

The Law and Practice of International Finance Series

Volume 6

# Conflict of Laws and International Finance

Philip R Wood

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**LAW AND PRACTICE OF INTERNATIONAL FINANCE**

**CONFLICT OF LAWS AND  
INTERNATIONAL FINANCE**

**FIRST EDITION**

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# **DEDICATION**

To my wife Marie-Elisabeth, my twin sons John-Barnaby and Richard, my daughter Sophie and my son Timothy.

*Works in the series*

**Law and Practice of International Finance**

1. Principles of International Insolvency
2. Comparative Law of Security Interests and Title Finance
3. International Loans, Bonds, Guarantees, Legal Opinions
4. Set-off and Netting, Derivatives, Clearing Systems
5. Project Finance, Securitisations, Subordinated Debt
6. Conflict of Laws and International Finance
7. Regulation of International Finance

*Related works*

8. Law and Practice of International Finance, University edition
9. Maps of World Financial Law

## PREFACE

This book is one of a series of seven works on the law and practice of international finance which, taken together, are the successor to six works on the subject published in 1995, in turn based on my *Law & Practice of International Finance* which was published in 1980. In addition, there are two related works, making nine in all. The nine works are listed on the *Works in the series* page facing this page.

Though the works now cover a much broader range of subjects, they have the same objectives as the original book of 1980. The objectives I have sought to achieve are to be practical as well as academic, to provide both a theoretical guide and legal source-book as well as a practitioner's manual, to be international, to provide serious comparative law information, to pool and organise the data, to compare, to get to the point as quickly as possible, to simplify the difficulties, to find the principles underlying the particularity, to synthesise and distil, to inform, and, most of all, to be useful. Doctrine, data, deals. I fear that there is a great gap between the ideals I aimed at and what I have actually achieved. These books are only an imperfect draft of what they should be.

The works are separate and each is intended to stand on its own. Sometimes I have summarised in one book sections from another book so that the subject is covered in one place in order that the reader does not have to look elsewhere. Together the books are intended to form a complete library for the international financial lawyer.

These books offer what I hope is a meaningful approach to comparative law and practice in this area and an aid to the essential keys to an understanding of the world's jurisdictions, the keys to unlock the dark cupboard of financial law so that the light may shine in. These keys are not merely functional; they are also ethical and they are driven by history. The basic ideas and classifications were first set out in the six works in 1995 and are now developed in these works. Comparative law is not an academic luxury: it is a practical necessity if we are to have an orderly international legal regime.

My hope is that this attempt to discover what is really going on in world financial law will help to mitigate international legal surprises and legal risks and, in the wider context, that jurisdictions will be better equipped to make essential choices as to what their legal systems should achieve. This is particularly important in view of the fact that jurisdictions are divided into camps which often do not agree on basic policies. We do not have to agree on everything (indeed there needs to be competition and hence diversity) but there is no reason why we should not agree on the fundamental policies: we do not have to have a muddle or be chained by history. The law is our servant, not our master. It must set us free, not tie us down. It must satisfy our sense of justice.

This book on conflict of laws is included to draw together quite disparate areas of conflict of laws as they relate to financial law, ranging from the

basic principles of governing law and jurisdiction, through to security interests and other property transfers, through to regulatory conflicts, through to insolvency which is the fundamental test of comity. There are also chapters on sovereign states. The object is to say at least something about these different conflict arenas in a single work so that the subject can be viewed as a whole.

It is difficult enough to be accurate about my own legal system (which is England), let alone several hundred others. Some of my sources will inevitably be out-of-date, sometimes by years. Obviously one must always confirm the position with competent local lawyers.

The citation is selective: there are now millions of cases and statutes and laws and decrees and it is hopeless to try and list even a proportion of them.

There are thousands and thousands of “footnotes” in these books, but there are no footnotes at the bottom of the page. At least one does not have to read the book in two places at once. If material is good enough to go in the footnotes, it is good enough to go in the text.

