



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

P.R.I.M.E. Finance

FACT SHEET

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P.R.I.M.E. Finance

Peace Palace
The Hague
The Netherlands



P.R.I.M.E. Finance Fact Sheet

Introduction

www.primefinancedisputes.org

Based in The Hague, P.R.I.M.E. Finance stands for the Panel of Recognized International Market Experts in Finance. P.R.I.M.E. Finance was established to help resolve, and to assist judicial systems in the resolution of, disputes concerning derivatives and complex financial transactions. P.R.I.M.E. Finance has the support of key international regulatory bodies and is complementary to on-going financial market regulatory reform processes.

Our core activities, and the three pillars upon which P.R.I.M.E. Finance is based, are:

- (i) dispute resolution services, including arbitration, mediation, and the provision of expert witnesses and expert opinions, determinations and risk assessment;
- (ii) training, education and support services for judges, arbitrators and regulators in both developed and developing markets and economies; and
- (iii) the compilation of a central database of international precedents and source materials.

With support from Dutch authorities, P.R.I.M.E. Finance, a not-for-profit foundation, opened for business in January 2012. P.R.I.M.E. Finance has made rapid progress since. Its first case and fee for assisting in finding expert witnesses quickly followed. P.R.I.M.E. Finance has developed programs in derivatives and other complex financial transactions for judges and arbitrators, both in advanced and developing economies. To date, P.R.I.M.E. Finance is now widely recognised as unique in offering specialised information that judges and arbitrators need to assess better the merits of complex financial disputes that they are asked to adjudicate, including the often differing opinions expressed by expert witnesses. Judicial training and education programs have been provided to courts and judges on 16 occasions in ten jurisdictions on five continents. P.R.I.M.E. Finance was awarded “Best Newcomer” at a GAR arbitration awards ceremony in Stockholm and has also received nominations for several innovation awards. A P.R.I.M.E. Finance Fellowship has been created at the Netherlands Institute for Advanced Study (NIAS) to promote research in the field of law relevant to the activities of P.R.I.M.E. Finance.



P.R.I.M.E. Finance was one of seven international arbitration centers acknowledged by the International Swaps and Derivatives Association (ISDA) in the 2013 ISDA Arbitration Guide.¹ The ISDA Guide provides a range of model arbitration clauses tailored for use with ISDA's industry standard 1992 and 2002 Master Agreements. P.R.I.M.E. Finance has also drafted forms of amendment agreements to modify existing 1992 or 2002 ISDA Master Agreements to provide for arbitration in accordance with the P.R.I.M.E. Finance Arbitration Rules. These amendment agreements contemplate the same arbitral seats as those in the ISDA Arbitration Guide, as well as additional seats.

P.R.I.M.E. Finance is increasingly receiving approaches from parties to disputes involving derivatives and complex financial transactions to provide expert advice and expert witnesses from its panel of experts.

Cooperation with Permanent Court of Arbitration

The Permanent Court of Arbitration (PCA) is the world's oldest arbitral institution, with over a century of experience in administering complex international proceedings. P.R.I.M.E. Finance joined forces with the PCA in 2015, combining the subject matter expertise of its Panel of Experts with the PCA's administrative efficiency. Therefore, arbitrations under the P.R.I.M.E. Finance/PCA Arbitration Rules are administered by the PCA. While the filing address for notices of arbitration is with the PCA at its Peace Palace headquarters in The Hague, arbitrations may take place anywhere in the world, and may be facilitated by the PCA's host country agreements with a number of its Contracting Parties. As a result, parties to complex financial transactions have improved access to arbitration and mediation to resolve their disputes.

Vision

P.R.I.M.E. Finance is a unique centre of excellence, dedicated to promoting a more sophisticated approach to financial markets dispute resolution, with a particular focus on issues arising out of industry standard documentation, relevant comparative law and market practices for derivatives and other complex financial products. P.R.I.M.E. Finance is an easily accessible, centralized, neutral, transparent, multi-linguistic and multi-cultural college of expertise.

