



## **P.R.I.M.E. Finance Newsletter – December 2018**

### **1. SAVE THE DATES**

#### **a) P.R.I.M.E. Finance Annual Conference 2019**

On **4 and 5 February 2019**, P.R.I.M.E. Finance will hold its 8th Annual Conference at the **Peace Palace** in The Hague. Do not miss the premier event in the field of financial markets and dispute resolution! For registration, please visit:

<https://primefinancedisputes.org/page/annual-conference-2019>

### **2. NEWS OF OUR EXPERTS**

In October, the **Hon. Charles Brower** was appointed by the USA as Judge *ad hoc* at the ICJ in the two pending cases: *Alleged Violations of the 1955 Treaty of Amity, Economic Relations and Consular Rights (Islamic Republic of Iran v. United States of America)* and *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*. The **Hon. Charles Brower** is one of only four American nationals to have been appointed as ICJ Judges *ad hoc* multiple times.

Earlier this month, **Francisco Orrego Vicuña** passed away. A prolific international arbitrator and highly regarded academic, Francisco served as arbitrator in nearly 40 arbitrations at ICSID and other treaty and commercial cases, often as tribunal president, and was renowned for promoting study and discussion of international relations in his home country, Chile. P.R.I.M.E. Finance remembers with gratitude his valuable and insightful contributions to its work and discussions and extends its condolences to his family.

Also in October, **Simon Firth** had his article on "No second bite at the ISDA valuation cherry: Lehman Brothers Special Financing v National Power Corporation" published by the Capital Markets Law Journal, Oxford University Publications. Simon considered how, in light of the decision, the standard must be met to calculate the close-out amount under that agreement differs from the standard that applies under the 1992 version of the Agreement. In addition, Capital Markets Law Journal published the article on "The virtual currency regulatory framework in global context" by **Sharon Brown-Hruska**. In brief, Sharon focused on the differences in treatment of virtual currencies that can be found between the USA and other major jurisdictions.

Later this month, **Robert Pickel** spoke at the 2018 Fall Annual Meeting and Education Conference of the American College of Investment Counsel, focusing on recent credit derivative developments, in particular the existence of so-called "manipulated" credit events. Earlier in the year, Mr. Pickel was expert witness in a case involving one such event relating to a company called Hovnanian.

In November, the **Hon. Elizabeth S. Stong** was appointed co-chair of the ABA Business Law Section Pro Bono Committee, as well as the advisory board of the ABA Center for Innovation. Later that month, Judge Stong attended the second biennial Insolvency Week Conference hosted by the Uganda Registration Services Board in Kampala.

Also in November, **Rick Grove** conducted a seminar on derivatives valuation for the staff of the Japanese Financial Services Agency (the Japanese financial regulator) in Tokyo.

In the same month, **Larry E. Thompson** was re-elected to serve as Vice Chairman at The Federal Home Loan Bank of New York for two-year term, commencing on January 1st, 2019.

**Olasupo Shasore** participated in a panel discussion themed "Re-calibrating supply and demand for Sustainable Growth" during the 4th West Africa Property Investment Summit.

**Lord Peter Goldsmith** chaired the GAR-CI Arb Seat Index assessment panel, which analyzed reports from thousands of rows of comment submitted by Global Arbitration Review readers in late 2017. As of November, the GAR-CI Arb Seat Index provides one-page summaries of the favorableness of individual arbitral seats against a range of standard criteria.

**Laurence Li**, chairman of the Hong Kong's Financial Services Development Council (FSDC), released the Environmental, Social and Governance (ESG) Strategy for Hong Kong.

In December, the University of Oxford announced the creation of a multidisciplinary group of experts that will research the potential limitations of artificial intelligence (AI). The research team is headed by P.R.I.M.E. Finance Expert **John Armour**. P.R.I.M.E. Finance Expert **Robin Dicker QC** will also participate in the group.

Also in December, **Gary DeWaal**'s article concerning recent American jurisprudence on cryptocurrencies was published by the National Law Review: <https://www.natlawreview.com/article/bridging-weeks-gary-dewaal-november-19-30-and-december-3-2018-investment-profits>.

