuer, or the security certificate states that it may be so registered.

11. Despite the conditions set out in section 10, a share or similar participation issued by a joint-stock company is a security, as is a participation in a trust. A share, unit or similar participation, other than an insurance policy or annuity contract issued by an insurance company, that is issued by a mutual fund within the meaning of the Securities Act is also a security.

§2. — *Financial asset*

12. A financial asset within the meaning of this Act is

(1) a security;

(2) a share or other participation in a person or an obligation of a person that, without being a security, is, or is of a type, dealt in or traded on financial markets or is a medium for investment in the area in which it is issued or dealt in or traded;

(3) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Act; or

(4) a credit balance in a securities account, unless the securities intermediary has expressly agreed with the person for whom the account is maintained that the credit balance is not to be treated as a financial asset under this Act.

13. A security entitlement is established when a security or other financial asset is, or is to be, credited to a securities account maintained by a securities intermediary.

§3. — *Classification of certain property*

14. A unit of or similar participation in a partnership or a limited liability company is not a security unless

(1) it is, or is of a type, dealt in or traded on securities exchanges or securities markets;

(2) its terms expressly provide that it is a security for the purposes of this Act; or

(3) the partnership or company is a mutual fund.

Whether considered a security or not, such a unit or participation is a financial asset if it is held in a securities account.

In this Act, “limited liability company” means a group not endowed with juridical personality, other than a partnership, that is formed under the laws of a legislative authority other than Québec and whose legal status grants to each of its members limited liability with respect to the liabilities of the group.

15. Bills of exchange and promissory notes to which the Bills of Exchange Act (Revised Statutes of Canada, 1985, chapter B-4) applies and depository bills and depository notes to which the Depository Bills and Notes Act (Statutes of Canada, 1998, chapter 13) applies are not securities, but are financial assets if held in a securities account.

16. Options, other than options on futures contracts, issued by a clearing agency in favour of its members, and other similar obligations, are not securities but are financial assets.

17. Commodity futures contracts, security futures contracts, financial instrument futures contracts and other similar futures contracts as well as options on such contracts are neither securities nor financial assets.

They are however, for the purposes of security law, including the related publication rules and conflict of law rules, considered to be financial assets if held in a securities account.

DIVISION III

OTHER GENERAL MATTERS CONCERNING TRANSFER OF SECURITY OR ESTABLISHMENT OF SECURITY ENTITLEMENT

§1. — Notices relating to security or financial asset

I — General provisions

18. For the purposes of this Act, a person has notice of a fact if the person has received a notice of it, if the person has knowledge of it or if the fact comes to the person’s attention under circumstances in which a reasonable person would take cognizance of it.

19. A notice is considered to be given if the person giving the notice has taken such steps as may be reasonably required in the normal course to ensure that the other person receives the notice, whether or not the other person takes cognizance of it.

20. A notice is considered to be received by the person to whom it is addressed when

- (1) the notice comes to the person's attention;
- (2) in the case of a notice under a contract, the notice is delivered to the place of business through which the contract was made; or
- (3) the notice is delivered to any other place held out by the person as the place for receipt of such notices.

21. A group, endowed with juridical personality or not, is considered to have notice of a fact concerning a particular transaction from the time when the fact is brought to the attention of the individual conducting the transaction on behalf of the group or would have been brought to the attention of that individual if the group had exercised due diligence.

A group exercises due diligence if it maintains reasonable routines for communicating significant information about a transaction to the individuals conducting the transaction on its behalf and there is reasonable compliance with those routines. Due diligence does not require an individual acting on behalf of the group to communicate information unless that communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

22. A notice is to be communicated by sending a signed writing unless the person giving the notice and the person receiving the notice have agreed to other means.

II — Notice of adverse claim

23. A person has notice of an adverse claim if

- (1) the person knows of the adverse claim;
- (2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or
- (3) the person has a duty, imposed by law, to investigate whether an adverse claim exists and the investigation, if carried out, would establish the existence of the adverse claim.

In this Act, "adverse claim" means a claim that the claimant has rights in a security or financial asset and that it is or would be a violation of the rights of the claimant for another person to hold, transfer or deal with the security or financial asset.

24. Having knowledge that a security or financial asset is being or has been transferred by a representative does not impose any duty of inquiry into the rightfulness of the transfer and is not notice of an adverse claim.

Despite the first paragraph, a person is considered to have notice of an adverse claim if the person knows that the representative is deriving a personal benefit from the transfer or is making the transfer in breach of a duty owed by the representative.

25. An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate, or that sets a date on or after which a security certificate is to be presented or surrendered for redemption or exchange, does not by itself constitute notice of an adverse claim except in the case of a transfer that takes place more than one year after a date set for presentation or surrender for redemption or exchange, or more than six months after the date on which the amounts to be paid against presentation or surrender of the security certificate became available.

26. A purchaser of a certificated security is considered to have notice of an adverse claim if

(1) the security certificate, whether in bearer form or registered form, has been endorsed “for collection” or “for surrender” or for some other purpose not involving a transfer; or

(2) the security certificate is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor.

The mere writing of a name on a security certificate does not by itself constitute an unambiguous statement that the security certificate is the property of a person other than the transferor.

27. Registration in the register of personal and movable real rights is not notice of an adverse claim to a security or financial asset.

§2. — *Terms of security*

28. The terms of a certificated security include the terms stated on the security certificate and any terms made part of the security by reference on the security certificate to a juridical act or another document, to the extent that those terms are compatible with the terms stated on the security certificate.

The terms of an uncertificated security include the terms stated in any act or document under which the security is issued.

§3. — *Validity of security and signatures, certificates, issues, rights and transfer restrictions*

29. A security is valid if it is issued in accordance with the issuer’s constituting instrument and with the provisions of the applicable law, determined according to the conflict of laws rules set out in the Civil Code.

30. A security with a defect going to its validity is enforceable against the issuer if held by a purchaser for value and without notice of the defect.

31. When the terms of a certificated security are made part of the security by reference on the security certificate to a juridical act or another document, the reference does not by itself constitute notice to a purchaser for value of a defect that goes to the validity of the security, even if the security certificate expressly states that a person accepting it admits notice.

32. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective except that the signature is effective in favour of a purchaser for value of the security if the purchaser is without notice of the lack of authority and the signing has been done by

(1) a trustee, transfer registrar, transfer agent or other person entrusted by the issuer with the signing or the preparation for signing of security certificates or with the authentication of the origin, genuineness and integrity of security certificates; or

(2) an employee of the issuer, or of any persons referred to in paragraph 1, entrusted with handling of the security certificate.

33. Subject to section 32, evidence that a security certificate is forged or counterfeited is a complete defence, even against a purchaser for value and without notice of the defect.

34. All other defences of the issuer of a security that are not referred to in sections 31 to 33, including a defence based on a defect in the delivery of a security, are ineffective against a purchaser for value of the security who has taken the security without notice of the particular defence.

