

Legal Aspects of International Finance

Module Introduction and Overview

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1 Introduction to the Module

Welcome to this module on the legal aspects of international finance. The first unit will introduce you to some of the topics you will study. This introduction will provide and outline some important information on Assessment and the on the Study process.

The teaching of this module is based on English law and makes reference to the law of other jurisdictions where this is relevant. You will be shown how contractual principles are applied to commercial fundraising transactions and how to differentiate between legal principles and the market practices that shape these transactions.

We hope that you will find the module instructive, useful and occasionally challenging.

2 The Module Author

Dr Dalvinder Singh is currently a Professor in the School of Law, University of Warwick. His area of research is in bank and financial regulation from both a policy and practical perspective in both the UK system and the US system, including European and international dimensions. Professor Singh is also a member of the Research and Guidance Committee of the International Association of Deposit Insurers, Basel Switzerland, and Managing Editor of the *Journal of Banking Regulation*, and *Financial Regulation International*.

3 Study Resources

This study guide is your main learning resource for the module as it directs your study through eight study units. Each unit has recommended reading either from the key text or from supplementary module readings.



Key text

Alastair Hudson (2013) *The Law of Finance*. 2nd Edition. London, Sweet & Maxwell.

This is a comprehensive and useful textbook covering this field. The text-book coverage has been complemented and supplemented by articles and extracts from other texts in the module readings.

Module readings

The module readings include a range of academic journal articles, extracts from supplementary textbooks and other reports or material.

Please feel free to raise queries with your tutor and with your fellow students, if there are issues that are not clear to you. Do this as soon as you find a problem, because waiting will hold you up as you work through the module.

4 Module Overview

The module is structured around eight units, which should be studied on a weekly basis. It is expected that studying each unit, including the recommended readings and activities, will take between 15 and 20 hours.

However, these timings may vary according to your familiarity with the subject matter and your own study experience. You will receive feedback through comments on your assignments and there is a specimen examination paper to help you prepare for the final examination.

Unit 1 The Law of International Finance

- 1.1 Introduction
- 1.2 The International Financial Market
- 1.3 Introduction to International Finance
- 1.4 Legal Aspects of International Finance
- 1.5 Introduction to International Capital Markets
- 1.6 Dealing with Risk in International Finance
- 1.7 Conclusion

Unit 2 International Loan Finance

- 2.1 Introduction
- 2.2 International Term Loan Agreements
- 2.3 Syndicated Loans
- 2.4 Structure of Typical Syndicated Loan
- 2.5 Secondary Market
- 2.6 Conclusion

Unit 3 Corporate and Sovereign Bonds

- 3.1 Introduction
- 3.2 Forms and Legal Characteristics of International Bonds
- 3.3 Issuing an International Bond – the Parties and Documentation
- 3.4 Issuing, Marketing and Distributing the Bonds
- 3.5 Basic Legal Terms and Conditions
- 3.6 Tax Considerations
- 3.7 Contractual Aspects of Sovereign Bond Offerings
- 3.8 A Brief Note on State Insolvency
- 3.9 Differences between Corporate and Sovereign Bonds
- 3.10 Conclusion

Unit 4 Project Finance

- 4.1 Introduction
- 4.2 What is Project Finance?
- 4.3 Special Features of Project Finance
- 4.4 Security in Project Finance
- 4.5 Some Particular Types of Contract
- 4.6 PPPs and PFIs
- 4.7 Conclusion

Unit 5 Financial Derivatives and Securitisation

- 5.1 Introduction to Financial Derivatives
- 5.2 Basic Aspects of International Derivatives Markets
- 5.3 Managing Legal Risk in International Derivative Transactions
- 5.4 Capacity and Authority to Enter into Financial Derivative Contracts
- 5.5 Termination and Close-Out Netting
- 5.6 The Structure and Main Provisions of the 2002 ISDA Master Agreement
- 5.7 Central Counterparties
- 5.8 Trade Repositories
- 5.9 Securitisation
- 5.10 Conclusion