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April 1, 2007

## **The author**

Philip Wood was born in Livingstone near the Victoria Falls in the then Northern Rhodesia, now Zambia. He has a general humanities BA from the University of Cape Town, an MA in English Literature from the University of Oxford and an honorary doctorate in law from the University of Lund, Sweden. He took first-class honours and was a triple prize-winner in the Law Society qualifying professional examinations.

He was a partner in the international law firm of Allen & Overy for many years and for 10 years was head of the firm's banking department. He has wide direct experience of international financial transactions. The firm is one of the largest law firms in the world.

He has taught financial law at universities since 1982.



## SOURCES AND ACKNOWLEDGEMENTS

Some of the main sources for this book were direct experience of foreign jurisdictions and transactions gained while I was a practising lawyer in the international banking practice of Allen & Overy, primary sources (statutes, codes and case law), articles in the legal press and more formal journals, numerous seminars, and papers and reports prepared by official organisations and others.

It would not be realistic to list the books and formal legal literature I have read or dipped into, but, as with all writers on conflicts, I would particularly acknowledge Dicey, Morris & Collins, *The Conflict of Laws* (14th edn 2006, Sweet & Maxwell).

There is a bibliography of comparative works in *Maps of World Financial Law* in this series.

I am grateful to my colleagues at Allen & Overy LLP and the many practising lawyers and counsel throughout the world with whom I have had dealings, in each case too numerous to mention individually. The number of practising lawyers to whom I am indebted runs to many hundreds. My students have been a source of inspiration. In addition in relation to the whole series I respectfully acknowledge the following:

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Naturally, none of the above is responsible for any errors in this book.

I am most grateful to the Allen & Overy document production department and checkers who laboured so magnificently to produce this work.

I am thankful to my publishers for their hard work and patience in bringing this work—and the other books in this series—to fruition and also for their support through the years.

My brother John, my sister Melanie and my mother all encouraged me and were tolerant of my efforts. My late father Leslie Wood, who was also a lawyer (as was his father), first inculcated in me a fascination and an enthusiasm for the law which was a passion for him, as it is for me.

Finally, I owe an enormous debt to my wife and children and can only express my affection for them by the token of dedicating this book to them.

## ABBREVIATIONS

ABGB	Austrian General Civil Code
Art	Article
BA	Bankruptcy Act
BC	Bankruptcy Code
BGB	German Civil Code
BL	Bankruptcy Law
C	chapter (of laws)
CC	Civil Code
CCAA	Companies Creditors Arrangement Act (Canada)
CCP	Code of Civil Procedure
CO	Code of Obligations (Switzerland)
ComC	Commercial Code
Comi	Centre of main interests
Conflicts Restatement	Restatement of the Law, <i>Conflict of Laws 2d</i> , by the <i>American Law Institute</i>
Dicey	Lawrence Collins (general editor), <i>Dicey, Morris and Collins on The Conflict of Laws</i> (14th edn 2006, Sweet & Maxwell)
EISO	Philip Wood, <i>English and International Set-off</i> (1989, Sweet & Maxwell)
FSA	Financial Services Authority (UK)
IA	Insolvency Act
IC	Insolvency Code (Germany)
ICSID	International Centre for the Settlement of Investment Disputes
IL	Insolvency Law
IR	Insolvency Rules (England)
ISDA	International Swaps and Derivatives Association, Inc
Mann, <i>Money</i>	FA Mann, <i>The Legal Aspect of Money</i> (6th edn 2005, Oxford University Press), by Charles Proctor
Ord	Order
PILA	Private International Law Act 1987 (Switzerland)
Restatement	Restatement of the Law by the American Law Institute
S	Section
Sch	Schedule
SEC	Securities and Exchange Commission (US)
UCC	Uniform Commercial Code (United States)
UCITS	Undertaking for Collective Investment in Transferable Securities
Uncitral	United Nations Commission on International Trade Law
ZPO	Code of Civil Procedure ( <i>Zivilprozessordnung</i> )

Zweigert/Kötz

K Zweigert and H Kötz, *An Introduction to Comparative Law* (3rd edn 1998, translation Tony Weir)

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