

BOOK REVIEWS

Default and Rescheduling Corporate and Sovereign Borrowers in Difficulty

David Suratgar, ed. Euromoney Publications, in association with The International Law Institute, Washington, D.C., 1984, pp. 163, \$85.00

The rescheduling of debts has become the major issue facing the international and financial system. With the development of the Euromarket and multinational corporations, the issue not only involves sovereign debtors and creditors but hundreds of commercial banks and a myriad of individual creditors: corporations, suppliers, and bondholders.

DEFAULT AND RESCHEDULING CORPORATE AND SOVEREIGN BORROWERS IN DIFFICULTY, edited by David Suratgar, provides a wide review of the key issues involved in international default and debt rescheduling with respect to both corporate and sovereign borrowings. One of the main qualities of this book is the originality of its conception and the diversity of its writers: bankers, lawyers, and high ranking executives of the Paris Club and the International Monetary Fund, each of whom has practical experience in dealing with international debt problems.

The nineteen chapters of the book may be classified in three categories according to subject matter. The first category deals with international default with respect to bankruptcy laws of various legal systems. Within this category, a number of chapters deserve reader attention. Chapter II discusses the efficacy of taking security under United States bankruptcy law. Chapter IV, "Conflicts of Law in a Multinational Bankruptcy," outlines clearly the key issues to be raised when the bankruptcy of a multinational entity involves various legal systems: identification of the interested jurisdictions; choice of the law to be applied, with the possible interplay of different systems' laws; and recognition of foreign judgments. Chapter VI, "Some Practical Problems in International Receivership: The Floating Charge"—which contains a documented review of various cases before the German, British and French Courts—as well as Chapter VIII, "Subordination of Foreign Claims Under Argentine Bankruptcy Law," highlight the differences of approach to multinational bankruptcy among the various jurisdictions and provide clear examples of the current inadequacy of national laws to cope with the issue of international bankruptcy.

The second category consists of chapters that focus mainly on the treatment of default and on the actual process of rescheduling debts. The

interesting chapter "Treatment of Default," by Sydney Cone, outlines, in a sharp analysis, the inadequacy of most of the default provisions in loan agreements. The author suggests new and more realistic approaches consisting of (1) providing in advance in the loan agreements the alternatives to the covenants taken by the Borrower and (2) defining the overall framework of the future rescheduling negotiations. Chapter V, "International Reorganization: The Prospects for Success," deals with the process of restructuring a major international corporation and contains interesting suggestions with respect to the organization of creditors and the management of the debtor during the crisis. A case study of the restructuring of a multinational corporation is provided by Chapter VII, "Anatomy of the Recapitalization of Chrysler." Other chapters, such as "The Legal Treatment of Sovereign Default" and "Problems of Documentation in Rescheduling of Sovereign Bank Debt," focus on the specific legal aspects raised by the rescheduling of some foreign debt.

The third category contains discussions in more general terms of the role of international organizations such as the International Monetary fund and the Paris Club. In this respect, the reader will be particularly interested in comparing the views expressed by Michel Camdessus, President of the Paris Club, the Chapter XV, "Governmental Creditors and the Role of the Paris Club" with the views of an outside observer, Christopher Whittington in Chapter XIII, "Multilateral Debt Renegotiations: A Banker's Perspective." Chapter IX, "Brief History of Sovereign Default and Rescheduling," and its case histories of Nicaragua and Costa Rica provide a very extensive survey of the handling of sovereign debt crisis. The final chapter, "The International Financial System and the Management of the International Debt Crisis," by David Suratgar, is a convincing and bold synthesis of all the issues still to be dealt with in order to define the new framework of international lending.

This book will undoubtedly be regarded as a major contribution to the literature concerning the means available to overcome the current international financing crisis. It will also be particularly helpful for practitioners involved in the day-to-day process of rescheduling debts.

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The Law Of Letters Of Credit

By John F. Dolan, Warren, Gorham & Lamont, Boston, 1984, pp. 608, \$77.00.

For many years there has been a need for a treatise on letters of credit. Henry Harfield's brilliant and witty *LETTERS OF CREDIT*, published in 1979 by the American Law Institute/American Bar Association, analyzes the basic legal principles governing letters of credit. But it does not purport to be a source book on the law in this area.

John F. Dolan, Professor of Law at Wayne State University Law School, has written such a book. If properly updated with periodic supplements, Professor Dolan's *THE LAW OF LETTERS OF CREDIT* will become an indispensable part of any commercial or banking law library.

Professor Dolan sets out the organization of his book in his preface. The first three of the book's twelve chapters introduce the subject by describing the nature and function of letter of credit transactions. These chapters cover the uses of standby letters of credit, the most rapidly developing area of letter of credit practice.

The fourth chapter discusses the sources of letter of credit law, principally Article 5 of the Uniform Commercial Code and the Uniform Customs and Practice for Documentary Credits ("UCP"). The author includes a discussion of rules of construction applicable to letters of credit. This chapter is extremely well done and should prove to be of great use to bankers and lawyers. However, a serious failing of the book is the absence of any analysis of the 1983 Revision of the UCP, ICC Publication No. 400. It is hoped that the first supplement to the book will rectify this situation.

The remaining eight chapters examine specific issues relating to letters of credit. For example, there is an excellent discussion of the strict compliance rule in handling documents presented under letters of credit as well as a thoughtful analysis of the fraud-in-the-transaction defense. Other topics dealt with by Professor Dolan include bankruptcy law aspects, attachment, security interests in letters of credit, and the problems involved in transferring letters of credit. For litigators there is a chapter on procedure and practice relating to letters of credit.

The textual material is thoroughly documented by references to case law, the UCC and the UCP (Publication No. 290). The cases cited are United States cases; no attempt is made in the book to cover foreign legal systems. This is not a serious omission for the American lawyer since U.S. courts, confronted with a plethora of U.S. authorities, rarely cite foreign law.

The appendices to the book contain several interesting features. The text of the UCP (Publication No. 290) set out in Appendix I is annotated by citations to relevant U.S. cases. This is the first time this reviewer has seen

an annotated version of the UCP! In addition, there is an annotated glossary of letter of credit terms and an extensive bibliography. Finally, Appendix III contains twenty-one sample letter of credit documents. This sampling could be supplemented by a form of Reimbursement Agreement for a standby letter of credit.

In summary, *THE LAW OF LETTERS OF CREDIT* is an excellent book which most practitioners working in the banking area will find useful. All Professor Dolan needs to do is to supplement the book with an analysis of the revised UCP, Publication No. 400, and to periodically update the book with new cases and banking regulations affecting letters of credit.

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