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Book Review: Cross-Border Insolvency: Principles and Practice (first edition)

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In *Cross-Border Insolvency: Principles and Practice*, the author calls upon years of experience as a practitioner to coherently explain the interrelationship between these various statutory provisions and the common law, while simultaneously demonstrating inconsistencies in the existing case law.

While many impactful works have been written regarding cross-border insolvency law, this book fills a gap in the existing literature by comprehensively addressing the issue from an English conflict of laws perspective. Sections discussing the interplay between European and English law will be of particular significance to English practitioners and academics. However, 'a large part of cross-border insolvency law concerns the circumstance in which insolvency proceedings commenced in one jurisdiction are given effect in another jurisdiction.' As such, the book calls upon numerous jurisdictions in discussing the interpretation of the Model Law as adopted in the United Kingdom and is an invaluable resource for insolvency practitioners and academics.

The book is divided into seven chapters, each examining a different element of the conflict of laws analysis. The first chapter addresses jurisdiction to commence insolvency proceedings by examining the relationship between the European Insolvency Regulation, the European Judgments Regulation, the Cross-Border Insolvency Regulations 2006, the Credit Institutions Regulations 2004, the Insurers Regulations 2004,and the Insolvency Act 1986. Chapter 2 continues the analysis by discussing the jurisdiction of English courts to sanction schemes of arrangement including, among other aspects, how the EU Insolvency Regulation impacts the English courts' jurisdiction in insolvent schemes, the relationship between the Judgment Regulations and solvent schemes and the “sufficient connection” requirement for foreign companies to employ an English scheme. Chapters 3 and 4 address the courts' authority to recognise and enforce foreign insolvency proceedings. Next, Chapter 5 addresses choice of law in the context of cross-border insolvency proceedings. In particular, it focuses on the courts' ability to employ the law of the jurisdiction of a recognised foreign proceeding. The book next examines the *pari passu* principle, arguing the principle is generally misunderstood with courts confusing distinct principles. Finally, the book concludes with a critique of the *Revised UNCITRAL Model Law Enactment Guide*, arguing that the document is misguided and, contrary to its goal of harmonising laws, instead infuses a greater degree of confusion into the process of recognising a foreign insolvency proceeding.

Comprehensively tackling cross-border insolvency law from a conflict of laws' perspective is itself unique. However, the book makes a number of additional important contributions including a theoretical framework for understanding the *pari passu* principle and providing a critique of the *Revised UNCITRAL Model Law Enactment Guide.* This review addresses the former.

The author challenges the traditional notion that the *pari passu* principle is the fundamental cornerstone of insolvency law, arguing that, at least 'at the doctrinal level, the *pari passu* principle's role is an extremely limited one'. He first advances the notion that there are two versions of the *pari passu* principle, which he coins the orthodox principle and the multi-layered version. Under the orthodox principle, all claims should be paid proportionately, and preferences, set-off and other deviations from the proportionate distribution to creditors constitute an exception to the orthodox principle. The second version, seeks to 'reflect the multiple layers of priority in a distribution regime'. This principle, embodied in the UNCITRAL Model Law, states that

'similarly situated creditors are treated and satisfied proportionately to their claim out of the assets of the estate available for distribution to creditors of their rank'. Under this version, distribution according to classes of claims are not exceptions to the principle but constitute its application. He goes so far as to claim that under this multi-layered version, ringfencing of a company's assets would not per se violate the *pari passu* principle. He then makes the distinction between the *pari passu* principle, which governs distribution of the debtor's assets, and the principle of collectivity, which is unrelated to distribution but employs tools such as the stay and avoidance actions to preserve value. The author provides multiple examples of case law confusing these concepts, citing 'indiscriminate use of the "*pari passu*" label'. This theoretical distinction, if accepted by courts, is important in determining the correct case law to apply when relying upon the principle.

Cross-Border Insolvency: Principles and Practice is an essential guide for those seeking to traverse the landscape of cross-border insolvency law from a conflict of laws perspective. While the book focuses on England, the principles discussed are equally applicable to any Model Law jurisdiction because 'in interpreting the Law, regard is to be had to its international origin and to the need to promote uniformity in its application'. No resource provides such a comprehensive and up-to-date analysis of the current state of cross-border insolvency law from the conflict of laws perspective.