*Secured Transactions Law Reform: Principles, Policies and Practice* BY LOUISE **GULLIFER** AND ORKUN **AKSELI**, eds [Oxford and Portland, Oregon: Hart Publishing, 2016. lviii + 542 pp. Hardcover: £150.00]

Reform of the law of secured transactions has been discussed in the United Kingdom ("UK") for more than forty years, starting with the Crowther Committee, *Report*

*of the Committee on Consumer Credit* (1971), followed by the Cork Committee, *Report of the Review Committee on Insolvency Law and Practice* (1982), the *Report by the Working Party on Security over Moveable Property* (1986) chaired by Professor John Halliday, A L Diamond, *A Review of Security Interests in Property* (1989), the Company Law Review Steering Group, *Modern Company Law: For a Competitive Economy: Final Report* (2001) and the Law Commission, *Company Security Interests: A Consultative Report* (2004) and *Company Security Interests: Final Report* (2005). Recommendations for reform made through the years have remained largely un-enacted, apart from limited changes made to the system of registration of company charges in 2013. The members of the Secured Transactions Law Reform Project ("STR") founded by Professor Sir Roy Goode and currently directed by Professor Louise Gullifer, are of the view that there are serious shortcomings in the law of England and Wales as it relates to security over personal property, even after the 2013 reforms. *Secured Transactions Law Reform: Principles, Policies and Practice* grew out of a conference organised by the STR to learn from the experience of other jurisdictions so as to inform the reform process in England and Wales. The volume has 24 chapters, comprising conference papers supplemented by post-conference material.

Part I begins with a collection of essays showcasing the modernisation efforts of common and mixed law jurisdictions. This part covers jurisdictions which have personal property security statutes ("PPSAs"), namely, the United States of America ("US"), Canada, New Zealand, Australia, Malawi and Jersey. As PPSAs have tended to be based broadly on Article 9 of the US *Uniform Commercial Code* (rev 2010) ("UCC"), the opening chapter outlining a typical PPSA scheme is particularly useful in laying the groundwork for the other chapters, and avoiding the need to repeat the basic concepts common to various jurisdictions. These PPSAs were enacted and came into force over a long period of more than 60 years. The US UCC was first enacted in the state of Pennsylvania in 1953. In Canada, the earliest of the Canadian PPSAs came into force in the province of Ontario in 1976. Much later, the New Zealand statute came into force in 2002, the Australian one in 2012, and Jersey and Malawi statutes in 2014 and 2015 respectively. Chapters on Ireland and Scotland, which have seen limited modernisation of their secured transactions law, are also included in Part I, where they sit somewhat uncomfortably under the heading of "modernisation". An alternative positioning might have been to put these jurisdictions in Part II alongside the chapters on the under-reformed English law with which they have commonalities, but this would have muddied the jurisdictional segregation of the English law chapters into a standalone part.

It is clear from the experience of the PPSA jurisdictions that reform can take a long time, and that the process may encounter initial resistance from the legal community. This phenomenon may provide some encouragement to the STR in England. The process of law reform is continually evolving. For instance, the US, with the oldest statute, has made successive amendments to the finer details of its PPSA. Canada is another country with a long PPSA experience, and Chapter 5 addresses current issues which have arisen in secured transactions law in Ontario. It points out that there are difficult areas that transcend the debate on substance over form (such as security interests in cash collateral and in proceeds) and underscores the point that some issues do not lend themselves to easy solutions, even under a PPSA system.

Given the mission of the STR, it might have seemed natural to position English law as the opening act in the secured transactions reform narrative. The postponement of the discussion on English law to Part II is refreshing, as this allows a person reading the chapters sequentially to see the possibilities of what has been done in other jurisdictions without being bogged down by the problems and inconsistencies of English law. Chapter 12 discusses the English law reforms made by the 2013 amendments (such as making all charges registrable unless specifically exempted, the introduction of electronic filing and the removal of the criminal sanction for a failure to register) and gives it a fair and diplomatic evaluation as having to a large extent fulfilled the objectives that it set out to achieve. However, the chapter goes on to point out that the 2013 reforms left much scope for improvement if measured against the purposes that secured transactions law should fulfil, *ie*, it should (at p 295):

> (1) be as simple as possible but not simpler; (2) be as transparent and certain as possible; (3) promote contractual freedom and flexibility of transactions; (4) promote efficiency of transactions and their enforcement; (5) balance the interests of those affected by the transactions; (6) not unduly discriminate between market participants; and (7) make full use of technology as far as possible.

