

# JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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## ARTICLES

### **Journal of Banking and Finance Law and Practice 25th Anniversary – Q and A with General Editor Gregory Burton SC**

It has been a busy year for the Journal of Banking and Finance Law and Practice as it celebrates its 25th anniversary. To mark the occasion the General Editor, Gregory Burton SC, answered some questions about the Journal’s progression over the last 25 years. .... 213

### **Applicable law in letters of credit transactions – Hang Yen Low and Keith Uff**

Where a letter of credit is used in a sale of goods transaction on the home market, it is unlikely that issues in relation to conflicts of law will arise because the legal system applicable to the contract of sale or the letter of credit is unlikely to be that of a foreign system. However, where it is used in international trading, the letter of credit will transcend national borders and involve various parties in different countries. Hence, it is not uncommon for conflict of law issues to arise in letters of credit transactions. Conflict of law rules are of great importance as they affect the determination of the rights and obligations of the various parties involved and the resolution of international legal disputes. This article attempts to explore conflict of laws issues under a letter of credit transaction from the perspective of English law, with a focus on the determination of the applicable law to contractual obligations in the absence of a choice of law clause. This issue is far from simple due to the many autonomous, yet linked, contractual relationships arising from a letter of credit transaction. .... 215

### **Why the Australian finance industry should pay closer attention to chattel paper – Nicholas Mirzai and Paul Richter**

Those familiar with the priorities prescribed by Pt 2.6 of the Personal Property Securities Act 2009 (Cth) (PPSA) will no doubt be aware of the default position that a security interest perfected “first in time” prevails over competing security interests pursuant to s 55(3). They will also likely be aware of the concept of a “purchase money security interest” provided for by s 14 and the “super priority” conferred on such an interest by s 62 of the PPSA. The reason for this understanding is reasonably straightforward from a commercial perspective, that is, at the time one seeks to enforce a security interest it is likely that only the creditor who holds the first ranking security interest will be able to recover that which it is owed. What might not be appreciated at first blush is that s 71 of the PPSA also provides that a person who acquires chattel paper or an interest in chattel paper usually prevails over general security interests and purchase money security interests in the chattel paper. Notwithstanding this, the use of chattel paper as a financing tool is rare in Australia for reasons which can only be speculated. This article explores the concept of chattel paper and its utility in Australian commerce in particular circumstances, to ensure secured parties are best protecting their interests. .... 228

**Pacific injustice and instability: Bank account closures of Australian money transfer operators – Ken C Ooi and Ross P Buckley**

Remittances from Australia to the Pacific Islands play a significant role in encouraging economic development and stability in the region. Money transfer operators promote financial inclusion and provide an important service by facilitating these remittances. Despite providing such a valuable service, Australian money transfer operators have been facing account closures by their banks. This article aims to examine the impact of regulation on financial inclusion. It argues that the current approach to anti-money laundering and counter-terrorist financing regulation has had the unintended consequence of encouraging banks to create financial exclusion. The article concludes that timely attention from industry, banks, government and regulatory bodies is required and provides suggestions to address this issue. .... 243

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