35. After an act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of a defect in the security's issue or of any other defect that may be raised by the issuer if

(1) the act or event requires that, on presentation or surrender of the security certificate, money be paid, a certificated security be delivered or a transfer of an uncertificated security be registered, the money or security is available on the date set for redemption or exchange, and the purchaser takes delivery of the security more than one year after that date; or

(2) the act or event is not one to which paragraph 1 applies and the purchaser takes delivery of the security more than two years after the date on which performance of the principal obligation became due or the date set for presentation or surrender.

This section does not apply to a call that has been revoked.

36. A charge in favour of an issuer encumbering a certificated security is enforceable against a purchaser only if it is noted conspicuously on the security certificate.

37. A restriction on the transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless

(1) the security is a certificated security and the restriction is noted conspicuously on the security certificate; or

(2) the security is an uncertificated security and the registered holder has received notice of the restriction.

38. If a security certificate contains the signatures necessary to the security's issue or transfer but is incomplete in any other respect, any person may complete the security certificate by filling in the blanks in accordance with the person's authority and, even if any of the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took the security for value and without notice of the incorrectness.

A security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

§4. — *Purpose, nature and effectiveness of endorsement, instruction and entitlement order*

I — Purpose and nature of endorsement, instruction and entitlement order

39. The transfer or redemption of a security is initiated by means of an endorsement or instruction and that of a financial asset, by means of an entitlement order.

In this Act,

“endorsement” means a signature that, alone or accompanied by other words, is made on a security certificate in registered form or on a separate document for the purpose of initiating the transfer or redemption of the security;

“entitlement order” means a notice communicated to a securities intermediary directing the transfer or redemption of a financial asset to which an entitlement holder has a security entitlement;

“instruction” means a notice communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed.

II — Effectiveness of endorsement, instruction and entitlement order

40. An endorsement, instruction or entitlement order is effective if

- (1) it is made by the appropriate person;
- (2) it is made by a representative of the appropriate person; or
- (3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

41. In this Act, “appropriate person” means,

- (1) with respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security;
- (2) with respect to an instruction, the registered holder of an uncertificated security; and
- (3) with respect to an entitlement order, the entitlement holder.

42. Persons empowered by law to act for the appropriate person or to exercise an appropriate person’s rights in a security or financial asset, including as the administrator of the property of another, are considered to be the appropriate person’s representatives.

43. An endorsement, instruction or entitlement order made by a representative is effective even if

- (1) the representative has failed to comply with the instrument granting the representative authority or with the law governing the representative’s rights and duties, including any provisions requiring the representative to obtain court approval of the transfer or redemption; or
- (2) the representative’s action in making the endorsement, instruction or entitlement order or using the proceeds of the transaction is otherwise a breach of duty owed by the representative.

44. If a security is specially endorsed to a representative or registered in the name of a representative, or if a securities account is maintained in the name of a representative, an endorsement, instruction or entitlement order made by the representative is effective even if the representative is no longer serving in that capacity at the time the endorsement, instruction or entitlement order is made.

45. The effectiveness of an endorsement, instruction or entitlement order is determined as of the date that the endorsement, instruction or entitlement order is made.

§5. — *Overissues of securities*

46. Except as otherwise provided in this subdivision, the provisions of this Act that make a security enforceable against an issuer despite a defence or defect or that compel a security's issue or reissue do not apply to the extent that the application of such provisions would result in an overissue, that is, an issue of securities in excess of the number or amount that the issuer is authorized to issue.

47. If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to the issue of a security, or a person entitled to enforce a security against an issuer despite a defence or defect as provided in sections 30 to 32 and 34, may compel the issuer to acquire the security and deliver it, if certificated, or register the transfer of the security, if uncertificated, against surrender of any security certificate the person holds.

If such a security is not reasonably available for acquisition, a person entitled to issue of a security may recover from the issuer the price that the last purchaser for value paid for the security.

48. An overissue is deemed not to have occurred if appropriate action has cured the overissue.

§6. — *Depository's or agent's liability to adverse claimant*

49. A depository or agent, including a dealer, who has dealt with a security or other financial asset at the direction of a client or principal is not liable to a person having an adverse claim to the security or financial asset for any loss suffered by the person as a result, except if the depository or agent

(1) acted as directed after having been served with a judgment enjoining the depository or agent from doing so and after having had a reasonable opportunity to abide by the judgment;

(2) acted in collusion with the client or principal in violating the rights of the person who has the adverse claim; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

CHAPTER III**TRANSFER OF SECURITY****DIVISION I****DELIVERY AND RIGHTS OF PURCHASER****§1. — Delivery**

50. Delivery of a certificated security occurs when the purchaser acquires possession of the security certificate or another person acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the security certificate, acknowledges that the person holds the security certificate for the purchaser.

When the person who acquires possession of the security certificate on behalf of the purchaser is a securities intermediary, however, delivery of the certificated security only occurs if the security certificate is in registered form and

- (1) the security certificate is registered in the name of the purchaser;
- (2) the security certificate is payable to the order of the purchaser; or
- (3) the security certificate is specially endorsed to the purchaser by an effective endorsement and has not been endorsed to the securities intermediary or in blank.

51. Delivery of an uncertificated security occurs when the issuer registers the purchaser as the registered holder, on the original issue or the registration of transfer, or another person, other than a securities intermediary, either becomes the registered holder of the uncertificated security on behalf of the purchaser or, having previously become the registered holder, acknowledges that the person holds the uncertificated security for the purchaser.

§2. — Rights of purchaser

52. A purchaser of a security acquires all rights in the security that the transferor had or had power to transfer.

53. A protected purchaser acquires rights in the security free of any adverse claim.

A protected purchaser is a purchaser who purchases a security for value, does not, at the time of the purchase, have notice of any adverse claim, and obtains control of the security.

54. The purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve that purchaser's position by virtue of taking from a protected purchaser.

55. A purchaser has control of a certificated security that is in bearer form if the certificated security is delivered to the purchaser. A purchaser has control of a certificated security that is in registered form if the certificated security is delivered to the purchaser and the security certificate is endorsed to the purchaser or in blank by an effective endorsement or is registered in the name of the purchaser at the time of the original issue or registration of transfer by the issuer.

56. A purchaser has control of an uncertificated security if the uncertificated security is delivered to the purchaser or the purchaser enters with the issuer of the security into an agreement, called "control agreement", under the terms of which the issuer agrees to comply with instructions that are originated by the purchaser without the further consent of the registered holder.

A purchaser has control of an uncertificated security even if the registered holder retains the right to originate instructions to the issuer, to make substitutions for the uncertificated security or to otherwise dispose of the uncertificated security.

57. The following rules apply to a control agreement regarding an uncertificated security:

(1) the issuer may not enter into a control agreement without the consent of the registered holder;

(2) the issuer is not required to confirm the existence of a control agreement to a third person unless requested to do so by the registered holder;

(3) the issuer is not required to enter into a control agreement even if the registered holder so requests; and

(4) a purchaser who is party to a control agreement is considered to be the representative of the registered holder for the purposes of any instruction.

