

LAW OF INTERNATIONAL FINANCE

Prof. Caroline Kleiner, Mathieu Françon and Emeric Prevost

Objectives:

This course aims at explaining the financial mechanisms used by private corporations as well as States in the international arena. This course will introduce students not only to the basic principles of the functioning of global financial markets but will also present the regulatory mechanism specific to financial institutions, which relies to a large extent on an endogenous system. No specific knowledge of financial markets is required.

Teaching method:

This course will be taught by Professor Caroline Kleiner, Mathieu Françon (deputy head of the private and financial law department at the ACPR, in charge of international cooperation) and Emeric Prevost (teaching assistant at the University of Vienna and lecturer at the University of Tokyo) and will be divided into 8 seminars of two and a half hour each.

Students are required to read the basic reading for each seminar (around 50 pages). Further reading is designed for additional reference should students be interested but is not required for successful completion of the course. The reading materials will be available for students on moodle.

A list of questions might be asked in advance, to facilitate the comprehension of the materials.






Evaluation:



The evaluation will be based on oral participation and on a short essay, whose subject will be determined in accordance with the professors.

Program:

Date	Seminars' topics	Reading materials
CK – Tues. 26 January 4-6.30 pm	1- From an International Monetary System towards an International Financial System (The evolution of the international monetary system, monetary sovereignty, the role of central banks and monetary policies, the 2008 financial global crisis and the subsequent reforms)	<p>Basic reading</p> <ul style="list-style-type: none"> Matthias Lehmann, "Legal Fragmentation, Extraterritoriality and Uncertainty in Global Financial Regulation", <i>Oxford Journal of Legal Studies</i>, Vol. 37, No. 2 (2017), pp. 406–434 (29 p.) Federico Lupo-Pasini, "The Rise of Nationalism in International Finance: The Perennial Lure of Populism in International Financial Relations", 30 <i>Duke J. Comp. & Int'l L.</i> 93 (2019) (50 p.) <p>Further reading</p> <ul style="list-style-type: none"> Alastair Hudson "The synthesis of public and private in finance law", in Kit Barker, Darryn Jensen (eds), <i>Private Law - Key Encounters with Public Law</i>, Cambridge University Press 2013, pp. 231-264
MF – Tues. 2 February 4-6.30 pm	2 - International cooperation in financial regulation: the development of international rules and standards (key notions of international financial regulation; role of international financial institutions in the development of international rules and standards; negotiation of international regulations; international standards and national laws)	<p>Basic reading</p> <ul style="list-style-type: none"> Jan Putnis, Tamara Raoufi, and Jennyfer Moreau, "The Banking Regulation Review", Eleventh Edition, Chapter 12 Barry Eichengreen, "International financial regulation after the crisis", <i>Journal of the American Academy of Arts & Sciences</i>, Fall 2010, pp. 107-114 Emily Jones and Alexandra O. Zeitz, "The Limits of Globalizing Basel Banking Standards", <i>Journal of Financial Regulation</i>, 2017, Volume 3, pp. 89–124 <p>Further reading</p> <ul style="list-style-type: none"> David Zaring "The International Campaign to Create Ethical Banker", <i>Journal of Financial Regulation</i>, 2017, Volume 3, pp. 187–209

<p>MF – Tues. 9 February 4-6.30 pm</p>	<p>3 - International cooperation in financial regulation: the enforcement of financial rules on a cross-border basis (objectives and tools of cooperation between authorities; role of international financial institutions in the cooperation between authorities; negotiation and enforcement of cooperation agreements; cross-border inspections; unilateral supervision and enforcement tools)</p>	<p>Basic reading</p> <ul style="list-style-type: none"> • Howell E. Jackson, "Substituted Compliance: The Emergence, Challenges, and Evolution of a New Regulatory Paradigm", <i>Journal of Financial Regulation</i>, 2015, Volume 1, pp. 169–205 • Mark Lang, Mark Maffett, James D. Omartian, Roger Silvers, "Regulatory cooperation and foreign portfolio investment", <i>Journal of Financial Economics</i>, 2020, Volume 238, pp. 138-158 <p>Further reading</p> <ul style="list-style-type: none"> • Joachim Wuermeling, "International cooperation in financial regulation - between myth and reality", Speech by Prof. Joachim Wuermeling, bis.org, Central bank speech, 12 September 2018
<p>CK – Tues. 2 March 4-6.30 pm</p>	<p>4 - Introduction to Global Financial Markets (objectives and tools of financial markets; globalization of financial markets; key notions of financial markets; conflict of laws issues)</p>	<p>Basic reading</p> <ul style="list-style-type: none"> • Philipp Paech, <i>Introduction to International Financial Law</i> (LSE, 2017) (10 p.) • Philip R. Wood, "Does moral philosophy apply to capital markets?" <i>Capital Markets Law Journal</i>, 2018, Vol. 13, p. 185 (9 p.) • Francisco J. Garcimartín Alférez, "Cross-Border Listed Companies", <i>Recueil des Cours vol. 328 (2017) Chapter I "Listing abroad"</i> (26 p.) <p>Further reading</p> <ul style="list-style-type: none"> • Hannah. L. Buxbaum, "Capital Markets and Conflict of Laws: from Mutual Recognition to Substituted Compliance", in <i>National, International, Transnational: Harmonischer Dreiklang im Recht, Festschrift für Herbert Kronke</i>, Giesecking, Bielefeld 2020, pp. 31-38 • Philip Wood, "Choice of governing law for bonds", <i>Capital Markets Law Journal</i>, 2020, Vol. 15, pp. 3-17 • Francisco J. Garcimartín Alférez, <i>Cross-Border Listed Companies, Recueil des Cours vol. 328 (2017) Chapter III. Capital markets: problems of applicable law</i>