¹ http://www.isda.org/publications/pdf/ISDA_Arbitration_Guide_Final_09.09.13.pdf



Mission

Our mission is to serve a public policy need by fostering a more stable global economy and financial marketplace by reducing legal uncertainty and systemic risk, as well as promoting the rule of law, particularly in emerging markets.

Our Experts

To view all experts please go to www.primefinancedisputes.org

P.R.I.M.E. Finance is so named for its core strength. That strength resides in the knowledge, experience and background of its carefully-vetted international Panel of Experts. The Panel of Experts comprises over 150 distinguished sitting and retired judges, central bankers, regulators, academics, representatives from private legal practice and market participants. The members of the Panel of Experts average more than 30 years of relevant experience each. The Panel of Experts is diverse in its geographical representation, market and jurisdictional expertise, linguistic skills and nationalities. The Panel of Experts provides independent and multi-jurisdictional expertise in relation to derivatives and complex financial transactions. P.R.I.M.E. Finance is accordingly unique in the global financial marketplace. The P.R.I.M.E. Finance Annual Conference in The Hague each January is organized to create an opportunity for many of our experts to report out on matters of current interest to the market. The Annual Conference has become a “must go to” conference on the international financial markets calendar.

Governance

The Advisory Board is chaired by H.E. the Hon. Sir David Baragwanath KNZM, Appellate Judge and former President of The Special Tribunal for Lebanon in The Hague, and former Judge of the New Zealand Court of Appeal. The Management Board is chaired by Professor Jeffrey Golden of 3 Hare Court Chambers, a Governor and Honorary Fellow of the London School of Economics and Political Science, retired founding partner of Allen & Overy LLP’s U.S. law practice and the former senior partner in that firm’s global derivatives practice.

Independent, neutral and transparent

P.R.I.M.E. Finance is independent, neutral and transparent. The P.R.I.M.E. Finance Management Board closely oversees this guiding principle.



Market need

Rapid growth and ever-increasing complexity in the financial markets call for innovative solutions to dispute resolution. To date, national courts and ad hoc arbitration have been unable to produce a settled and authoritative body of financial markets law. Decisions are unpredictable, too decentralized, taken too slowly and not always enforceable in home jurisdictions. Judges have limited resources of their own to draw upon. Judges and arbitrators do not always have the necessary expertise to deal with complex financial products traded in the global marketplace, and the issues that arise out of disputes involving complex financial products. P.R.I.M.E. Finance was established to respond to these problems, to serve the public policy need of assisting judges and arbitrators in the resolution of these complex cases with a view to reducing legal uncertainty and fostering stability and confidence in world financial markets.

Recognizing that better regulation is only part of the answer, a roundtable meeting took place in The Hague in October 2010, following the G20 summit of finance ministers and central bankers in Seoul, to explore the feasibility of P.R.I.M.E. Finance. The meeting was chaired by Lord Woolf, a former Lord Chief Justice of England and Wales, who was joined by 60 finance experts including lawyers, judges, market participants, regulators and central bank officials, and many of the founders of the derivatives and structured finance markets. P.R.I.M.E. Finance has received continual support since for its mission and philosophy from markets, courts, regulators, governmental entities and international legal institutions.

Growing Interest in Arbitration in the Financial Markets

By virtue of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), P.R.I.M.E. Finance arbitral awards are enforceable in more than 140 jurisdictions. The New York Convention is considered to be one of the key advantages of international arbitration, particularly in Asia. This was also confirmed by an ISDA working group on arbitration, which provided further insight into the potential use of arbitration in the derivatives markets.²

² ISDA, Memorandum for members of the International Swaps and Derivatives Association, Inc.: Memorandum on arbitration in derivatives (19 January 2011) and The use of arbitration under an ISDA Master Agreement: feedback and policy options (10 November 2011), available at <http://www2.isda.org/functional-areas/public-policy/financial-law-reform/page/1>



The P.R.I.M.E. Finance Arbitration Rules were prepared in consultation with P.R.I.M.E. Finance's Panel of Experts, and have been adapted for financial markets disputes. For example, the P.R.I.M.E. Finance Arbitration Rules contain special provisions on fast-track proceedings, comprising expedited proceedings, emergency proceedings and referee proceedings. The P.R.I.M.E. Finance Arbitration Rules are otherwise based on the UNCITRAL Arbitration Rules 1976 (as revised in 2010) but modified for a more institutionalized proceeding and to conform to certain financial markets practices. The P.R.I.M.E. Finance model arbitration clause is specifically drafted for cross-border finance documentation. A well-drafted arbitration clause is of utmost importance, to avoid enforceability issues among other things, where arbitration is the parties' preferred method for the resolution of their contractual disputes.