58. Unless otherwise agreed, a purchaser of a certificated or uncertificated security has a right to require that the transferor supply the purchaser, on demand, with proof of entitlement to the security or of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security. If the purchase is not for value, the purchaser may so require only on payment of the necessary expenses.

If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject the transfer or consider the transfer contract to be rescinded.

DIVISION II**ENDORSEMENT AND INSTRUCTION**§1. — *Endorsement*

59. An endorsement of a security certificate may be in blank or special.

An endorsement in blank includes an endorsement to bearer.

For an endorsement to be a special endorsement, the endorsement must specify to whom the security is to be transferred or who has the power to transfer the security.

The certificate holder may convert an endorsement in blank to a special endorsement.

60. A partial endorsement, that is, an endorsement in respect of only some of the securities represented by the certificate, is effective only if the securities are intended by the issuer to be separately transferable.

61. An endorsement of a security certificate, whether special or in blank, does not constitute a transfer of the security until the delivery of the security certificate on which the endorsement appears or, if the endorsement is on a separate document, until the delivery of both the security certificate and the document on which the endorsement appears.

62. If a security certificate in registered form has been delivered to a purchaser without a necessary endorsement, the transfer is complete against the transferor on delivery.

However, the purchaser may become a protected purchaser only when the endorsement is supplied, and has a right to have any necessary endorsement supplied at any time.

63. An endorsement of a security certificate in bearer form may constitute notice of an adverse claim to the security certificate, but does not otherwise affect any right that the certificate holder has.

§2. — *Instruction*

64. An instruction originated by the appropriate person with respect to an uncertificated security may, if necessary, be completed by any person in accordance with the person's authority.

The issuer may rely on the instruction as completed, even if it has been completed incorrectly.

DIVISION III**WARRANTIES**§1. — *Warranties by endorser or originator*

65. A person who endorses a security certificate warrants to the purchaser for value and to any subsequent purchaser that

(1) the security certificate is neither forged nor counterfeited and has not been materially altered;

(2) the endorser does not know of any fact that might impair the validity of the security;

(3) there is no adverse claim to the security;

(4) the transfer does not violate any restriction on transfer;

(5) the endorsement is made by the appropriate person or, if the endorser is a representative of the appropriate person, the endorser has actual authority to act on behalf of the appropriate person; and

(6) the transfer is otherwise effective and rightful.

66. A person who endorses a security certificate warrants to the issuer that there is no adverse claim to the security and that the endorsement is effective.

67. A person who originates an instruction for the registration of transfer of an uncertificated security to a purchaser for value of the security warrants to the purchaser that

(1) the instruction is made by the appropriate person or, if the originator is a representative of the appropriate person, the originator has actual authority to act on behalf of the appropriate person;

(2) the security is valid;

(3) there is no adverse claim to the security; and

(4) at the time that the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer, the transfer will be registered by the issuer free from all prior claims, hypothecs, restrictions and claims other than those specified in the instruction, the transfer will not violate any restriction on transfer, and the transfer will otherwise be effective and rightful.

68. A person who originates an instruction for the registration of transfer of an uncertificated security warrants to the issuer that the instruction is

effective and that, at the time that the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer.

69. Unless otherwise agreed, a person making an endorsement or originating an instruction does not warrant that the security will be honoured by the issuer and makes only the warranties set out in this subdivision.

§2. — *Warranty on signature, endorsement or instruction*

70. A person who guarantees a signature of an endorser of a security certificate warrants that, at the time of signing,

- (1) the signature was neither forged nor counterfeited;
- (2) the signer was the appropriate person to endorse or, if the signature is by a representative of the appropriate person, the representative had actual authority to act on behalf of the appropriate person; and
- (3) the signer had legal capacity to sign.

71. A person who guarantees a signature of the originator of an instruction warrants that, at the time of signing,

- (1) the signature was neither forged nor counterfeited;
- (2) if the person specified in the instruction as the registered holder was, in fact, the registered holder at that time, the instruction was effective; and
- (3) the signer had legal capacity to sign.

A person who guarantees a signature of the originator of an instruction does not by that guarantee warrant that the person who is specified in the instruction as the registered holder is in fact the registered holder.

72. A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under section 71 and also warrants that, at the time that the instruction is presented to the issuer,

- (1) the person specified in the instruction as the registered holder of the security will in fact be the registered holder of the security; and
- (2) the transfer of the security will be registered by the issuer free from all prior claims, hypothecs, restrictions and claims other than those specified in the instruction.

73. A signature guarantor does not warrant the rightfulness of the transfer otherwise than under sections 70 to 72.

74. A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor and also warrants the rightfulness of the transfer in all respects.

75. A person who guarantees an instruction that requests the transfer of an uncertificated security makes the warranties of a special signature guarantor and also warrants the rightfulness of the transfer in all respects.

76. An issuer may not require a special guarantee of signature, a guarantee of endorsement or a guarantee of instruction as a condition to the registration of transfer.

77. The warranties under this subdivision are made to a person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to the person for any loss resulting from any breach of those warranties.

An endorser or an originator of an instruction whose signature, endorsement or instruction has been guaranteed is liable to a guarantor for any loss resulting from any breach of the warranties of the guarantor.

§3. — *Other warranties*

78. A person signing a security certificate in a capacity such as trustee, transfer registrar or transfer agent for the purpose of certifying the origin, genuineness and integrity of the security certificate for the issuer warrants to the purchaser for value of the security, if the purchaser is without notice of a particular defect in respect of that security, that

- (1) the security certificate is neither forged nor counterfeited;
- (2) the person is acting within the person's capacity and within the scope of the authority received by the person from the issuer; and
- (3) the person has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

Unless otherwise agreed, the person signing the security certificate does not assume responsibility for the validity of the security in any respect other than that set out in the first paragraph.

79. A person who transfers a certificated security to a purchaser for value otherwise than by endorsement warrants to the purchaser that

- (1) the security certificate is neither forged nor counterfeited and has not been materially altered;
- (2) the transferor does not know of any fact that might impair the validity of the security;

- (3) there is no adverse claim to the security;
- (4) the transfer does not violate any restriction on transfer; and
- (5) the transfer is otherwise effective and rightful.

80. A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants to the purchaser that

- (1) the security is valid;
- (2) there is no adverse claim to the security;
- (3) the transfer does not violate any restriction on transfer; and
- (4) the transfer is otherwise effective and rightful.

81. A person who presents a security certificate for the registration of transfer or for payment, redemption or exchange warrants to the issuer that the person is entitled to the registration, payment, redemption or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants to the issuer only that the person has no knowledge of any unauthorized signature in a necessary endorsement.

82. A person who, as an agent, delivers a security certificate that the person has received from the principal or from a third person at the direction of the principal, to a purchaser who knows the identity of the principal, warrants to the purchaser only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

83. A secured creditor who redelivers a security certificate received from a debtor or, after payment and on order of the debtor, delivers the security certificate to a third person, makes only the warranties of an agent set out in section 82.

