

**BOOK REVIEW OF SARAH PATERSON & RAFAL ZAKRZEWSKI (EDS)
MCKNIGHT, PATERSON, AND ZAKRZEWSKI ON THE LAW OF
INTERNATIONAL FINANCE, 2ND EDN (OUP 2017)**

This book is a timely addition to the literature on the law of International finance. This is particularly so as the first edition of it, published in 2008, was at the peak of the 2007 to 2008 financial crisis. This edition gives a good review of the developments in international financial law since then, resulting particularly from the financial regulatory reforms introduced in the aftermath of that crisis as well as the numerous disputes arising from it. It provides a proper reflection of the effectiveness, as well as markets reactions to the regulatory provisions instituted in the aftermath of the financial crisis. As contributions to this book have been made both by well-experienced practitioners and academics, it provides not only a comprehensive perspective on the law of international finance as it stands today but also a clear account of the practice and application of the law in this field in real life.

The book is divided into three parts, each comprising a few chapters. Part A introduces the book by assessing the role of contract law which is the underpinning law in international financial transactions and as such is a critical part of such transactions. It also considers banking regulation, particularly as banks are predominant players in the world of international finance and therefore regulation has an impact on their performance. It then considers the structure and content of key transactions / agreements in international finance.

In this part, *Paterson's* introductory chapter explores contractual issues that may arise under English law and which are of particular relevance to finance transactions. This chapter covers key contractual issues that may arise in the context of the provision of finance, such as the formation of a contract; vitiating factors (mistake, illegality, frustration); enforcement and remedies.

Penn's chapter describes the prudential and supervisory regulation of banking activities, particularly as they relate to international banking and financial markets. It provides a comprehensive overview of financial regulation and reforms introduced after the 2008 financial crisis, from a UK, European and international perspective. The international perspective considers the work of the Basel Committee on Banking Supervision on the international regulation of capital from the Basel Accord to the more recent, Basel III.

Zakrzewski's chapter focuses on loan facilities. It discusses the structure and content of loan facility agreements looking at key provisions including financial, condition precedent, repayments, interest, penalties, payments under loan facility agreements representations and warranties, covenants and undertakings and events of defaults and acceleration. It considers all of this within the context of bilateral loan facilities and syndicated facilities. It also considers briefly Islamic finance designed to meet principles of Shariah law and describes, briefly, some Islamic financial products.

Given that international financial transactions involve colossal amounts moving across different jurisdictions, they raise quite serious legal issues as to which jurisdictions would be consulted when disputes arise in cross-border transactions. Part B, therefore, focuses on

conflict of law issues in international finance, discussing how the applicable laws are determined when disputes arise in these transactions.

Marcus Smith's chapter considers conflict of laws in transactional matters. It examines how English courts determine the laws that should be applied in international financial disputes and a number of other conflict of law issues raised in financial transactions, including the circumstances in which an English court may refuse to give recognition or effect to foreign law.

Paterson's chapter considers cross-border insolvency, and examines the approach an English court will take in determining jurisdiction where an insolvent entity may have a presence or assets in more than one jurisdiction and be subject to the possibility of insolvency proceedings in more than one jurisdiction.

Tom Smith's chapter looks at the circumstances where an English court may have jurisdiction to hear a dispute where there is a foreign element. It also considers the position where a dispute is the subject of proceedings in more than one jurisdiction. It then considers alternative method for dispute resolutions in financial transactions, focusing on arbitration and then considers the quite key issues, particularly in cross-border dispute resolution, of the recognition of foreign arbitral awards in arbitration.

Yianni and James' chapter is concerned with disputes involving foreign States and international organisations. It considers, from a UK perspective, the subject of immunity from legal proceedings granted both to States and international organisations. It also looks at State insolvency, and the position where a State cannot pay its debts and defaults in its obligations to external creditors.

Paterson's chapter concerns the use of legal opinions in financial transactions. These opinions which are fundamental, particularly in cross-border transactions, address the conflict of law issues that arise due to the cross-border nature of the transaction. The chapter considers the types and circumstances when these opinions are delivered.