Judicial Support and Education Program

Since its inception P.R.I.M.E. Finance has conducted numerous support and education seminars all over the world. Below we present an overview of our judicial support activities.

✓ Judicial training session in Sydney and Melbourne

On 16 and 17 October 2017, P.R.I.M.E. Finance, in collaboration with the International Bar Association (IBA), organised a training programme for judges of the Federal Court of Australia and of the Supreme Courts of New South Wales and Victoria. The session focused on the economics, reality, practice and documentation of derivatives and provided an overview of the relevant law and cases in the industry. Presenting were P.R.I.M.E. Finance experts Professor Jeffrey Golden, Rick Grove and Jonathan Ross.

✓ Judicial support seminar in Bucharest

On 26 and 27 September 2016, P.R.I.M.E. Finance, in collaboration with the European Bank for Reconstruction and Development (EBRD), and the National Institute of Magistracy (NIM), organised a judicial seminar in Bucharest. The event was attended by judges from various courts, including the High Court of Cassation and Justice. Presenting were P.R.I.M.E. Finance experts Professor Jeffrey Golden, Dr. Peter Werner, Rick Grove, and Zoltan Lengyel.

✓ Judicial support seminar in Santiago de Chile

On 31 March 2016, and in collaboration with the International Bar Association (IBA), P.R.I.M.E. Finance conducted a judicial session at the Instituto de Estudios Judiciales,



in Santiago de Chile. The session focused on the documentation and economics of derivatives, and recent case law and developments. Rick Grove and Jonathan Ross, both P.R.I.M.E. Finance experts, led the session.

✓ **Foundational Judicial Studies Course in London**

On 29 September 2015, P.R.I.M.E. Finance joined the Banking and Corporate Finance panel during the Foundational Judicial Studies Course at the Rolls Building in London, which was the first of a series of seminars intended to apprise the Financial List judges of market developments. Professor Jeffrey Golden participated on behalf of P.R.I.M.E. Finance.

✓ **Judicial session with the Upper Court judges in Lisbon**

On 12 and 13 March 2015, P.R.I.M.E. Finance conducted a session with the Portuguese judiciary at the Supreme Court in Lisbon on the mechanics of the ISDA documentation, in addition to the basic features and rationale of OTC derivatives. Professor Jeffrey Golden, Carolyn Jackson, Robert Pickel and Dr. Peter Werner conducted the session.

✓ **Judicial session with the New York Commercial Division Institute**

On 22 September 2014, P.R.I.M.E. Finance gave a presentation before the Commercial Division Institute, in New York, entitled "Complex Financial Instruments: Dealing with Derivatives." P.R.I.M.E. Finance Chairman, Jeffrey Golden, Advisory Board member Thomas Jasper, and expert Robert Pickel led the session.

✓ **P.R.I.M.E. Finance conducts judicial session in Tokyo**

On 6 June and 5 September 2014, P.R.I.M.E. Finance, in collaboration with the IBA, gave a presentation to the Japanese judiciary on derivatives and complex financial transactions. The aim of the sessions was to provide the judges with information so that they may have better awareness of what questions to ask when deciding a case involving complex financial instruments. The seminars were organized by three P.R.I.M.E. Finance experts: Professor Tetsuo Morishita and Professor Akihiro Wani, of Sofia University in Tokyo, and Jonathan Ross.