84. Subject to section 82, a dealer acting for a client makes to the issuer or a purchaser the warranties set out in sections 65 to 68, 79 and 81.

A dealer that delivers a security certificate to the dealer's client makes to the dealer's client the warranties set out in sections 65 and 79 and has the rights of a purchaser provided under sections 65, 79, 82 and 83.

A dealer that causes the dealer's client to be registered as the holder of an uncertificated security makes to the client the warranties set out in sections 67 and 80 and has the rights of a purchaser provided under those sections.

The warranties of and in favour of a dealer under this section are in addition to the warranties given by and in favour of the dealer's client.

DIVISION IV

REGISTRATION OF TRANSFER

§1. — Conditions for registration

85. If an endorsed security certificate in registered form is presented to an issuer with a request to register a transfer of the certificated security or an instruction is presented to an issuer with a request to register a transfer of an uncertificated security, the issuer registers the transfer as requested if

(1) under the terms of the security, the purchaser is eligible to have the security registered in that person's name;

(2) the endorsement or instruction is made by the appropriate person or by that person's representative;

(3) reasonable assurance is given that the endorsement or instruction is neither forged nor counterfeited and is authorized;

(4) any applicable fiscal law that imposes duties on the issuer at the time of the transfer has been complied with;

(5) the transfer does not violate any restriction on transfer imposed by the issuer that is enforceable against the purchaser or imposed by law; and

(6) the transfer is rightful or is to a protected purchaser.

86. An issuer may require the following assurance that each endorsement or each instruction is neither forged nor counterfeited and is authorized:

(1) a guarantee of the signature of the person making the endorsement or originating the instruction, given by a guarantor reasonably believed by the issuer to be a responsible person;

(2) if the endorsement is made or the instruction is originated by a representative of the appropriate person, appropriate evidence of actual authority to act on the appropriate person's behalf; or

(3) if the endorsement is made or the instruction is originated by a person not referred to in subparagraph 2, assurance appropriate to the case corresponding as nearly as may be to the assurance required by that subparagraph.

An issuer may adopt standards for the purpose of determining whether a guarantor is a responsible person, so long as those standards are not manifestly unreasonable.

87. In the case of a representative who is designated by a court, any document issued by or under the direction or supervision of the court or an officer of the court and dated within 60 days before the date of presentation for transfer is appropriate evidence of the representative's authority to act on the appropriate person's behalf.

In any other case, a copy of a document showing that the representative has the authority to act on the appropriate person's behalf, a certificate certifying that authority issued by a person reasonably believed by the issuer to be a responsible person or, in the absence of such a document or certificate, other evidence that the issuer reasonably considers appropriate is appropriate evidence of the representative's authority to act on the appropriate person's behalf.

88. An issuer may elect to require assurance beyond that specified in section 86 that an endorsement or instruction is neither forged nor counterfeited and is authorized, provided that such assurance is reasonable in the circumstances.

89. A person who is the appropriate person to make an endorsement or to originate an instruction may demand that the issuer not register a transfer of the security.

The demand is made by communicating a notice to the issuer setting out, among other things, the identity of the registered holder, the issue of which the security is a part, and the correspondence address of the person making the demand.

The issuer is under a duty to consider the demand only if the issuer has had a reasonable opportunity to act on it, having regard to the circumstances of receipt of the demand.

90. If, after a demand that the issuer not register a transfer of a security, a certificated security is presented to an issuer with a request to register a transfer or an instruction is presented to an issuer with a request to register an uncertificated security, the issuer promptly gives a notice to each interested person who initiated the demand, presented the request or originated the instruction.

The notice must state expressly

(1) that a request to register the transfer of the security has been presented to or an instruction for the registration of transfer of the security has been received by the issuer;

(2) that a demand that the issuer not register the transfer had previously been received; and

(3) that the issuer will withhold registration of transfer for a period of time stated in the notice in order to provide the person entitled to the security an opportunity to either obtain a judgment enjoining the issuer from registering the transfer or furnish security sufficient in the issuer's judgment to protect the issuer or a transfer registrar, transfer agent or other representative of the issuer from any loss that those persons may suffer by refusing to register the transfer.

The period of time stated in the notice may not exceed 30 days from the date on which the notice is given. The notice may specify a shorter period so long as it is not manifestly unreasonable.

§2. — *Issuer's duties*

91. Before due presentation for registration of transfer of a certificated security in registered form or the receipt of an instruction for registration of transfer of an uncertificated security, the issuer or the issuer's representative may treat the registered holder as the person exclusively entitled to vote, to receive notices, to receive any payments, dividends or other distributions and to otherwise exercise all the rights and powers of a registered holder.

92. An issuer that refuses or fails to register or unreasonably delays registering the transfer of a security despite the registration conditions being met is liable for any loss suffered as a result of the refusal, failure or delay by the person who presented the request to register the transfer or originated the instruction requesting the registration of transfer or by that person's principal.

When an issuer has received an effective demand from the person entitled to the security that the issuer not register a transfer, the registration conditions are considered to be met if the person has not, within the time allotted, either obtained a judgment enjoining the issuer from registering the transfer or furnished the security required by the issuer.

93. An issuer is not liable, to an appropriate person who initiated a demand that the issuer not register a transfer, for any loss that the person suffers as a result of the registration of a transfer in accordance with an effective endorsement or instruction if the person has not, within the time allotted, either obtained a judgment enjoining the issuer from registering the transfer or furnished the security required by the issuer.

94. An issuer is liable for wrongful registration of transfer.

Wrongful registration of transfer is registration of a transfer of a security to a person not entitled to the security when the transfer is registered by the issuer

(1) under an ineffective endorsement or instruction;

(2) without complying, in accordance with section 90, with an effective demand that the issuer not register the transfer which the issuer was under a duty to consider;

(3) after the issuer had been served with a judgment enjoining the issuer from registering the transfer and had a reasonable opportunity to abide by the judgment before registering the security; or

(4) acting in collusion with the person who requested the registration.

95. Subject to any applicable fiscal law that imposes duties on the issuer at the time of transfer, an issuer is liable for the loss resulting from registration of the transfer of a security under an effective endorsement or instruction only if the registration otherwise constitutes wrongful registration within the meaning of section 94.

96. An issuer that is liable for wrongful registration of transfer must, if the person entitled to the security so requests, provide the person with an identical certificated or uncertificated security, as the case may be, and with any payments, dividends or other distributions that the person did not receive as a result of the wrongful registration.

If the provision of a like security would result in an overissue, the issuer's liability to provide the person with an identical security is governed by section 47.

97. If the registered holder of a certificated security, whether in registered form or bearer form, claims that the security certificate has been lost, wrongfully taken or destroyed, the issuer must issue a new security certificate if the registered holder

(1) so requests before the issuer has notice that the lost, wrongfully taken or allegedly destroyed security certificate has been delivered to a protected purchaser;

(2) provides security sufficient in the issuer's judgment to protect the issuer from any loss that the issuer may suffer by issuing a new certificate; and

(3) satisfies any other reasonable requirements imposed by the issuer.

