THE LAW OF CROSS-BORDER SECURITIES TRANSACTIONS EDITED BY HANS VAN HOUTTE [London: Sweet & Maxwell, 1999, xxv + 318 pp (including index). Price: £125]

LIBERALISATION, globalisation, and increasing demand for international capital from private businesses and public entities in the past decade has brought about a dramatic increase in the volume of equity and debt securities transactions with cross-border elements. These transactions may be subject to different national laws depending on the points of contact with the different jurisdictions, raising questions concerning the rules governing conflict of laws for such transactions. More specifically, as noted by an author in this book, it is generally not possible to establish one national law as the law governing all aspects of such a transaction because "the parties to [the] transaction may be resident in different states; they may choose to submit their mutual relations to the law of a third state; the securities trade in question may be made over a foreign stock exchange; and, the securities may be physically located in yet another state."

This book attempts to give a conflict of laws framework for the different aspects of transnational securities transactions, and is a welcome addition to the growing literature on this difficult and complex area of the law. It is a compilation of papers from different authors arranged in four parts analysing the law applicable to securities (Part I), to public offerings in the UK and EU (Part II), to court jurisdiction and arbitration over misrepresentation in securities transactions in the EU and the US (Part III); and reviewing recent EU and WTO measures towards uniformity and harmonisation of international securities transactions (Part IV). Other than conflict of laws issues, the papers also contain useful overviews and summaries of aspects of UK, EU and US domestic securities law and readers interested in updating themselves in these areas should consider reading this book. The book also benefits from having both a practical and an academic slant as the contributors have been drawn from a cross-section of both practitioners and academics from England, US, Germany, Austria and Belgium. Contributing law firms including Davis Polk & Wardell and Simpson Thacher & Bartlett in New York, and Herbert Smith and Norton Rose in London.

Part I (chapters 1-4) on the *Law Applicable to Securities* is likely to be the most relevant part of the book for local practitioners and academics as it includes, in chapter 3, a discussion on an important and pressing area of securities law - conflict of laws issues arising from the intermediation of securities with central depositories and financial intermediaries - currently receiving attention from a number of international bodies. This section is divided into four chapters analysing the law applicable to shares, to bonds, to the transfer or pledge of securities held through depositories, and to securities transactions on and off-exchange respectively. To be commended is the editorial selection and arrangement of topics in this part as it displays a strong grasp of the importance of first identifying the legal nature of an underlying security (be it a share or bond), and the laws applicable to such a

security, before attempting to lay a framework for conflict of law issues relating to more complex products such as book entry or dematerialised securities.

In chapter 1, Adam Johnson (partner, Herbert Smith, London) analyses the conflicts rules applicable to issues of title to shares focussing, in particular, on the debate between the choice of the *lex soci etatis* (personal law of the company) or of the *lex situs* as the applicable law for questions of title to shares. The author notes that there is currently a confusing emphasis amongst English and Canadian authorities on the *lex situs* rule; and much of this confusion, he believes, can be avoided if the particular and essential nature of shares - as a collection of corporate rights and obligations which should be governed by the personal law of the company - is borne in mind. Despite the different strains of authority in different jurisdictions indicating different possible approaches to this problem, the author believes that some common principles can be discerned and advocates of the *lex situs* rule will benefit from reading his views in the paper which includes a revisitation of the important English Court of Appeal decision in *Macmillian Inc.* v *Bishopsgate Investment Trust plc and others (No. 3)* [1996] 1 All ER 585. The court held in this case that the *lex situs* rule should apply to questions of title to s hares.

Mr Johnson's paper, however, does not deal with important conflict of laws issues arising from book entry securities held through central depositories and financial intermediaries (issues which were also not addressed directly in *Macmillan's* case). This challenging topic is taken up in chapter 3 by Randall Guynn (partner, Davis Polk & Wardell in New York and London, and Chairman of the Committee on Modernising Securities Ownership, Transfer and Pledging Law of the Capital Markets Forum of the International Bar Association (IBA)). Mr Guynn is a well-known and much respected practitioner and writer in this area, and his views here and those of the IBA which he represents, have been adopted by the International Organization of Securities Commission (IOSCO). Readers are strongly encouraged to read this chapter which includes a detailed explanation of the modern system of securities holding, transfer and pledging with its unique multi-tiered and custodial structure of central depositories and financial intermediaries. The legal problems and difficulties of applying the traditional *lex situs* rule to such systems are raised in this paper, which also includes a summary of the legal measures which have been adopted by countries such as the US, and Belgium and Luxembourg where Euroclear and Cedel Bank operate respectively, to strengthen ownership rights of investors in their systems.

In Part II (chapters 5-7), the law applicable to public offerings in the UK and Continental Europe, and the territorial scope of US securities laws, are reviewed. Two points which are worth noting may be discerned from reading the papers in this section. The first, is that the territorial scope asserted by and granted to US securities laws from the perspective of both the US Securities and Exchange Commission and the US courts have, over the years, been trimmed to fit within competing claims of other national regulators in light of securities markets being increasingly interlinked and

multinational today (see chapter 7). The second, is that, as a result of directives of the EU to harmonise various capital market regulations, Member States in Continental Europe currently benefit from a "mutual recognition principle" in securities law which permit, for example, the recognition of a prospectus used for a "primary listing" in one Member State as sufficient for the "secondary listing" on the stock exchange of a second Member State (see chapter 6).

Part III (chapters 8 and 9) deals with court jurisdiction and arbitration issues in the EU and the US where there has been misrepresentation in a securities transaction because a party has either made false or misleading statements, or omitted to disclose material information. Chapter 8 outlines the rules for determining which courts in the EU or EFTA (European Free Trade Area) have jurisdiction and what law may apply in cases of international securities litigation. In the US, liability for misrepresentation may be derived from federal securities law, state securities law and the common law, and arbitration is becoming an increasingly popular alternative to court adjudication. These issues are covered in chapter 9.

Finally, Part IV (chapters 10 and 11) concludes with a summary of recent harmonisation and liberalisation measures taken by the EU and WTO on securities transactions and an analysis of their impact, if any, on relevant conflicts issues. In the EU, the harmonisation programme has been less a unification of securities laws, and more a process of imposing minimum standards to EU based investors, traders and issuers without necessarily adding anything new to pre-existing conflict of laws rules for investors in international securities transactions. Similarly, the WTO Agreement on Trade in Financial Services has resulted in increased market access to domestic markets of member countries and national treatment guarantees for foreign companies operating in such markets but has had limited, if any, impact on domestic regulations or conflict of laws issues in securities transactions. Indeed, the author in chapter 11 admits that for this, there may be a need to rely on international bodies outside the WTO such as the OECD, the Bank of International Settlements (BIS) and IOSCO.

In conclusion, this book benefits from its global perspective. It will update readers (especially busy practitioners) on the developing jurisprudence on the law of cross-border securities transactions and provide them with valuable insights into some of the legal issues and problems in this area. Readers might wish to note, however, that it is not possible, in a short book of 300 odd pages, to analyse exhaustively the full range of conflict of laws issues in a complex and rapidly evolving area and market. As such, the discussions and citations in some areas may have had to be abridged. For research purposes, it is recommended that this book should be treated as supplementary to, but not a replacement for, leading textbooks such as Dicey & Morris on *Conflict of Laws*.

ANGELINE LEE