



P.R.I.M.E. FINANCE
Panel of Recognised International Market Experts in Finance

P.R.I.M.E. Finance Newsletter No. 5 – January 2012

P.R.I.M.E. Finance is now officially open for business!

1. Opening Conference of P.R.I.M.E. Finance, the seminars on dispute resolution in the financial markets and the reporting out session by our experts

P.R.I.M.E. Finance, a tribunal devoted to settling the world's most complex and contentious financial cases, was opened for business on 16 January 2012 in The Hague by Jan Kees De Jager, Finance Minister of the Netherlands.

Comprised of a group of sitting and retired judges and other international legal and market experts with more than 2,000 years of relevant collective experience, the P.R.I.M.E. Finance Disputes Center will take on cases which may be too specialised for many domestic courts. It aims to contribute to the development of a settled body of law in areas where to date national courts in different countries have been seen to hand down conflicting rulings. The Center will also offer training in finance for judges around the world and hopes to develop a useful database of relevant court precedents and other resources.

The Opening Conference was convened by The Rt Hon the Lord Woolf of Barnes, Chairman of the Advisory Board of the P.R.I.M.E. Finance Foundation and former Lord Chief Justice of England and Wales. Delegates were also welcomed by Marjolein de Jong, Vice-Mayor of The Hague and Bernard Bot, Chairman of the Carnegie Foundation and former Foreign Minister of the Netherlands. The Hon Sir David Baragwanath KNZM, QC, President of the United Nations Special Tribunal for Lebanon and a member of the P.R.I.M.E. Finance Foundation Advisory Board, presented a study report of the Netherlands Institute for Advanced Study in the Humanities and Social Sciences on the P.R.I.M.E. Finance project (see further details below). Frank Elderson, an Executive Director of the Dutch Central Bank offered the observations of a central banker, and The Hon Justice Kunio Hamada, a P.R.I.M.E. Finance expert, shared the observations of a former Supreme Court justice. Board members Gay Evans, Thomas Jasper and Sandie Okoro presented views of an industry spokesperson and former regulator, an investment banker and former CEO and a CLO with a buy-side perspective and a particular interest in developing markets, respectively. Professor Jeffrey Golden, Chairman of the Management Board of the P.R.I.M.E. Finance Foundation and Visiting Professor at the London School of Economics and Political Science, made the closing speech.

Following the formal Opening, at the seminars on arbitration and mediation and reporting out session on recent financial market cases and related legal issues, the Secretary-General of the P.R.I.M.E. Finance Secretariat, Gerard Meijer, introduced the Center's new arbitration and mediation rules (see below) and the audience heard from the following P.R.I.M.E. Finance experts: The Hon Judge Francisco Orrego Vicuna, Professor Klaus Peter Berger, Judith Gill QC, Michael Hwang SC, The Hon Judge Elisabeth Stong, Professor Jan Eijbouts, Arthur Hahn, The Hon Ben F. Tennille, William Wood QC, Daniel Cunningham, Robin Dicker QC, Simon Firth, Edward Murray, Malcolm Basing, E. Whitney Debevoise II, Schuyler Henderson, Willem Calkoen, Antoine Maffei, Habib Motani, Akihiro Wani, Peter Werner, Hendrik Haag, Cynthia Beerbower, Rick Grove, Carolyn Jackson and Joanna Perkins. Elena Sulima, representing the European Bank for Reconstruction and Development (EBRD), also spoke about her institution's interest in the project.

In addition to the participation of the members of the Management and Advisory Boards and Experts Lists of P.R.I.M.E. Finance, there was a strong turnout that included other interested market participants and their advisers, ambassadors, international court judges and guests, with overall more than 250 attendees participating in the two-day event.

The Opening also attracted impressive media coverage in the Netherlands and abroad in newspapers, radio, television and the internet, including the Financial Times, the Wall Street Journal, Bloomberg and the BBC. [Click here \(pdf\)](#) to find recent press articles concerning the P.R.I.M.E. Finance project.

We would like to take this opportunity to thank our speakers and everyone else who made the Opening a great success and an unforgettable event, and in particular we would like to express our thanks for the generous support of the Dutch authorities and our other event sponsors.

2. Confirmation of additional experts joining the P.R.I.M.E. Finance Experts List

We are also pleased to announce that the following distinguished experts have recently accepted appointment to the P.R.I.M.E. Finance Experts List:

The Honourable Michael Black AC QC, Retired Chief Justice of the Federal Court of Australia; Former Co-President of the International Association of Supreme Administrative Jurisdictions (Australia)

Michael Brindle QC, Barrister at Fountain Court Chambers; Member of the Financial Markets Law Committee; Recorder of the UK Crown Court; Member of the SIAC and Kuala Lumpur Panels of Arbitrators; Former Chairman of the Commercial Bar Association; Former Chairman of Bar Council Education and Training and International Committees (UK)

Judith Gill QC, Partner at Allen & Overy LLP and Head of its International Arbitration Group; Director of the American Arbitration Center, SIAC and LCIA and former member of the LCIA Court; Member of the ICC UK Arbitration Group; Fellow of the Institute of Advanced Legal Studies and a Fellow of the Chartered Institute of Arbitrators (UK)

Professor Roger McCormick, Visiting Professor at the London School of Economics and Co-director of LSE's Sustainable Finance Project; Non-executive Director of SMBC Derivative Products; Author of *Legal Risk in the Financial Markets* (Oxford University Press, 2010) (UK)