98. If, after the issue of a new security certificate, a protected purchaser of the lost, wrongfully taken or allegedly destroyed security certificate presents that security certificate for the registration of the transfer of the security, the issuer must register the transfer, as requested by that purchaser.

This rule does not apply if the registration of the transfer would result in an overissue, in which case the issuer's liability to the protected purchaser is governed by section 47.

An issuer that suffers a loss as a result of the application of this section may exercise against the registered holder to whom the issuer issued a new security certificate all the rights the issuer may have under the security provided by the registered holder.

99. Despite any contrary provision in this subdivision, the registered holder of a security may not assert a claim under section 96 or 98 against the issuer if

(1) the holder had notice of the fact that the security certificate had been lost, wrongfully taken or destroyed but failed to give a notice to the issuer of that fact within a reasonable time; and

(2) the issuer registered a transfer of the security before receiving a notice of the loss, wrongful taking or destruction of the security certificate.

100. A person who, in a capacity such as trustee, transfer registrar or transfer agent, is entrusted with certifying the origin, genuineness and integrity of securities for an issuer in the registration of a transfer of the issuer's securities, in the issue of new security certificates or uncertificated securities or in the cancellation of security certificates has the same obligation and liability to the registered holder of a security with regard to the particular function performed as the issuer has in regard to that function.

101. Nothing in this subdivision relieves an issuer from liability for loss resulting from the registration of a transfer under an endorsement or instruction that was not effective.

102. Nothing in this Act affects the liability of the registered holder of a security for a call, assessment or the like.

CHAPTER IV

ESTABLISHMENT OF SECURITY ENTITLEMENT

DIVISION I

ESTABLISHMENT OF SECURITY ENTITLEMENT AND RIGHTS OF ENTITLEMENT HOLDER OR OTHER PURCHASER

§1. — *Establishment of security entitlement*

103. A person acquires a security entitlement and so becomes the entitlement holder if a securities intermediary

(1) indicates, by book entry, that a financial asset has been credited to the person's securities account;

(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) becomes obligated under another law, regulation or rule or under a judgment to credit a financial asset to the person's securities account.

104. A person may have a security entitlement even if the securities intermediary does not itself hold the financial asset.

105. A person is not considered to have a security entitlement with respect to a financial asset if a securities intermediary holds the financial asset for that person and the financial asset

(1) is registered in the name of, payable to the order of or specially endorsed to that person; and

(2) has not been endorsed to the securities intermediary or in blank.

106. Issuance of a security does not in itself establish a security entitlement.

§2. — *Rights of entitlement holder or other purchaser*

107. To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all rights in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not the property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary except as otherwise provided in section 130.

Each entitlement holder has a proportionate right with respect to that financial asset, without regard to the time that the entitlement holder acquired the security entitlement or the time that the securities intermediary acquired the rights in that financial asset.

108. An entitlement holder's rights may only be enforced against the securities intermediary and only by the exercise of the entitlement holder's rights under the provisions of Division II of this chapter that relate to the duties of all securities intermediaries.

109. Despite section 108, an entitlement holder's rights with respect to a financial asset may be enforced against a purchaser of the financial asset, or rights in it, if

(1) bankruptcy or insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient rights in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset; and

(3) the securities intermediary violated its obligations under section 116 by transferring rights in the financial asset to the purchaser.

A trustee or liquidator acting on behalf of all entitlement holders having security entitlements to a particular financial asset may exercise the entitlement holders' rights. If the trustee or liquidator does not take action, the entitlement holders may each exercise their rights against the purchaser.

An action based on the entitlement holder's rights with respect to a particular financial asset, however framed, may not be brought against any purchaser of a financial asset who purchases the financial asset for value, obtains control or possession of the financial asset, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 116.

110. An action based on an adverse claim to a financial asset, however framed, may not be brought against the entitlement holder if the entitlement holder acquired the security entitlement for value and did not, at the time of the acquisition, have notice of the adverse claim.

111. Subject to the provisions of the Civil Code regarding hypothecs and the provisions of Division IV of this chapter regarding priority rules, an action based on an adverse claim to a security entitlement or the financial asset to which an entitlement holder has a security entitlement, however framed, may not be brought against a purchaser of the security entitlement who purchased the security entitlement from the entitlement holder if the purchaser is a protected purchaser or if such an action could not have been brought against the entitlement holder under section 110.

112. The purchaser of a security entitlement is a protected purchaser if the purchaser purchases the security entitlement for value, does not, at the time of the purchase, have notice of any adverse claim to the security, and obtains control of the security entitlement.

113. A purchaser of a security entitlement has control of the security entitlement if

(1) the purchaser becomes the entitlement holder;

(2) the purchaser enters with the securities intermediary into an agreement, called "control agreement", under the terms of which the securities intermediary agrees to comply with entitlement orders that are originated by the purchaser without the further consent of the entitlement holder; or

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously obtained control of the security entitlement, acknowledges that the person has control on behalf of the purchaser.

A purchaser has control of the security entitlement even if the entitlement holder retains the right to originate entitlement orders to the securities intermediary, to make substitutions for the security entitlement or to otherwise dispose of the security entitlement.

114. The following rules apply to a control agreement relating to a security entitlement:

(1) the securities intermediary may not enter into a control agreement without the prior consent of the entitlement holder;

(2) the securities intermediary is not required to confirm the existence of a control agreement to a third person unless requested to do so by the entitlement holder;

(3) the securities intermediary is not required to enter into a control agreement with the purchaser even if the entitlement holder so requests; and

(4) a purchaser that is party to a control agreement is considered to be the representative of the entitlement holder for the purposes of any entitlement order.

§3. — *Status of securities intermediary as purchaser*

115. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favour of the holder of a securities account maintained by the securities intermediary is considered to be a purchaser for value of the financial asset.

A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary is considered to acquire the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favour of the holder of a securities account maintained by the securities intermediary.

If rights in a security entitlement are granted by the holder of a securities account to the securities intermediary that maintains that account, the securities intermediary is considered to have control of the security entitlement.

DIVISION II**DUTIES OF SECURITIES INTERMEDIARY**

116. A securities intermediary must promptly obtain and then maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements that the securities intermediary has established in favour of its entitlement holders with respect to that financial asset.

The securities intermediary may maintain the financial asset directly or through one or more other securities intermediaries. Except to the extent otherwise agreed to by its entitlement holder, a securities intermediary may not encumber the financial asset with a security.

This section does not apply to a clearing agency that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

117. A securities intermediary must take action to obtain a payment, dividend or other distribution made by the issuer of a financial asset.

On receiving a payment, dividend or other distribution from the issuer of a financial asset, the securities intermediary is obligated to its entitlement holders having security entitlements to the financial asset.

118. A securities intermediary must exercise rights with respect to a financial asset if directed to do so by an entitlement holder.

119. A securities intermediary must comply with an entitlement order within a reasonable time if the securities intermediary has had a reasonable opportunity to assure itself that the entitlement order is effective.