Unit 6 Alternative Investment Funds

- 6.1 Alternative Investments
- 6.2 Private Equity
- 6.3 Equity-Debt-Leverage Finance
- 6.4 Hedge Funds
- 6.5 Risks
- 6.6 Comparing Hedge Funds and Private Equity Funds
- 6.7 Conclusion

Unit 7 Payment and Securities Settlement Systems

- 7.1 Introduction and Overview of Payment Systems
- 7.2 Risks and Legal Issues in Payment Systems
- 7.3 Types of Payment System
- 7.4 Securities Settlement Systems
- 7.5 Risks and Legal Issues in Securities Settlement Systems
- 7.6 Implications of Using Intermediaries
- 7.7 Financial Collateral
- 7.8 Conclusion

Unit 8 Conflict of Laws, Jurisdiction and Enforcement

- 8.1 Introduction to the Conflict of Financial Laws
- 8.2 The Choice of Governing Law by the Parties
- 8.3 Choice of Jurisdiction
- 8.4 Legal Opinions
- 8.5 Conclusion – Conflict of Laws and International Financial Markets

This is a module on the legal aspects of raising different forms of international finance and how international finance disputes are settled.

Unit 1 provides a primer on the size of the global financial markets and some international legal principles governing the flow of capital across borders. It looks at the role of primary and secondary markets and the importance of financial depth of markets. In it, we will set out in simple terms the different features of debt and equity finance and some of the key risks in international finance. The module is designed to introduce you to the different forms of international finance and then some of the

underlying issues, such as payment and settlement systems in Unit 7 and conflicts of law and jurisdiction in Unit 8.

The issues in Units 7 and 8 bring together all the components of the module. The forms of finance and their structures are explored in Units 2, 3, 4, 5 and 6. Unit 2 looks at basic forms of loan finance. Bilateral and syndicated loans are a common means for governments and corporate borrowers to raise large sums in the financial market. The unit starts by looking at the key contractual features of a bilateral loan and a syndicated loan. A crucial component of the syndicated loan market that will be explored in detail is the secondary market.

Moving on from the basics of loan finance, we look at the other principal form of debt finance namely Bonds. The main purpose of Unit 3 is to examine the main legal aspects and terms of international corporate and sovereign bonds. Specific emphasis is placed on the key contractual provisions and their purpose. It finally explores the distinguishing features of corporate and sovereign bonds. The forms of finance explored in Units 2 and 3 provide the underlying basis of project finance.

Project finance is a tremendously complex and multi faceted form of infrastructure finance. However, Unit 4 provides an overview of the key features and parties involved in negotiating project finance. The unit will outline and discuss the main documents, transactions and parties involved in the financing of international projects. Moving on from the traditional forms of finance, we then explore the role of derivatives and securitisation as forms of finance. Financial derivatives and securitisation can together be referred to as refinancing techniques since they facilitate the repackaging of assets and allow risk management.

In examining the different forms of debt finance, the module introduces some aspects of equity finance by exploring the role of Private Equity and Hedge Funds, as alternative. As noted above, Unit 7 will look at payment systems and securities settlement systems. In practice, these are closely bound up with payment systems, since one 'leg' of the settlement of securities transaction will generally involve a payment being made. The unit will go on to look at the main issues raised by the use of intermediaries to hold securities, since this practice is now very much bound up with the way in which securities settlement systems operate.

Every legal issue under a financial contract must be determined in accordance with a system of law and litigated in a court located somewhere regardless of whether it involves parties in different countries or within a single location. Those are the key issues explored in Unit 8. In this final unit of the module, you will study the choice of governing law and the choice of jurisdiction by the parties concerned.

5 Learning Outcomes

When you have completed your study of this module, you will be able to:

- outline the different forms of international finance available in global capital markets and the role of the primary and secondary market
- evaluate the key issues associated with the different forms of debt finance and alternative investment funds
- determine the role of the various parties involved in the different forms of international finance
- evaluate the importance of derivatives and securitisation as a form of international finance and risk management technique
- analyse the key contractual provisions and documentation associated with the different forms of debt finance and alternative investment finance
- explain the role of payment and settlement systems in international finance
- critically assess the importance of the choice of law and jurisdiction clause in international financial transactions.