Gabriel Moss QC, Barrister at 3-4 South Square Chambers; Member of the Financial Markets Law Committee; Authorised to sit as Deputy High Court Judge in the UK Chancery Division; Member of the Bank of England Working Group on Property Interests in Investment Securities; Member of the Bank of England Working Group on Financial Collateral; Chairman of the Editorial Board of *Insolvency Intelligence*; Founding Member of the Board of the Insolvency Research Unit, King's College, London; Author of *Lightman & Moss, The Law of Administration and Receivers of Companies* (and other works) (UK)

William Wood QC, Independent Mediator at Brick Court Chambers; Member of the English Civil Mediation Council Board and Chair of its Accreditation Committee (UK)

Professor Sarah Worthington QC, Downing Professor of Law at Cambridge University; Academic Member at 3-4 South Square Chambers; Member of Council, British Academy; Professorial Fellow of the Law School at University of Melbourne; Member of the Insolvency Lawyers' Academic Advisory Group; former President of the Society of Legal Scholars; Author of *Equity* (Clarendon Law Series OUP) (and other works) (UK and Australia)

The number of expressions of interest and self-nominations to join our Panel of Experts now exceeds the current number of appointed Experts. We would like to ensure all nominees that their applications will be given careful consideration by our appointments commission.

P.R.I.M.E. Finance does aim to expand the current Experts List with a view to broadening its diversification. We welcome further nominations for that List, including self-nominations. For further information, please contact: secretary@primefinancedisputes.org (see also the “Contact us” section below).

3. P.R.I.M.E. Finance Arbitration and Mediation Rules

The first edition of the P.R.I.M.E. Finance Arbitration and Mediation Rules has now been published and can be accessed on our website.

The P.R.I.M.E. Finance Arbitration Rules are based on the UNCITRAL arbitration rules (as revised in 2010). However, in order to "institutionalise" the UNCITRAL Rules, the P.R.I.M.E. Finance Secretariat was built in as the body administering the arbitral proceedings.

In preparing the Arbitration Rules we have kept deviations from the original text to a minimum, both with a view to confirming the role of the Permanent Court of Arbitration and in order to ensure that, in the case of any ambiguities, reference may easily be made to the commentaries on the UNCITRAL Arbitration Rules 2010. Nevertheless, to reflect a particular financial market need for speedy resolution of disputes, we have included several provisions and annexes which allow the parties to arbitral proceedings to shorten relevant time frames in several ways.

The P.R.I.M.E. Finance Mediation Rules are based on the commonly used UNCITRAL Conciliation Rules 1980. However, being aware of many developments in the mediation techniques and trends, we have made some refinements to the UNCITRAL Conciliation Rules in order to both build in the P.R.I.M.E. Finance Secretariat and to introduce some more updated features.

4. Steering committees for the further development of the Arbitration and Mediation Rules

To further improve our rules and procedures and to address the particular challenge of making them more suitable for dispute resolution in the financial markets, the Management Board of P.R.I.M.E. Finance has decided to establish steering groups focused on the on-going development of the P.R.I.M.E. Finance Arbitration and Mediation Rules. The committees will be composed of the members of the Panel of Experts of P.R.I.M.E. Finance, and will include both dispute resolution and financial experts.

Moreover, we intend to organize several consultation meetings with market parties concerning the rules in major financial centres around the world. As part of this project, we would particularly welcome comments and suggestions from the market concerning the scope and content of the current rules until 15 April 2012. Comments and suggestions may be sent to: secretary@primefinancedisputes.org

5. Netherlands Institute for Advanced Study in the Humanities and Social Sciences (NIAS)

During the Opening Conference of P.R.I.M.E. Finance, HE the Honourable Sir David Baragwaneth KNZM, QC provided a briefing on the three-month research project at NIAS in which he outlined the types of cases that would benefit from the establishment of P.R.I.M.E. Finance and the scope of services that the facility should aim to provide. He identified a pressing need for greater professionalism in handling complex financial transactions and suggested that P.R.I.M.E. Finance specialise in the broad areas of derivatives, securitised loans and collateralized transactions. Furthermore, he identified “an immense black hole of legal

uncertainty” around global financial transactions but suggested the P.R.I.M.E. Finance Disputes Center is well-placed to bring clarity and authority to the field.

The research project at NIAS is scheduled to conclude at the end of January 2012, and the hope is to publish the findings of this research project in an academic journal in the first quarter of 2012. We look forward to updating you further on the final findings of this research project later in the year.

6. Follow-up P.R.I.M.E. Finance London expert meeting – March 2012

Following previous consultations in London, New York, Paris, Dublin, Frankfurt, Moscow and Dubai, a further follow-up meeting with market parties from the City of London is being organised. Feedback on the P.R.I.M.E. Finance Arbitration and Mediation Rules will be sought, an update on the project and next steps given and with a Q&A to follow. The meeting is tentatively scheduled for 1st March 2012. Expressions of interest from those wishing to participate in this upcoming meeting are again welcome and invited. (See "Contact us" immediately below.)

7. Contact us

For further information, please contact the P.R.I.M.E. Finance Secretariat at secretary@primefinancedisputes.org or tel. +31 (0)70 8200 400 or Professor Jeffrey Golden, Chairman, P.R.I.M.E. Finance Foundation at j.b.golden@lse.ac.uk.

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