120. A securities intermediary that has transferred a financial asset in accordance with an effective entitlement order is not liable for any loss suffered as a result of the transfer by a person having an adverse claim to the financial asset unless

(1) the securities intermediary transferred the financial asset after being served with a judgment enjoining the securities intermediary from doing so and after having a reasonable opportunity to abide by the judgment;

(2) the securities intermediary acted in collusion with the originator of the entitlement order in violating the rights of the person who has the adverse claim; or

(3) in the case of a stolen security certificate, the securities intermediary acted with notice of the adverse claim.

121. If a securities intermediary transfers a financial asset under an ineffective entitlement order, the securities intermediary must re-establish a security entitlement in favour of the previous entitlement holder and pay or credit any payments, dividends or other distributions that the previous entitlement holder did not receive as a result of the wrongful transfer.

122. A securities intermediary must act at the direction of an entitlement holder to change a security entitlement, when possible, into a security or another available form of holding or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary.

123. A securities intermediary is considered to satisfy the duties imposed under this division if the securities intermediary acts with respect to the duty as agreed between the entitlement holder and the securities intermediary or, in the absence of such an agreement, the securities intermediary exercises due care.

In the case of the duty imposed under section 118, the securities intermediary is considered to satisfy that duty if, in the absence of an agreement with the entitlement holder, the securities intermediary acts so as to enable the entitlement holder to directly exercise the entitlement holder's rights under that section.

124. Subject to specific standards specified by another law, regulation, rule or by a contract, a securities intermediary and an entitlement holder must perform their duties and exercise their rights under this division in a commercially reasonable manner.

125. If the substance of a duty imposed on a securities intermediary under this division is the subject of another law, regulation or rule, compliance with that other law, regulation or rule is considered to satisfy the duty.

Nothing in this division requires a securities intermediary to take any action that is otherwise prohibited by another law, regulation or rule. Nothing in this division prevents a securities intermediary from exercising its rights arising out of a security on a financial asset or from invoking exception for nonperformance against an entitlement holder who has obligations to the securities intermediary.

DIVISION III

WARRANTIES

126. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary

(1) that the person is the appropriate person or has the authority to act on behalf of the appropriate person; and

(2) that there is no adverse claim to the financial asset.

127. A person who delivers a security certificate to a securities intermediary for credit to a securities account makes to the securities intermediary the warranties set out in section 65 or 79, according to whether the certificate is in registered form or bearer form.

A person who directs a securities intermediary to credit an uncertificated security to a securities account makes to the securities intermediary the warranties set out in section 67.

128. A securities intermediary that delivers a security certificate to an entitlement holder makes to the entitlement holder the warranties set out in section 65 or 79, according to whether the certificate is in registered form or bearer form.

A securities intermediary that causes an entitlement holder to be registered as the holder of an uncertificated security makes to the entitlement holder the warranties set out in section 67 or 80, as applicable.

DIVISION IV

PRIORITY RULES

129. A purchaser for value of rights in a security entitlement who obtains control of the security entitlement has priority over such a purchaser who does not obtain control. When two or more such purchasers have control of a security entitlement, the purchaser who first obtained control has priority over the other; however, the purchaser who obtains control by becoming the person for whom the securities account in which the security entitlement is carried is maintained has priority.

A securities intermediary as purchaser always has priority over a conflicting purchaser who has control of the security entitlement.

The rules set out in this section apply subject to the rules set out in the Civil Code with regard to hypothecs.

130. If a securities intermediary does not have sufficient rights in a financial asset to satisfy both the securities intermediary's obligations to entitlement holders who have security entitlements to that financial asset and the securities intermediary's obligation to a creditor of the securities intermediary who has a security on that financial asset, the claims of entitlement holders have priority over the claim of the creditor.

However, the claim of a creditor of a securities intermediary that has a security on a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if

- (1) the securities intermediary is a clearing agency; or
- (2) the creditor has control of the financial asset.

CHAPTER V

AMENDING PROVISIONS

CIVIL CODE

131. The Civil Code of Québec (1991, chapter 64) is amended by inserting the following article after article 2479:

“2479.1. If the insured has assigned or hypothecated his right to a premium overpayment refund to or in favour of the person who paid the premium and the insurer has received notice of the assignment or hypothec, the insurer is bound to make the overpayment refund to the assignee or to the holder of the hypothec.

The assignment or hypothec may not be set up against third persons until the insurer receives notice of the assignment or hypothec.

If two or more assignments or hypothecs are made or granted on the same right to a premium overpayment refund, priority is determined according to when the insurer received notice.”

132. Article 2677 of the Code is amended

(1) by inserting “certain and determinate” after “A hypothec on” in the first paragraph;

(2) by replacing “, provided the registration of the hypothec” in the first paragraph by “. Publication of the hypothec by registration subsists only if the registration”.

133. The Code is amended by inserting the following article after article 2684:

“2684.1. Notwithstanding article 2684, a natural person not carrying on an enterprise may grant a hypothec on a universality of present or future securities or security entitlements, within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements, provided the securities or security entitlements are securities or security entitlements that the person may encumber with a hypothec without delivery.

Such a natural person may also grant a hypothec on any other universality of present or future property determined by regulation, provided the property is property that the person may encumber with a hypothec without delivery.”

134. The Code is amended by inserting the following article after article 2701:

“2701.1. A movable hypothec constituted by a securities intermediary on securities or security entitlements within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements is deemed to be published by the sole fact of its constitution, and does not require registration.

If the securities intermediary has constituted two or more movable hypothecs on the same securities or security entitlements, the hypothecs rank concurrently among themselves, regardless of when they were published.”

135. Article 2702 of the Code is amended by replacing “by delivery” by “by physical delivery” and by inserting “physically” after “continuing to”.

136. The Code is amended by inserting the following after article 2714:

“§5. — Movable hypothecs with delivery on certain securities or security entitlements

“2714.1. In the case of securities and security entitlements within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements, the requirement that the property be delivered to and held by the creditor in order for a movable hypothec with delivery to be constituted and set up against third persons may be met by the creditor obtaining control of the securities or security entitlements in accordance with that Act.

“2714.2. From the time a creditor secured by a movable hypothec with delivery obtains control of the securities or security entitlements, that hypothec ranks ahead of any other movable hypothec on the same securities or security entitlements, regardless of when that other hypothec is published.

If two or more movable hypothecs with delivery are granted on the same securities or on the same security entitlements in favour of creditors each of whom has obtained control of the securities or security entitlements, the hypothecs rank among themselves according to when the creditors obtained control. However, in the case of security entitlements, the hypothec granted in favour of the creditor who obtained control of the security entitlements by becoming the entitlement holder ranks ahead of the other.

“2714.3. A movable hypothec with delivery granted in favour of a securities intermediary on security entitlements to a financial asset credited to a securities account maintained by the securities intermediary for its grantor ranks ahead of any other hypothec on those security entitlements.