Chapters 13 and 14 address respectively the complex and uncertain rules governing claims to traceable proceeds arising from dispositions of assets subject to security, and the controversial question of whether clauses prohibiting assignment should be overridden by statute.

Part III examines the law of secured transactions in the European civil law jurisdictions of Germany, Italy, France, Belgium, Lithuania and Spain. For a common lawyer, the traditional focus on possessory security over movable property in civil law jurisdictions, though now increasingly modified by law reform efforts, provides an illuminating counterpoint to the law that applies in jurisdictions covered in Part I. Interestingly, the level of satisfaction with the law of secured transactions amongst writers of the civil law chapters covered in Part III seems to be highest for two jurisdictions with opposite experiences: Germany, where there has been little attempt to modernise the law; and Lithuania, where extensive reforms have taken place. Despite lacking features which many jurisdictions would consider vital, such as a system of publicity with respect to security rights over movables, the German system of secured transactions is reported to be working relatively well, largely facilitated by the specific conditions of the German economy. In contrast, Lithuanian law was coherently and comprehensively reformed in 2012, based, *inter alia*, on the United Nations Commission on International Trade Law ("UNCITRAL"), *Legislative Guide on Secured Transactions* (2010). Evaluating this development, the writer of the Lithuanian chapter concludes that "Lithuanian security law reform is a success that could serve as an inspiration (if not a roadmap) for. . . unreformed jurisdictions" (at p 416). As with the jurisdictions in Part I, the tendency to learn from the experience of other countries is apparent, for instance, in the Belgian experience, where earlier reforms in France were relied on and improved upon. Italy and Spain have both made incremental reforms to the law of secured transactions through the years, and there are discussions in both countries about undertaking a more comprehensive reform. In this regard, greater awareness of the need for modernisation has been raised by developments such as the implementation of the European Commission,

*Directive 2002/47/EC of the European Parliament and of the Council on Financial Collateral Arrangements* (2002) OJ L168/43, and Spain's accession to the *Convention on International Interests in Mobile Equipment* (2001) 2307 UNTS 285 (the Cape Town Convention), and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (2001), again highlighting the influence of regional and international forces in law reform.

The potential influence of international legislative texts in law reform is examined by the three chapters contained in Part IV, in the context of the European Bank for Reconstruction and Development, *Model Law on Secured Transactions* (2004), the *United Nations Convention on the Assignment of Receivables in International Trade* (2002) 41 ILM 777, the UNCITRAL *Legislative Guide on Secured Transactions* and the UNCITRAL, *Model Law on Secured Transactions* (2016). The message from these chapters is that international organisations can help in the law reform process, by setting standards and by helping to assess and fine-tune existing systems of secured transactions. Chapter 21 aptly suggests two prerequisites for this to work: first, one must accept that "reform is not a linear process but a continuous effort to fit the legal provisions with the local circumstances, which are continuously evolving under internal and external pressures." (at p 463) Second, organisations need to accept that "they need to evolve too: their knowledge of secured transactions and reform beliefs must be attuned to the changes that occur across the world." (at p 463)

The concluding chapter masterfully draws together the various issues that have surfaced in the volume. It considers, in turn, the drivers for reform, the method of reform, and the substance of reform in the various jurisdictions, and in each aspect, draws lessons for English law. The reader is treated to an illuminating discourse that illustrates the complexity of this area of the law, and yet gives order to its concerns.

The English law reform lens through which the material in the book is viewed and assessed by no means limits the universality of the volume, which, taken as a whole, analyses the essential characteristics of a well-designed system of taking security over personal property as well as the different laws which have been proposed or adopted with various measures of success. This detailed, well-curated and wide-ranging volume is a valuable addition to the literature on the law of secured transactions and has admirably met its self-professed aim to "provide a resource both for those interested in the reform of English law. . . and those involved in law reform throughout the world" (at p 3).

DORA **NEO**
Associate Professor
Faculty of Law, National University of Singapore