

The Law on  
Financial  
Derivatives

Sixth Edition

Alastair Hudson

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# The Law on Financial Derivatives

*Sixth edition*

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## Sixth edition

### Contents

Preface	vii
Author Biography	xi
Table of Abbreviations	xiii
Table of Contents	xv
Table of Cases	xl
Table of Statutes	lxxxiii
Table of Statutory Instruments	lxxxv
<b>Part A. The Regulation of Derivatives</b>	
1. Introduction	1
2. The Development of Derivatives Regulation	25
3. EU Regulation of Derivatives	43
4. UK Financial Regulation	89
<b>Part B. The Nature and Documentation of Derivatives</b>	
5. The Products	119
6. Confirmations and Master Agreements	203
7. Termination under a Master Agreement	301
8. Structuring Derivatives Contracts	377
<b>Part C. Substantive Law and Derivatives</b>	
9. The Creation of Derivatives Contracts	407
10. The Validity of Derivatives Contracts	441
11. Liability in Selling Derivatives	489
12. The Performance and Interpretation of Derivatives Contracts	587
13. Termination and Restitution in Derivatives Transactions	645
14. Conflict of Laws	721
<b>Part D. Taking Security</b>	
15. Taking Security	761
16. Collateralisation and Credit Support Agreements	829

17. Set-off, Netting and Insolvency	875
<b>Part E. Taxation</b>	
18. Taxation of Financial Derivatives	931
Index	971

## Preface

This new edition of the Law on Financial Derivatives—published twenty-two years after the first edition—analyses the new code of regulations which govern the derivatives markets and the growing panoply of case law on the liability of banks for the selling of complex financial instruments in the wake of the financial crisis. It continues to analyse the ISDA documentary architecture in detail.

While this sixth edition explores this new legal environment for international derivatives markets, it continues to analyse the law and the market standard documentation governing derivatives transactions in great detail. It analyses the substantive law of England and Wales closely and delivers an entirely objective account of that law as it applies to derivatives markets.

The discussion of standard documentation is written with the solitary practitioner in mind—whether working in-house covering derivatives and other markets without much help, or coping with derivatives business in private practice, or otherwise thrown into the threshing machine of the derivatives markets—and as such this book aims to give practical advice on drafting derivatives documentation as well as an analysis of the substantive law. This analysis ranges from the drafting of ISDA documentation through to the detailed case law on the creation, operation and termination of contracts, and on to the liability of banks for mis-selling derivatives and other complex financial instruments. Approximately sixty new cases are analysed in this edition, together with the full range of EU and UK regulations.

After decades of resistance, formal regulation of derivatives markets has now been introduced. This includes clearing of transactions and the mandatory provision of information about derivatives transactions to specified types of body. An architecture of regulation is being introduced at the EU level and is intended to be implemented in the UK before the Brexit process can be completed. This sixth edition explains these new regulations governing derivatives markets in the UK and the EU.

The creation of this regulation has led to a reorganisation of the book. Otherwise, its character and approach remain the same. Readers familiar with my other books (for example *The Law and Regulation of Finance* (2013) and *Securities Law* (2013)) will know that I prefer to begin with the statutory and regulatory context in which financial markets operate, before turning to market practice and the substantive law. At the time of writing the previous edition of this book in 2011, those regulations were only in draft form and therefore I kept the book in its long-standing order. In this edition I have moved the regulatory material to the front of the book in recognition of its new primacy in the legal context. Nevertheless I have limited the discussion of the regulation of financial