“2714.4. A movable hypothec with delivery encumbering securities represented by a certificate in registered form, even if granted in favour of a creditor who does not have control of the securities, ranks ahead of any movable hypothec without delivery encumbering the same securities, regardless of when the hypothec without delivery is published.

“2714.5. Except in the case of securities represented by a certificate, a natural person not carrying on an enterprise may grant a movable hypothec with delivery only on those securities or security entitlements that the person may, under the conditions prescribed, encumber with a movable hypothec without delivery.

“2714.6. Unless otherwise agreed between the grantor and the creditor, a creditor holding a movable hypothec with delivery on securities or security entitlements may alienate the securities or security entitlements or grant a movable hypothec on them in favour of a third person.

“2714.7. Certificates representing securities within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements do not have to be negotiable for hypothecary delivery to be validly effected through the physical delivery and holding of the certificates; hypothecary delivery results from the delivery of the certificates in accordance with that Act.”

137. Article 2756 of the Code is repealed.

138. Article 2759 of the Code is replaced by the following article:

“2759. A creditor holding a hypothec on securities or security entitlements within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements may sell the securities or security entitlements or otherwise dispose of them without having to give a prior notice, obtain their surrender or observe the time limits prescribed by this Title, if the agreement between the creditor and the grantor so permits and, when the creditor does not have control of the securities or security entitlements, if they are, or are of a type, dealt in or traded on securities exchanges or financial markets.

A creditor who so disposes of securities or security entitlements acts on behalf of the grantor and is not bound to declare the creditor’s position as creditor to the purchaser. The creditor imputes the proceeds of the disposition to payment of the costs incurred to dispose of the securities or security entitlements, to payment of the hypothecary claims prior to the creditor’s claim and, finally, to payment of the creditor’s claim; the creditor remits any surplus to the grantor. The disposition purges the real rights to the extent provided by the Code of Civil Procedure in respect of the effect of a sale of property seized.

The rules of this Title pertaining to a sale by a creditor are applicable in all other respects to the disposition of securities or security entitlements by a creditor, with the necessary modifications.”

139. The Code is amended by inserting the following after article 3108:

“§4. — *Securities and security entitlements to financial assets*

“3108.1. The validity of a security is governed by the law of the country under which the issuer is constituted or, if the security is issued by a country, by the law of that country.

“3108.2. The following matters are governed by the law of the country under which the issuer is constituted or, if permitted by the law of that country, by another law specified by the issuer:

(1) the rights and duties of the issuer with respect to the registration of transfer of a security on its books, and the validity of the registration;

(2) whether the issuer owes any duty to an adverse claimant to a security issued by the issuer; and

(3) whether an adverse claim may be asserted against a person to whom the transfer of a security is registered in the records of the issuer or who obtains control of an uncertificated security issued by the issuer.

If the issuer is constituted under the law of a country that comprises several territorial units having different legislative jurisdictions, the applicable law is the law in force in the territorial unit where the issuer has its head office or, if permitted by the law of the country that comprises the territorial units, another law specified by the issuer.

“3108.3. Despite article 3108.2, if the issuer is a country, the matters listed in that article are governed by the law of that country or, if the law of that country so permits, by the law specified by that country.

“3108.4. Québec as an issuer and any issuer constituted under a law of Québec may specify the law governing the matters listed in article 3108.2.

“3108.5. Whether a security is enforceable against the issuer despite a defect or defence related to matters other than those listed in articles 3108.1 and 3108.2 is governed by the law of the country under which the issuer is constituted or, if the issuer is constituted under the law of a country that comprises several territorial units having different legislative jurisdictions, by the law of the territorial unit in which the issuer has its head office.

If the issuer is a country, the applicable law is the law of that country. If the issuer is a country that comprises several territorial units having different legislative jurisdictions, the applicable law is the law of that country or any other law specified by that country.

“3108.6. The law of the country in which a security certificate is located at the time of its delivery determines whether an adverse claim to the security may be asserted against a person to whom the security certificate is delivered.

“3108.7. The law expressly specified in a juridical act governing a securities account maintained for an entitlement holder by a securities intermediary as the law applicable to that act governs the following matters, unless the act specifies another law as the law applicable to them:

- (1) acquisition of a security entitlement from the securities intermediary;
- (2) the rights and duties of the securities intermediary and the entitlement holder arising out of the security entitlement;
- (3) whether the securities intermediary owes any duty to a person who has an adverse claim to a security entitlement; and
- (4) whether an adverse claim may be asserted against a person who acquires a security entitlement from the securities intermediary or who acquires rights in a security entitlement from the entitlement holder.

If no law is specified in a juridical act governing a securities account, the applicable law is the law of the country in which the establishment expressly mentioned in such an act as being the place where the securities account is maintained is located or, if no establishment is expressly specified in such an act, the law of the country in which the establishment identified in an account statement as the establishment serving the entitlement holder’s account is located. If no law may be determined on the basis of the account statement, the applicable law is the law of the country in which the decision-making centre of the securities intermediary is located.

“3108.8. The validity of a security encumbering a security or security entitlement to a financial asset, the publication of the encumbering security and the effects of publication are governed by the following laws, determined, with respect to the validity of the encumbering security, at the time of its creation:

- (1) in the case of a certificated security, the law of the country in which the security certificate is located;
- (2) in the case of an uncertificated security, the law governing the matters listed in article 3108.2 relating, among other things, to certain rights and duties of the issuer; and
- (3) in the case of a security entitlement to a financial asset, the law governing acquisition of a security entitlement from a securities intermediary.

However, whether an encumbering security is published by registration and whether an encumbering security without delivery granted by a securities intermediary is considered to be published by the sole fact of its being granted are governed by the law of the country in which the grantor is domiciled.”

CHARTER OF VILLE DE MONTRÉAL

140. Section 124 of Schedule C to the Charter of Ville de Montréal (R.S.Q., chapter C-11.4) is amended by striking out the last sentence of the second paragraph.

CITIES AND TOWNS ACT

141. Section 549 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended

(1) by striking out the fifth and sixth paragraphs;

(2) by striking out the following sentence at the end of the seventh paragraph: “That condition is added to the pertinent transfer procedure mentioned in the fifth or sixth paragraph.”;

(3) by replacing the eighth paragraph by the following paragraph:

“A transfer in accordance with the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) or with the fifth paragraph of this section, as applicable, conveys all rights in the bond to the transferee and entitles the transferee to bring an action based on the bond in the transferee’s own name.”

142. Section 551 of the Act is amended by replacing “the person entitled thereto pursuant to the last four paragraphs of section 549 when the interest specified therein falls due” in the first paragraph by “the person entitled to payment of the interest when the interest specified therein falls due, whether the bearer, the person in whose name the bond is registered or the endorsee”.

CODE OF CIVIL PROCEDURE

143. The Code of Civil Procedure (R.S.Q., chapter C-25) is amended by replacing the heading before article 617 by the following heading:

“SECTION III

“SEIZURE OF SECURITIES AND SECURITY ENTITLEMENTS TO FINANCIAL ASSETS”.