✓ **Judicial training before the Singapore Supreme Court**

In May 2014, P.R.I.M.E. Finance experts Jonathan Ross, Rick Grove, as well as Management Board member Daniel Cunningham presented before the Singapore Supreme Court on derivatives. The session, conducted in collaboration with the IBA,



was attended by approx. 25 judges and associates of the court. It was a return visit, and followed a presentation given by P.R.I.M.E. Finance in 2013.

✓ **Supreme Arbitrage Court of the Russian Federation**

On 22 November 2013, P.R.I.M.E. Finance, with the support of the EBRD, participated in a follow up round-table session with the Supreme Arbitrage Court of the Russian Federation on derivatives instruments, trading, and regulation with a special focus on issues arising from recent developments in the Russian derivatives market and in complex products cases being heard there and in other jurisdictions. P.R.I.M.E. Finance experts Professor Jeffrey Golden, Vladimir Khrenov and Dr. Peter Werner participated in the session.

✓ **Supreme Court and Chancery Court of Delaware**

On 24 October 2013, P.R.I.M.E. Finance gave an extended presentation to the judges of the Supreme and Chancery Courts of Delaware. The program covered the economic rationale of derivatives, relevant product types, pricing and close-out mechanics, documentation and key court decisions from other jurisdictions. The presentation was made by three P.R.I.M.E. Finance experts: Daniel Cunningham, Professor Jeffrey Golden and Rick Grove. The Hon. Judge Ben F. Tennille (ret.), a member of the P.R.I.M.E. Finance Management Board, also participated.

✓ **Korean High Court in Seoul**

On May 10, 2013, P.R.I.M.E. Finance had a two-hour discussion with more than 40 judges of the Korean High Court in Seoul. The session, conducted with the support of the IBA, provided an introduction to derivatives and the ISDA Master Agreement, its history, its place in the financial markets and current legal issues arising from its use. The discussion also focused on recent English and New York cases involving derivatives and complex financial transactions. The session was led by two P.R.I.M.E. Finance Experts, Jonathan Ross and Chin-Chong Liew.

✓ **Supreme Court of Singapore**

On April 23, 2013, P.R.I.M.E. Finance conducted a three-hour presentation to the judges of the Supreme Court of Singapore. The presentation provided an introduction to derivatives and the ISDA Master Agreement, its history, its place in the financial markets, current legal issues arising from its use, and a review of recent case law from courts in England and New York. The session, conducted with the support of the IBA, provided a unique opportunity for P.R.I.M.E. Finance to assist a judicial audience that



sits in a leading regional financial center. The presentation was made by three P.R.I.M.E. Finance Experts, Professor Jeffrey Golden, Daniel Cunningham and Jonathan Ross.

✓ **Appellate Judges in New York**

On April 16, 2013, P.R.I.M.E. Finance Expert, Daniel Cunningham, together with Charles Smithson of Rutter Associates, Inc., conducted an interactive session for New York's Appellate Division Justices. The purpose of the session was to support those jurists in their understanding of the economic basics of derivatives and the key legal issues that arise under ISDA Master Agreements.

✓ **American College of Business Court Judges**

On 11 December 2012, P.R.I.M.E. Finance gave an extended presentation to the American College of Business Court Judges at their annual seminar at the George Mason Law School in Arlington, Virginia. The audience consisted of state court judges who manage complex business litigation courts across the United States, and who are most likely to see disputes involving derivatives and master agreements. The presentation provided an introduction to derivatives and the ISDA Master Agreement, its history, its place in the financial markets and the current legal issues arising from its use. The Hon. Judge Ben F. Tennille (ret.), a member of the Management Board of P.R.I.M.E. Finance, moderated the session.

✓ **Supreme Arbitrage Court of the Russian Federation**

On 26 November 2012, P.R.I.M.E. Finance and the EBRD conducted a one-day round-table session with the Supreme Arbitrage Court of the Russian Federation on derivatives instruments, trading, and regulation with a special focus on issues arising in the Russian derivatives market and international complex product cases. Particular attention was paid to issues relating to documentation, close-out netting and standard contracts and terms.



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P.R.I.M.E. Finance Foundation

Peace Palace

Carnegieplein 2

2517 KJ The Hague

The Netherlands

secretary@primefinancedisputes.org

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