



**Banking and Financial Law**

# **International Finance Markets**

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**A NEW FUTURE**

**A NEW WORLD**

# **INTRODUCTION TO INTERNATIONAL FINANCE**

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## **1. INTRODUCTION**

- (1) Contact Structures and Finance Options**
- (2) Relevant Terms and Conditions**
- (3) Related Legal Issues**

## **2. MARKETS AND DEFINITIONS**

- |                                   |                                      |
|-----------------------------------|--------------------------------------|
| <b>(1) Historical Development</b> | <b>(a) <i>City of London</i></b>     |
| <b>(2) Main Markets</b>           | <b>(b) <i>Coffee Houses</i></b>      |
| <b>(3) Main Definitions</b>       | <b>(c) <i>Financial Markets</i></b>  |
| <b>(International)</b>            | <b>(d) <i>Eurodollar Markets</i></b> |
|                                   | <b>(e) <i>Bretton Woods</i></b>      |

## **INTRODUCTION TO INTERNATIONAL FINANCE**

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### **3. CORE CONTRACTS**

- |            |  |                            |
|------------|--|----------------------------|
| <b>(1)</b> | <b><u>EUROLOANS</u></b><br><i>Terms and Syndicated Loans</i> | <b><u>LMA</u></b>          |
| <b>(2)</b> | <b><u>EUROBONDS</u></b>                                      | <b><u>ICMA</u></b>         |
| <b>(3)</b> | <b><u>EURONOTES</u></b>                                      | <i>(short duration)</i>    |
| <b>(4)</b> | <b><u>COMMERCIAL PAPER</u></b>                               | <i>(disintermediation)</i> |
| <b>(5)</b> | <b><u>FINANCIAL DERIVATIVES</u></b>                          | <b><u>ISDA</u></b>         |

## 4. CONTACT PARTIES, EXAMINATION AND NEGOTIATION

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				<b>(Lead Bank)</b>
<b>(1)</b>	<b>Term Loans</b>		<b>'Term Loan Agreement'</b>	
		<b>(1)</b>	<b>Financial Terms</b>	<b>Draw Down</b>
<b>(a)</b>	<b>Information</b>	<b>(2)</b>	<b>Conditions</b>	<b>(a) Precedent    <i>Pre-Loan</i></b>
<b>(b)</b>	<b>Disposal</b>			<b>(b) Reps and Ws    <i>Pre-Advance</i></b>
<b>(c)</b>	<b>Negative Pledge</b> (scope, breach, enforcement)			<b>(c) Covenants    <i>Post-Advance</i></b>
<b>(d)</b>	<b>Pari Passu Pro Rata Sharing</b>			
<b>(e)</b>	<b>Cross-default</b>	<b>(3)</b>	<b>Events of Default</b>	<b>(Negotiation)</b>
<b>(2)</b>	<b>Syndication</b>			
	<b>Lead Bank/Agent Bank</b>		<b>(1)</b>	<b>Function</b>
			<b>(2)</b>	<b>Liability</b>
			<b>(3)</b>	<b>Exclusion</b>
<b>(3)</b>	<b>Eurobonds</b>			
	<b>(1) Managers</b>	<b>(4)</b>	<b>Negotiability</b>	
<b>Trusts</b>	<b>(2) Trustee</b>	<b>(5)</b>	<b>Listing (access and price)</b>	
	<b>(3) Bondholder Meetings</b>	<b>(6)</b>	<b>Depositaries and Custody</b>	

# ***International Finance Law***

## **5. SPECIAL CONTRACTS**

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- |            |                                     |  |
|------------|-------------------------------------|--|
| <b>(1)</b> | <b><u>PROJECT FINANCE</u></b>       | <b>Structures, Sponsors (Functions) and Documentation</b>  |
| <b>(2)</b> | <b><u>SECURITISATION</u></b>        | <b>Structures, SPVs, Risk, Documentation and Transfers</b> |
| <b>(3)</b> | <b><u>STATE LOANS</u></b>           | <b>Sovereign Immunity (Governments and Central Bank)</b>   |
| <b>(4)</b> | <b><u>SECURED LENDING</u></b>       | <b>Structures, Terms, Guarantees and Enforcement</b>       |
| <b>(5)</b> | <b><u>FINANCIAL DERIVATIVES</u></b> | <b>Risk, Purpose and Standard Documentation (ISDA)</b>     |

# ***International Finance Law***

## **6. SPECIAL ISSUES**

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### **(1) FINANCIAL REGULATION**

#### ***Risk, Regulation Standard Documentation***

- (a) LMA**
- (b) ICMA (IPMA and ISMA)**
- (c) ISDA**

### **(2) ASSET TRANSFERS**

#### ***Options and Effect***

**(restrictions, benefit, commitments, set-off, security and guarantees, appropriation, recourse, rescheduling, management, capital and regulation)**

- (a) Assignment**
- (b) Novation**
- (c) Participation**
- (d) Risk Participation**
- (e) Securitisation**

# ***International Finance Law***

## **6. SPECIAL ISSUES**

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### **(3) LEGAL OPINIONS**

***Purpose and content. Limitations (exclusions) and Value***

### **(4) FINANCIAL REMEDIES**

***Distress, demand, preferences, remedies (combination and dispute Resolution and lien), set-off, enforcement, receivership, Enterprise Act 2002, floating charges, liquidation, freezing orders,***

### **(5) PRIVATE INTERNATIONAL LAW**

***Choice of Law and Jurisdiction, Moratoria and Extra-territorial Orders***

## 5. INTERNATIONAL FINANCIAL REGULATION

### *International Wholesale Markets*

*'authorisation, supervision & enforcement & financial stability & integrity'*

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

*(prin/FR, sysc, aper (s 59), fit and cond)(basel III BIPRU)*

*'capital, liquidity, leverage & ancillary risk cover'     [firm £10m & procedure]*

**(2) CONDUCT RULES**     *(1) Wholesale Market Rules Ct or EC (Per Se or Elective)*  
*(2) 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'*

*& private contract & courts     (3)     ISDA     (6)     Wholesale Deposits(2)*

*(3) Non-Investment Product Rules (NIP Code)*

*(4) Market Codes (MMCode) (GFXCode) (Metals Code)*

*(5) Financial Ethics     Professional Codes (CISI)*

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

*'stock markets and exchanges'*

*Regulation of Financial Markets*



## **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

- Wholesale Market Self-Regulation** *(1) reflect market practice*  
*'professional trade association advantage'* *(2) best risk management*  
*(3) standard documentation*  
*(4) industry representation*  
*(5) public understanding*
- 'market (self-regulation) advantage'*
- (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 a range of standards and requirements including financial, market trading and dealing rules as well as national and international best market standards & ethical practices.**

**2. Standard Documentation is produced by the principal Trade Associations in each market which applies private law & courts. Firms and individuals are regulated at the national level but contracts are governed by standard market documentation which defines the rights, obligations and remedies of the parties & secures predictability and certainty in financial dealings.**

**3. Exchange rules implement relevant international standards and principles including World Federation of Exchanges (WFE), IOSCO and Committee on Financial Market Infrastructure (CFMI) as common standards and principles emerge.**

**4. Standard form documentation is particularly necessary in non-exchange OTC and unregulated wholesale markets with little material disruption arising after Global Financial Crisis & Coronavirus Crisis except for some continued delays in trade execution and settlement such as CDSs.**

**5. All of these measures will be continually reviewed and revised as market structure and best market practice evolve over time.**





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