144. Articles 617 to 619 of the Code are replaced by the following articles:

“617. Securities represented by a certificate are seized by seizure of the certificates, through service of a writ of execution on the person holding the certificates, and notification of the seizure to the issuer or the issuer’s transfer agent in Québec.

“618. Uncertificated securities or security entitlements to financial assets are seized through service of a writ of seizure by garnishment on the issuer or on the securities intermediary that maintains the debtor’s securities account.

“619. Uncertificated or certificated securities or security entitlements to financial assets may also be seized through service of a writ of seizure by garnishment on a secured creditor if

(1) the certificates representing the securities are in the secured creditor’s possession;

(2) the uncertificated securities are registered in the secured creditor’s name in the issuer’s records; or

(3) the security entitlements to financial assets are held in the secured creditor’s name in a securities account maintained by a securities intermediary for the debtor.

“619.1. The seizure of securities or security entitlements to financial assets entails the seizure of the dividends, distributions and other rights attached.

“619.2. When securities represented by a certificate are seized, the issuer must declare to the bailiff the number of securities held by the debtor, the extent to which the securities are paid up and the dividends or other distributions declared but not paid.”

145. Article 620 of the Code is amended by replacing “of the declaration of the company” by “of the declaration of the issuer”.

146. Article 621 of the Code is amended

(1) by replacing “of the shares is subject under the constituting act and by-laws of the company” at the end of the first paragraph by “of the securities or security entitlements to financial assets is subject under the constituting act and by-laws of the issuer or the instrument governing the securities account maintained by the securities intermediary”;

(2) by replacing “shares” in the second paragraph by “securities or security entitlements”.

147. Article 622 of the Code is amended

(1) by replacing “of shares” in the first paragraph by “of securities or security entitlements”;

(2) by replacing “Shares” in the second paragraph by “Securities or security entitlements” and by replacing “other shares” in that paragraph by “other securities or security entitlements”.

148. Article 623 of the Code is amended by replacing “share” and “shares” by “security” and “securities” respectively.

149. Article 624 of the Code is amended by replacing “shares of companies” by “securities or security entitlements to financial assets”.

MUNICIPAL CODE OF QUÉBEC

150. Article 1068 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) is amended by replacing “the person entitled thereto under articles 1086 and 1087 when the interest specified therein falls due” in the first paragraph by “the person entitled to payment of the interest when the interest specified therein falls due, whether the bearer, the person in whose name the bond is registered or the endorsee”.

151. Article 1086 of the Code is repealed.

152. Article 1087 of the Code is amended by striking out the second paragraph.

153. Article 1088 of the Code is amended

(1) by replacing the first paragraph by the following paragraph:

“**1088.** A transfer in accordance with the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) or with article 1087, as applicable, conveys all rights in the bond to the transferee and entitles the transferee to bring an action based on the bond in the transferee’s own name.”;

(2) by replacing “articles 1086 and 1087” in the second paragraph by “article 1087”.

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE MONTRÉAL

154. Section 203 of the Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01) is amended by striking out the last sentence of the second paragraph.

COMPANIES ACT

155. Section 46 of the Companies Act (R.S.Q., chapter C-38) is amended by replacing “property and are transferable in the manner and on the conditions prescribed by this Part, the constituting act or the by-laws of the company” in the first paragraph by “property; the transfer of company shares is governed by the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20), on the conditions prescribed by this Part and, if the conditions are effective under that Act, by the constituting act or the by-laws of the company”.

156. Section 48 of the Act is amended by adding the following sentence at the end of subsection 13: “Likewise, the purchase or redemption of shares by a company that is compelled to do so under the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) shall not be considered to reduce its capital stock.”

157. Section 54 of the Act is amended by striking out “, and the shares may be transferred by delivery of the warrant” in subsection 2.

158. Sections 74 to 76 of the Act are repealed.

159. Section 123.44 of the Act is amended by adding the following sentence at the end of the first paragraph: “It may also hold its own shares if compelled to do so under the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20).”

160. Section 123.93 of the Act is amended by adding the following at the end of the third paragraph: “or, if the shares are uncertificated securities within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) and the person did not receive notice of such an agreement”.

161. Section 144 of the Act is amended by replacing “property and are transferable in the manner and on the conditions prescribed by this Part or by the charter or by-laws of the company” in the first paragraph by “property; the transfer of company shares is governed by the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20), on the conditions prescribed by this Part, by the charter of the company or, if the conditions are effective under that Act, by the by-laws of the company”.

162. Section 146 of the Act is amended by adding the following sentence at the end of subsection 13: “Likewise, the purchase or redemption of shares by a company that is compelled to do so under the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) shall not be considered to reduce its capital stock.”

163. Section 152 of the Act is amended by striking out “, and the shares may be transferred by delivery of the warrant” in subsection 2.

164. Sections 166 to 168 of the Act are repealed.

ACT RESPECTING MUNICIPAL DEBTS AND LOANS

165. Section 24 of the Act respecting municipal debts and loans (R.S.Q., chapter D-7) is amended by adding the following sentence at the end of the first paragraph: “However, if the debenture is held jointly by two or more holders, the clerk, secretary or secretary-treasurer is not required to enter more than one holder.”

166. Section 25 of the Act is amended by replacing “his right of ownership of such debenture” in the first paragraph by “that person’s rights in the debenture”.

167. Section 27 of the Act is repealed.

168. Section 28 of the Act is amended by striking out the second paragraph.

169. Section 29 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“29. A transfer in accordance with the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) or with section 28, as applicable, conveys all rights in the bond to the transferee and entitles the transferee to bring an action based on the bond in the transferee’s own name.”;

(2) by replacing “sections 27 and 28” in the second paragraph by “section 28”.

SECURITIES ACT

170. Sections 10.2 to 10.5 of the Securities Act (R.S.Q., chapter V-1.1) are repealed.

CHAPTER VI

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

171. The Minister of Justice is responsible for the administration of this Act.

172. The provisions of this Act are not applicable to proceedings pending on 1 January 2009.

173. Movable hypothecs with delivery effected by the creditor obtaining control of securities or security entitlements within the meaning of this Act may not be cancelled or declared unenforceable against third persons on the grounds that control of the securities or security entitlements, though obtained in the manner provided for by that Act, was obtained before 1 January 2009.

174. Movable hypothecs with delivery which became enforceable against third persons before 1 January 2009 after being published in a manner not recognized by the new provisions enacted by this Act retain their original enforceability provided they are published in the year that follows that date in accordance with the law in force at the time of publication. In the absence of such publication, the initial publication of those hypothecs ceases to have effect on the expiry of that year.

For the sole purposes of the first paragraph, hypothecs published by registration in the register of personal and movable real rights will in all cases be considered to be published in accordance with the law in force at the time of publication.

175. This Act applies to hypothecs referred to in sections 173 and 174, especially as regards their publication or their ranking among themselves or in relation to other hypothecs on the same securities or security entitlements.

176. This Act comes into force on 1 January 2009.