

INTERNATIONAL FINANCE LAW

Introduction and Outline Structure

- 1. FINANCIAL MARKETS (1) Money Markets**
AND INSTRUMENTS (2) Bank or Credit Markets
(3) Capital Markets
(a) Bond Markets
(b) Equity Markets
(c) Derivatives Markets
- 2. FINANCIAL INTERMEDIATION**
- 3. FINANCIAL RISK**
- 4. FINANCIAL REGULATION *Financial Stability***
- 5. PRIVATE CONTRACT LAW AND REMEDY**
Regulation of Financial Markets

1. FINANCIAL MARKETS

(1) MONEY MARKETS

(1) Primary ***UK Discount Market / US Discount Window***

(2) Secondary ***(1) Local Authority Market***

(2) Inter-Company Market

(2) CREDIT MARKETS

(3) Sterling Certificate of Deposit

(1) Euro Loan ***(4) Certificate of Deposit***

(2) Commercial Banking ***(5) Inter-Bank Market***

(3) Investment Banking

(3) CAPITAL MARKETS ***markets for investment capital or using capital (debenture or equity) based instruments***

(1) Debt

(2) Equity

(3) Warrants and Hybrids

(4) Depositary Receipts

(5) Eurodollars

(4) DERIVATIVES MARKETS

(5) CURRENCY MARKETS, GOLD (BULLION) AND COMMODITY MARKETS

2. FINANCIAL INTERMEDIATION - KEY TERMS

Any identifiable location, system or formalised relations through which buy or sell product or commodity

(1) MARKET

Any organised process through which financial contracts or claims can be issued and traded

(2) FINANCIAL MARKET

Any identifiable location on which contracts or instruments can be issued and traded

(3) EXCHANGE

Any organised and regulated market place for trading government or corporate stock and shares

(4) STOCK MARKET AND EXCHANGE

Transferable confirmation, certification or representation right underlying

(5) SECURITY

proprietary interest (chase) or debt (claim)

BANK Financial intermediary which accepts deposits and grants credit own account (Aggregate savings)

(1) Savings or Deposit (4) Investment and Funding

(6) FINANCIAL FUNCTION

(2) Loan or Credit (5) Risk Management

(3) Payment

(7) FINANCIAL INTERMEDIATION

Match or link excess with deficit financial capacity or elements within financial system

(1) Savers Receive Secure Return
(2) Borrowers Pool and Transform Maturities
(3) Ancillary Payment Services

(8) FINANCIAL VALUE

(4) Credit Risk Assessment
(5) Credit Risk Pricing

(9) FINANCIAL RISK

Financial, Legal and Operational Risks

(6) Credit Risk Specialised Management
(7) Lower Transactions Costs

(10) FINANCIAL REGULATION

Laws and regulations to identify, measure and manage financial risk

(8) Reduce Counterparty Risk and Exposure
(9) General Information Management Service
(10) Increase Credit Volumes and Welfare

3. FINANCIAL RISK

80-100 risks but 5 key groups`

(1) FINANCIAL RISKS

- (1) Market or Position Risk
 - (2) Credit (Country, Political or Sovereign)
 - (3) Currency Risk (Foreign Exchange risk)
 - (4) Interest Rate Risk
 - (5) Financial Derivatives
- (a) Liquidity risk
 - (b) Reinvestment (Extension risk)
 - (c) Performance (Prepayment risk)
 - (d) Basis risk
 - (e) Inflation risk
 - (f) Spread (quality) risk
 - (g) timing
 - (h) Commodity risk

(2) OPERATIONAL RISKS

- (1) Fraud (internal and external)
 - (2) Personnel failure
 - (3) Systems defect or failure
- (a) Delivery risk
 - (b) Acutarial risk
 - (c) Fiduciary risk
 - (d) Model risk
 - (e) Aggregation risk
 - (f) Technological risk
 - (g) Operations risk

(3) LEGAL RISKS

- (1) Capacity (or vires)
- (2) Documentation Validity
- (3) Enforceability

(4) MANAGEMENT RISKS

(Reputation risk) (Group risk)

- (a) Political
 - (b) Social
 - (c) Natural
 - (d) Direct environmental
 - (e) Indirect environmental
- (ENVIROMENTAL RISKS)**

(5) MARKET RISKS

- (1) Delivery or Settlement risk
- (2) 'Herstatt' risk

(BEHAVIOURAL RISK)

- (a) Fraud risk
- (b) Errors and omissions

4. FINANCIAL REGULATION

- (1) Financial Intermediaries
- (2) Financial Conduct or Contract
- (3) Financial Markets

(1) FINANCIAL RULES

Regulation of Financial Firms

(1) FINANCIAL REGULATION

Suitability, Systems and Solvency (Financial requirements)

(1) **Market Entry** (a) Authorisation **AUTH** **SUP**

Visits and Inspections

(b) Supervision Returns, Reports and Relations (Management meetings)

(Info, Doc, Systems, Witness, Inspections)

(c) Enforcement **ENF**

Scope, Safety or Stability (Protective Action) and Sanction (Fine or censure)

'external regulation and control'

(2) **Market Exit** (a) Asset Resolution Winding-up and Insolvency laws

(b) Liability Resolution

Complaints, Compensation and Corrective Action (Agency recovery)

(2) FINANCIAL RESERVE or SUPPORT (Bank Reserve (1/3 rd Assets), Inter-Bank Claims and LLR)

(2) **CONDUCT OR** (1) CONDUCT OF BUSINESS **COBS**

CONTRACT (2) CRIMINAL LAW Insider Trading, Theft and Fraud

RULES (3) CIVIL LAW Market Abuse, Misrepresentation and

'internal regulation and control' Statutory Damages

(3) **MARKET** (1) PRIMARY Listing

RULES (2) SECONDARY Dealing [Takeovers]

