THE LAW OF GLOBAL CUSTODY BY JOANNA BENJAMIN [London: Butterworths, 1996. xix + 217 pp (including index)].

THE title of this book belies the importance of its contribution to the legal literature on the nature of rights in securities traded in financial and capital markets today. This may be because the term "custody" is still perceived by many as associated primarily with the deposit of cash, physical valuables or certificates representing shares, loanstock or other debt in a bank vault for safe custody – an activity traditionally characterised (in common law jurisdictions, at least) as subsumed under the law of bailment.

The reality, in securities markets today, is that much of what is being traded daily is "paperless" and comprises modern computerised securities recorded as book-entries in the records of a depository or custodian and traded and settled electronically. As a result the focus in the law of custody has shifted from discussions on concepts of bailment and negotiability of bearer securities based upon possession of tangible assets to identifying and resolving legal uncertainties surrounding the rights of investors in computerised securities. The result is a paradigm shift in thinking to the importance of distinguishing between personal and proprietary rights (or between obligations and ownership) in computerised securities,[1] a central theme in the book.

A correct legal analysis of the position under English law, or Singapore law, is not a meaningless academic exercise but vital to the issue in practice of who owns the securities in the event of insolvency of the custodian. If the securities fall to be treated as the custodian's assets (and not the investors') available to the general creditors of the custodian in the event of its insolvency, this will generally mean that they are unlikely to be marketable and accepted for trading internationally. Readers practising in this area seeking answers to this question (particularly those frequently called upon to render legal opinions on local debt and equity securities deposited with the Singapore central depository) should clearly read this book.

In some jurisdictions,[2] legislative attempts have been made to introduce legislation to confer ownership rights on investors. However drafting a provision which adequately caters for all types of computerised securities in different scenarios may not be

[1] The term "computerised securities" is defined by the author in the book as including (i) immobilised securities; (ii) global securities; (iii) repackaged securities and (iv) dematerialised securities.

[2] *Eg*, Singapore and Malaysia.

possible as it is difficult to pre-empt the innovative forms of securities constantly being created by financial markets. In Singapore, it should be noted that section 130D(1) of the Companies Act, (Cap 50, 1994 Rev Ed) statutorily prescribes to investors (accountholders of the Singapore Central Depository Pte Ltd ("CDP")) proprietary rights in listed securities of Singapore-incorporated issuers where the securities have been immobilised with CDP and CDP is named as a member in the issuer's register of members. However this section is limited in application (for example, it does not address the position of securities issued by foreign issuers).

Where statute does not adequately cater for a particular type of computerised security, it will be necessary to review the contractual arrangements and consider the common law position. On this, it is comforting to note that the author concludes that the legal uncertainties may be largely addressed by greater use of the law of trusts and careful drafting in customer documentation.[3]

This book benefits from the fact that the author writes with the eye of a practitioner[4] familiar with this area, and her practical approach to issues and uncertainties raised keeps the subject matter relevant to the reader. There are 14 chapters and 3 appendices in all. The sections most relevant to local readers are chapters 1-8, 10 and 14 and the appendices which contain discussions and analysis of the legal principles relating to proprietary and other rights in custody assets, types of computerised securities, computerisation and the custody relationship, English private international law principles and the custodian's duties.

This book is particularly relevant in the local context in light of recent developments in Singapore: namely, the freezure of Malaysian Clob International securities involving two major custodian depositories (CDP and the Malaysian Central Depository Sdn Bhd), the creation of the Stock Exchange of Singapore's new debt clearing and settlement system, and the Singapore government's push to develop the fund management industry. The discussions in this book will not only update those interested in the law of global custody but also enlighten practitioners, in-house counsels, trustees, bankers, fund managers, and central depositories engaged in custodial operations and trading and settlement of computerised securities or advising thereon.

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[3] There is support for this view from other writers: see "The Nature and Transfer of Rights in Dematerialised and Immobilised Securities" by Professor Roy Goode, Butterworths Journal of International Banking and Financial Law, April 1996, pp 167-176; but note discussion in Beaves, "Global Custody – A Tentative Analysis of Property and Contact" in Palmer & McKendrick (ed), *Interests in Goods* (2nd Ed 1998), pp 117-139.

[4] Director, Financial Services Research, Clifford Chance, see front page of book.