

The Law and Practice of International Finance Series

Volume 2

# Comparative Law of Security Interests and Title Finance

2nd edition, by Philip R Wood

THOMSON



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**LAW AND PRACTICE OF INTERNATIONAL FINANCE**

**COMPARATIVE LAW OF SECURITY  
INTERESTS AND TITLE FINANCE**

**SECOND EDITION**

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LONDON  
SWEET & MAXWELL  
2007

First edition 1995  
Second edition 2007  
Published in 2007 by  
Sweet & Maxwell Limited of 100 Avenue Road,  
*http://www.sweetandmaxwell.co.uk*  
Typeset by YHT Ltd, London  
Printed and bound in Great Britain by  
William Clowes Ltd, Beccles, Suffolk

No natural forests were destroyed to make this product;  
only fanned timber was used and re-planted.

**British Library Cataloguing in Publication Data**

A CIP catalogue record for this book is available from the British Library

ISBN 978 184 703 2065

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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 in the *Works in the Series* list on the facing 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 security interests and title finance endeavours to make sense of an area of law which is particularly bedevilled by outworn ideologies and doctrinaire dogma.

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.

Philip R Wood

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April 1, 2007

# PLATES

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## **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, digests, numerous seminars, and papers and reports prepared by official organisations and others.

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:

Professor David Allan	(Australia)
Professor Mads Andenas	(Norway and England)
Professor John Armour	(England)
Dr Manfred Balz	(Germany)
Professor Christian von Bar	(Germany)
Mr Thomas Baxter	(US)
Mr Spiros V Bazinas	(Greece)
Professor Hugh Beale	(England)
Professor John Bell	(England)
Dr Joanna Benjamin	(England)
Mr William Blair QC	(England)
Professor Michael Bridge	(England)
Professor Adrian Briggs	(England)
Professor Andrew Burrows	(England)
Professor William E Butler	(US)
Professor Malcolm Clarke	(England)
Professor John C Coffee	(US)
Professor Brian C Cheffins	(Canada and England)
Mr Neil Cooper	(England)
Professor Ross Cranston	(England)
Professor James Crawford	(England)
Sir Peter Cresswell	(England)
Ms Frédérique Dahan	(France)
Professor Jan Dalhuisen	(Netherlands and England)
Professor Paul L Davies	(England)
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Professor Sarah Worthington	(England)
Dr Mamiko Yokoi-Arai	(Japan and England)
Professor Reinhard Zimmermann	(Germany)

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
CCP	Code of Civil Procedure
CO	Code of Obligations (Switzerland)
ComC	Commercial Code
Comi	Centre of main interests
Conflicts Restatement	Restatement of the Law, Conflict of Laws 2d, <i>by the American Law Institute</i>
Dicey	<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)
IA	Insolvency Act
IC	Insolvency Code (Germany)
IL	Insolvency Law
IR	Insolvency Rules (England)
ISDA	International Swaps and Derivatives Association, Inc
Ohada	Organisation for the Harmonisation of Business Law in Africa
Ord	Order
Restatement	Restatement of the Law by the American Law Institute
S	Section
Sch	Schedule
UCC	Uniform Commercial Code (United States)

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