(3) SETTLEMENT Clearing and settlement

Regulation of Financial Markets

5. INTERNATIONAL FINANCIAL REGULATION

International Wholesale Markets

authorisation, supervision and enforcement and financial stability

(1) FINANCIAL RULES *Intermediary Regulation (FSMA) (ss, 19, 20 and 21)s*
FSA Handbook of Rules and Guidance

(prin, sysc, aper (s 59), fit and cond)(basel II BIPRU)

‘minimum professional counterparty conduct’

(2) CONDUCT RULES *(1) Wholesale Market Rules ECR (MAR) IPs*
(2) Non-Investment Product Rules (NIPs)

‘contract structure and operation and rights obligations and remedies’

(3) Standard Documentation *EBF Euro Repo*

‘market self-regulation’ (1) *LMA* (4) *ICMA/SIFMA Repos (GMRA)*

using ‘tool’ of private law (2) *ICMA* (5) *Bullion ‘FX JSC 1973’*

and contract (3) *ISDA* (6) *Wholesale Deposits*

‘financial derivatives’ (MAs, disclosure and CCPs)

bank of england website

(3) MARKET RULES *Recognised Investment Exchanges (RIEs and RCHs)*
and Clearing Houses (REC) (s 285, part XXVIII FSMA)

‘stock markets and exchanges’

6. INTERNATIONAL FINANCIAL REGULATION

Formal Market Regulation or Public International Law

Disadvantage

'politically, operationally and financially ineffective and impractical solution'

'necessary therefore look for market (self-regulatory and membership) or private contract law solution' (formal, official, authoritative,

(1) Formal Treaty Based *impartial and final)*

Cost, Expense and Formality

(2) Political Sensitivity and Difficulty Agree

Partial, Incomplete and Uneven

(3) Need for National Variation and Adjustment

Inconsistent, Incoherent and Conflict

(4) Lack Effective International Oversight

No effective private or sovereign review and oversight

(5) Lack Effective Enforcement Mechanism

No effective private or sovereign sanction

7. INTERNATIONAL FINANCIAL REGULATION

- (1) reflect market practice*
- Wholesale Market Self-Regulation*** *(2) best risk management*
‘professional trade association advantage’ *(3) standard documentation*
(4) industry representation
‘market (self-regulation) advantage’ *(5) public understanding*
- (1) Expert and Relevant**
Market Professional Design and Structured
- (2) Immediate and Integral**
Incorporation into private law contracts
- (3) Flexible and Responsive**
Continuous Revision in response to market changes
- (4) Cost and Ease of Revision** *but (1) conflict interest*
Simple Rule book Amendment *(2) no-transparent*
- (5) Voluntary Adoption and Compliance** *(3) anti-competitive*
Consent based with consequent self-interest *(4) no public interest*
and internal ‘Culture of Compliance’ *(5) systemic control*

8. LOAN MARKET ASSOCIATION (LMA)

European syndicated loan trade association

- (1) Establishment** established 1996 with 400 members
 - (1) *efficient execution loan business***
- (2) Purpose**
 - (2) *increased liquidity***
 - (3) *manage loan portfolios more efficiently***
 - (4) *collective approach and reduced costs***
 - (5) *timely exchange of views***
 - (6) *provision dedicated website***
 - (7) *education and training***
 - (8) *participation issues and problem solving***
- (3) Board and Governance**
- (4) Committees**
 - Agency, Distressed Debt, Documentation, Loan Operations, Par Trading Practices and tax Committees***
- (5) Documentation** ***Standard Term Agreements***

9. INTERNATIONAL CAPITAL MARKETS ASSOCIATION (ICMA)

***International bond and capital market trade association
merger ISMA and IPMA July 2005***

- (1) Establishment** *AIBD change name to ISMA in 1991*
 - (1) High standards market practice*
- (2) Purpose** *(2) Advocacy on appropriate regulation*
 - (3) Trade Systems and Market Data TRAX*
 - (4) Education and Research*
 - (5) Networking, Information and Events*
- (3) Governance and Committees**
 - Regulatory Policy, Market Practices, Primary Market Practices,
Secondary Market Practices, Legal and Documentation, Euro CP*
- (4) Documentation** *Rules and recommendations*
- (5) Handbooks** *IPMA / GMRA 1995 and 2000*

10. INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION (ISDA)

chartered 1985, 800 members and 56 countries

- (1) Master Agreements and Annexes** *2002*
- (2) Confirmations** *Long and Short Form Cons
Telex exchange commercial terms*
- (3) Definitions** *Currency, Interest Rate,
Commodity and Equity*
- (4) Opinions** *Netting (36 annual) and Credit Support (28)*
- (5) Amendment Protocols and Adherence Letters**
Regulation of Financial Markets

COMMENT AND CONCLUSIONS

- 1. International markets and exchanges are governed by range of standards and requirements including market trading and dealing rules as well as national and international best market standards.**
- 2. Exchange rules implement relevant international standards and principles including WFE, IOSCO and CPSS as common standards and principles emerge.**
- 3. Firms and individuals are regulated at national level but contracts are governed by standard market documentation which defines rights, obligations and remedies of parties and secures predictability and certainty in financial dealings.**
- 4. Standard form documentation is particularly necessary in non-exchange OTC and unregulated wholesale markets with little material disruption arising after recent financial crisis except for some continued delays in trade execution and settlement such as CDSs.**
- 5. All of these measures will be further reviewed and revised as market structure and best market practice evolve over time.**

Financial Markets Law

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