<p>CK – Tues. 9 March 4-6.30 pm</p>	<p>5 - Law of International Financial Markets (International Jurisdiction issues in case of financial fraud and International Cooperation)</p>	<p>Basic reading Cases:</p> <ul style="list-style-type: none">  U.S. Supreme Court: Morrison v National Australia Bank Ltd 130 S Ct 2859 (2010);  ECJ, Kronhofer, aff. C-168/02 (2004)  ECJ, Kolassa, c. Barclays Bank plc., aff. C 375-13 (2015)  ECJ, Profit Investment SIM SpA contre Stefano Ossi et autres, aff. C-336/13 (2016)  ECJ, Helga Löber c. Barclays Bank plc, aff. C-304/17 (2018) <ul style="list-style-type: none"> • Matthias Lehmann (2016), "Prospectus liability and private international law – assessing the landscape after the CJEU's Kolassa ruling (Case C-375/13)", <i>Journal of Private International Law</i>, 2016 vol. 12, 318-343 (26 p.) • Caroline Kleiner, « Lieu du préjudice en matière financière pour prospectus lacunaire : la nécessité d'un for spécifique » (ECJ Löber (2018)), <i>JDI</i> 2019, pp. 507-516 (10 p.)
<p>EP – Tues. 6 April 9.30-12 am.</p>	<p>6 - Disruptive Financial Markets: towards a decentralised and tokenised finance? (Decentralised Finance, Distributed Ledgers, Smart Contracts, Initial Coin Offerings, Digital Assets)</p>	<p>Basic reading:</p> <ul style="list-style-type: none"> • Yan Chen and Cristiano Bellavitis, "Blockchain disruption and decentralized finance: The rise of decentralized business models", <i>Journal of Business Venturing Insights</i>, Vol. 13, June 2020, 8 p. • Iwa Salami, "Decentralised Finance: The case for a holistic approach to regulating the crypto industry", <i>Butterworths Journal of International Banking and Financial Law</i> 35 (7), July/August 2020, pp. 496-499. • Chiara Zilioli, "Crypto-assets: legal characterisation and challenges under private law", <i>European Law Review</i>, 2020, 45(2), pp. 251-266. • Luminita Procopie, "Are smart contracts actually contracts? How smart contracts can work globally", <i>Journal of International Banking Law and Regulation</i>, 2020, 36(1), 25-30. <p>Further reading:</p> <ul style="list-style-type: none"> • ISDA, White Paper, Private International Law Aspects of Smart Derivatives Contracts Utilising Distributed Ledger Technology, January 2020, 31 p. • OECD (2020), The Tokenisation of Assets and Potential Implications for Financial Markets, OECD Blockchain Policy Series, available at: www.oecd.org/finance/The-Tokenisation-of-Assets-and-PotentialImplications-for-Financial-Markets.htm. • Proposal for a regulation of the European Parliament and of the Council on Markets in Crypto-assets (Directive (EU) 2019/1937).

<p>EP – Tues. 13 April 9-30-12 am</p>	<p>7 - Sustainable Financial Markets: challenges and prospects (Socially Responsible Investments (SRI), Non-financial ESG reporting, Green Finance, Internalisation processes)</p>	<p>Basic reading:</p> <ul style="list-style-type: none"> • Victor de Serière, "Idealism or realistic approaches? Regulatory possibilities to require financial institutions to more substantially contribute to achieving climate goals? An overview", <i>Journal of International Banking Law and Regulation</i>, 2020, 35(3), pp. 94-106. • Stephen Kim Park, "Investors as Regulators: Green Bonds and the Governance Challenges of the Sustainable Finance Revolution", 54 <i>Stanford Journal of International Law</i> 1 (2018), 48 p. <p>Further reading:</p> <ul style="list-style-type: none"> • EU Commission, Action Plan: Financing Sustainable Growth (COM/2018/097 final). • Anne Demartini, "Provision of non-financial data: mapping of stakeholders, products and services", AMF Risks & Trend Mapping report, December 2020, 25 p.
<p>CK – Tues. 4 May 4-6.30 pm</p>	<p>8 - International Financing of the States (The Evolution of financial resources of the States; the characteristics of sovereign bonds; restructuring of sovereign debts)</p>	<p>Basic reading</p> <p>Cases:</p> <ul style="list-style-type: none"> •  U.S. Supreme Court, <i>Weltover, Inc. v. Republic of Argentina</i>, 504 U.S. 607 •  ECJ <i>Hellenische Republik c. Leo Kuhn</i>, Aff. C-308/17 (2018) <ul style="list-style-type: none"> • Hayk Kupelyants, <i>Sovereign Defaults Before Domestic Courts</i>, OUP 2018, Chapter 1 Theoretical Underpinnings of Sovereign Debt (28 p) • Lee Buchheit et Mitu Gulati, "Responsible Sovereign Lending and Borrowing", <i>Law & Contemp. Probs.</i> 2010, vol. 73, 63 (30 p.) <p>Further reading</p> <ul style="list-style-type: none"> • Mathias Goldmann, Public and Private Authority in a Global Setting: The Example of Sovereign Debt Restructuring, 25 <i>Ind. J. Global Legal Stud.</i> 331 (2018)