In the same month, it was announced that **Prof. Jeffrey Golden**, Chairman of the P.R.I.M.E Finance Management Board, alongside P.R.I.M.E. Finance Experts **Prof. Charles Whitehead** and **Andy Brindle**, will act as External Reviewers to the Credit Derivatives Determinations Committee in the Sears Roebuck Acceptance Corp. Case.

Also in December, **Spyridon Bazinas** will join the Law Faculty of Sigmund Freud University in Vienna to teach a course on uniform secured finance law, the related conflict-of-laws and insolvency issues. In addition, Mr. Bazinas will be representing the International Law Institute at the UNCITRAL Working Group V (Insolvency) and VI (Security Interests) meetings in Vienna.

### 3. PRESENTATIONS, STAKEHOLDERS' MEETINGS AND NEWS OF THE FOUNDATION

#### a) P.R.I.M.E. Finance New York Conference 2018

On October 4, the P.R.I.M.E. Finance New York Conference hosted by White & Case was a great success. Following an opening from **Prof. Jeffrey Golden**, the **Hon. Shelley Chapman**, Judge of the United States Bankruptcy Court for the Southern District of New York gave the keynote address. The Conference comprised five extremely interesting panel discussions with participation of experts from across the globe. The Lessons of the Lehman Experience, The Role of Arbitration and Mediation in Complex Financial Disputes, The Implications of Brexit, The Importance of Experts and Alternative Forums in Bet-the-Company Litigation, and Ethics in Financial Disputes were amongst the topics presented at the Conference.

#### b) P.R.I.M.E. Finance jurisprudence discussion at the Dutch Central Bank

On October 31, P.R.I.M.E. Finance hosted a high-level international jurisprudence discussion at the Dutch Central Bank (*De Nederlandsche Bank*, or "DNB") in Amsterdam. More than 40 practitioners had the chance to debate the most relevant recent national and international financial cases. **Dr. Willem Calkoen**, Director and Board Member of P.R.I.M.E. Finance gave introductory remarks to the cases and facilitated the discussion. P.R.I.M.E. Finance Experts **Prof. Eddy Wymeersch**, **Prof. Pim Rank**, and **Prof. Arthur Hartkamp** also participated, as did former P.R.I.M.E. Finance Secretary-General **Prof. Gerard Meijer**, the recently appointed Secretary-General **Prof. Bastiaan Assink** and Board Member **Ms. Joanne Kellermann**.

### 4. NEW BOARD MEMBER AND PANEL APPOINTMENTS

In November, P.R.I.M.E. Finance proudly announced the appointment of **Joanne Kellermann** to its **Management Board**. Ms. Kellermann is the former Director of Resolution Planning and Decisions as well as Board Member of the Single Resolution Board ("SRB") the central authority that ensures an orderly resolution of failing banks within the European Union. Before joining the SRB, Ms. Kellermann was Chair of the Financial Expertise Center, a joint venture of all Dutch authorities in the fight against financial crime. Ms. Kellermann was previously the Executive Director and Board member of the Dutch Central Bank (*De Nederlandsche Bank*, "DNB") and prior to that the General Counsel and Director of the Legal Affairs Division of the DNB. For the **full Press Release**, please see: [https://primefinancedisputes.org/files/2018-11/1541502914\\_6-november-2018-former-director-and-board-member-of-the-single-resolution-board-joins-p.r.i.m.e.-finance-management-board.pdf?9978855c8f](https://primefinancedisputes.org/files/2018-11/1541502914_6-november-2018-former-director-and-board-member-of-the-single-resolution-board-joins-p.r.i.m.e.-finance-management-board.pdf?9978855c8f)

P.R.I.M.E. Finance takes great pleasure in confirming **three new appointments** to its **Panel of Experts**. The inclusion of these experienced individuals, who represent diverse financial and legal backgrounds, brings the number of experts in our list to more than 170, each of whom has an average of 30 years of relevant market and legal experience. The three new members of the Panel are:

- **Paula Costa da Silva**, Professor of Civil Procedure, Arbitration and Corporate Law, University of Lisbon Faculty of Law.
- **Scott Farrell**, Senior Partner, King & Wood Mallesons; co-chair of the Australian Government's FinTech Advisory Group.
- **Gopal Sundaram**, Partner, Abdullah Chan; former Project Adviser to Central Bank of Malaysia; member of the International Monetary Law Committee of the International Law Association (MOCOMILA); member of Board

of Directors of Kuwait Finance House (Malaysia) Behrad; leading adviser on the new Malaysian Financial Services Act 2013 and Islamic Financial Services Act 2013.