Part C which focuses on Composite and Specialised Financial Transactions considers the main types of international financial transactions occurring on the international financial market today, namely: syndicated lending; bond issues; derivatives transactions; loan transfers, securitisation and structured finance and lastly, project finance.

Zakrzewski's chapter considers syndicated lending. It provides a comprehensive but succinct description of the keys aspects on this topic. It describes the contractual relationships between the lenders under syndicated loan agreements, in particular their obligations to share receipts and implied restrictions on the exercise of their voting rights. It considers the role and potential liability of the arranger and the agent towards other parties, especially in contract and in tort. The chapter concludes by examining the mechanisms for protecting the arrangers and agents, both within the mandates and syndicated loan agreement from potential claims and legal action.

Fuller's chapter focuses on bond issues. It starts by considering the similarities and differences between bonds and other methods of raising corporate finance. It then discusses the manner in which bonds are traded and succinctly explains the process for international bond issues. The

chapter then discusses regulatory matters and bond documentation, before considering the duties and discretions of the trustee and the protection afforded to it.

Murray's chapter is concerned with derivatives transactions. It provides a very clear explanation of the usually complex literature on derivatives. It explains the basic concepts of derivatives transactions and considers the documentation and regulation of such transactions. It also considers legal issues raised by such transactions including enforcement, liabilities and protections against them. Among other key issues, it also considers the role of insolvency laws on such transactions, credit risk mitigation and the legal aspects of termination and close-out netting.

Fuller's chapter on loan transfers, securitisation and structured finance discusses conflict of laws issues relating to these matters before considering in depth mechanisms for effecting transfers, including assignment, trust, novation, and sub-participation. The chapter then explains securitisation and structured finance.

McCormick's chapter is on project finance. This chapter provides a succinct coverage of the key legal issues raised in project finance transactions. It discusses the entities involved in project financing, the licence, the network of contracts, risk assessments, insurance, the financing documents, security arrangements and finally, step-in rights and direct agreements.

Part D directs attention to Secured Transactions, Equipment Finance, and Guarantees. Here the book looks at the quite key issue of securities in financial transactions; the unique financing technique of equipment finance; the place of guarantees and guarantors in financial transactions and the topical issue of the reform of secured transactions in English law.

Gullifer and Raczynska's chapter on secured transactions provides a comprehensive coverage of the English law dimensions of this topic. It starts by explaining key concepts of security in financial transactions before a detailed discussion on secured transactions including: concepts of property, interests in property and dealings therein, future property and attachment of proprietary interests, accretions to and the proceeds of assets, the forms of security, floating charges, security in financial assets, security over receivables and other contractual obligations and the enforcement of security.

Bhuchar, Ellis, and Patient's chapter on equipment finance provides a quite detailed coverage of the key aspects of equipment finance. It examines the methods by which a financier might acquire title in equipment, the forms of transaction by which equipment is made available by the financier to its customer, the financier's statutory responsibilities for the equipment and the effectiveness of attempts to exclude or restrict that responsibility, the rights and obligation of the parties following defaults by the customer, the effect of the customer's insolvency, the financiers rights against third parties, and insurance arrangements.

Salter's chapter on guarantees provides a clear assessment of this topic with a rich reflection of case law on the aspects covered. It examines the nature of a guarantee as contrasted with other types of instrument, preliminary matters in taking a guarantee, State guarantees under EC law, the types of guarantee, Export Credits Guarantee Department (ECGD) cover, the rights of the guarantors, reasons for the discharge of the guarantor, and concludes by considering provisions to save the beneficiary's position under the guarantee.

Gullifer's chapter considers the reform of secured transactions under English law. It discusses the reasons why reform is needed and then reviews proposals that were put forward by the Law Commission to effect reform of the law.

This book is a comprehensive and up to date text on the law of international finance, dealing with key issues raised in modern day international financial transactions. With a rich provision and analysis of case law, it provides invaluable insight from the practitioner's perspective and, therefore is a very useful contribution to the literature on this subject. It can easily be described as a 'must read' for practitioners, academics and students of the law of international finance.

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