## 5. JUDICIAL TRAINING

### **P.R.I.M.E. Finance Session at the Shanghai University of Political Science & the Hong-Kong University Judicial Roundtable**

On December 11, lessons learned from disputes arising out of derivatives and complex financial transactions in the 10 years since the global financial crisis were discussed during a session devoted to the works of P.R.I.M.E. Finance. The broad purpose of the Judicial Roundtable was capacity-building for Chinese and other judges who may (more likely, will) be involved in disputes arising out of the Belt and Road Initiative. Mr. David Liu (IBA) addressed the introductory remarks, while P.R.I.M.E. Finance's Experts **Jonathan Ross** and **Rick Grove** acted as moderators of the session discussion. Additionally, **Sir William Blair**, P.R.I.M.E. Finance Expert and Advisory Board member, and **Anselmo Reyes** made notable contributions to the roundtable discussion, which focused on two derivatives cases, namely *Standard Chartered Bank v Ceylon Petroleum Corporation* (2011) and *Macquarie Bank Ltd v Graceland Industry Pte Ltd* (2018).

## 6. LEXIS NEXIS PUBLICATIONS

See below the most recent contribution from our Experts to the LexisNexis PSL tool:

In November, P.R.I.M.E. Finance Experts **Tim Massad** and **Prof. Eddy Wymeersch** discussed the potential implications of Brexit on central counterparties in this analysis for LexisNexis PSL. You can find the publication here: <https://blogs.lexisnexis.co.uk/loanranger/what-are-the-potential-implications-of-brexit-on-ccps/>

## 7. P.R.I.M.E. FINANCE SERVICES AND NOMINEE EXPERTS

P.R.I.M.E. Finance continues to administer requests for expert witness services. All such inquiries should be directed in the first instance to Camilla Perera – De Wit, Head of the Secretariat of P.R.I.M.E. Finance, at: [c.perera@primefinancedisputes.org](mailto:c.perera@primefinancedisputes.org), with a copy to the Secretariat via [secretary@primefinancedisputes.org](mailto:secretary@primefinancedisputes.org).

Although the number of our Experts has increased considerably since P.R.I.M.E. Finance's inception, we continue to expand our global presence and invite additional nominations. All nominees, unless given written notice otherwise, should assume that their applications remain under consideration and shall receive the Selection Committee's careful consideration. For further information, please see our web-page at <https://primefinancedisputes.org/page/list-of-experts> or contact the Secretariat at [secretary@primefinancedisputes.org](mailto:secretary@primefinancedisputes.org).

## 8. FRIENDS OF P.R.I.M.E.

In 2014, a group of individuals organized "Friends of P.R.I.M.E." to facilitate individual financial contributions to support the P.R.I.M.E. Finance Foundation and its work. The P.R.I.M.E. Finance Foundation is a not-for-profit Dutch foundation, which relies heavily on the *pro bono* spirited efforts and intellectual contribution of its Experts and Board members. P.R.I.M.E. Finance cherishes its independence, and donations through Friends of P.R.I.M.E. help preserve this. We also established a U.S.-based entity known as PRIME Finance Dispute Resolution and Education Foundation in order to apply for grants from U.S.-based Foundations and allow our U.S.-based Friends to become Friends of P.R.I.M.E. in a tax efficient manner. All monies raised through Friends of P.R.I.M.E. go directly to program support.

Join numerous other Experts and supporters, and become a Friend of P.R.I.M.E. Finance today!

For complete information on becoming a Friend of P.R.I.M.E., please contact [secretary@primefinancedisputes.org](mailto:secretary@primefinancedisputes.org).

## 9. PRESS COVERAGE

Find recent press articles and other media coverage concerning P.R.I.M.E. Finance [here](#).

## 10. CONTACT US

For questions, please contact the Secretariat via [secretary@primefinandisputes.org](mailto:secretary@primefinandisputes.org).

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

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