



## **P.R.I.M.E. Finance Newsletter - May 2011**

We are pleased to present to you the first P.R.I.M.E. Finance Newsletter. Since our last encounter, we have made some significant steps. We have outlined these below for you. We hope that you find these readings interesting. Starting with this newsletter, we intend to circulate succinct news updates on a bi-monthly basis.

It gives us great pleasure to inform you that the first board meeting of the P.R.I.M.E. Finance foundation will take place on 29 June 2011 in The Hague. We would be delighted to welcome you on this day, to raise a glass with us after this meeting and to inform you in more detail about the Expert List, the Management Board of P.R.I.M.E. Finance, the launch of the website and the P.R.I.M.E. Finance Rules. An informal Q&A session will follow the board meeting that morning. We also hope to announce then the date of the formal opening of P.R.I.M.E. Finance.

### **1. Experts' Roundtable 2010**

In October 2010 the WLF team hosted an international Experts' Roundtable at the Peace Palace in The Hague to discuss P.R.I.M.E. Finance in more detail. The Roundtable, by invitation only, was chaired by Lord Woolf of Barnes, former Lord Chief Justice of England and Wales and barrister at Blackstone Chambers. The attendees, approximately 60 in total, were comprised of distinguished representatives from financial institutions, regulatory authorities, national and state supreme courts, universities and law firms. Dutch Central Bank President Nout Wellink (also Chairman of the Basel Committee on Banking Supervision) was present and publically welcomed the initiative of P.R.I.M.E. Finance.

### **2. Regional Market Expert Meetings 2011 (London, New York, Dublin, Paris, Frankfurt, Moscow, Dubai, Shanghai)**

Following the success of the Experts' Roundtable in 2010, WLF organized and participated in several regional market expert meetings (to date: London, New York, Dublin, Paris and Frankfurt) to discuss with market parties the conclusions and next steps that were drawn from the Roundtable. During these meetings, the WLF team presented the idea behind, and current status of, P.R.I.M.E. Finance. It was a unique experience, offering as it did the opportunity to involve in these smaller gatherings some of the most authoritative experts from the derivatives industry. The rich discussions and useful suggestions all contributed to the blueprint of P.R.I.M.E. Finance as it now stands. Please find below in more detail summaries of the expert meetings that have taken place to date. Please also note that further market expert meetings are envisaged for later this year in Moscow, the Middle East and the Far East. Expressions of interest from those wishing to participate in any of these upcoming meetings are invited.

#### **2.1 London Expert meeting - Eversheds (27 January 2011)**

In January, WLF participated in a market expert meeting with UK market parties in London, including representatives from British banks, asset management companies, law firms and insurance companies.

The participants agreed that a unique list of competent experts will constitute the most valuable asset of P.R.I.M.E. Finance and distinguish it from other offerings in the market. It was the view of this group that every effort must be made to ensure that the experts will be seen to be (i) neutral and (ii) geographically diverse. There was a consensus in support of making the list of experts transparent and ensuring that it included financial expertise as well as legal expertise. As regards the scope of the services to be provided by the specialized panel of experts, a need was identified for mediation, early evaluation assessments of potential claims and advisory opinions in addition to arbitration. It was further indicated that, while in



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Panel of Recognised International Market Experts in Finance

principle confidentiality may be of critical importance to the parties, every effort should be made to think creatively about ways in which P.R.I.M.E. Finance could contribute to fostering a settled body of law for the global markets, for example, by publishing "anonymous" awards or awards in summary form. The Hague, as the "international city of peace and justice", would be an ideal location for P.R.I.M.E. Finance, though the ability to convene a chamber of the Panel elsewhere was also an appreciated feature.

### **2.2 New York Expert meetings - ISDA & NY Fed (15 February 2011)**

In February, WLF organized two market expert meetings with US market parties in New York. The first meeting took place at the offices of the Federal Reserve Bank of New York (NY Fed) and the second was hosted at the International Swaps and Derivatives Association (ISDA).

During the NY Fed meeting the importance of hardwiring into standard documentation, such as FEOMAs, IFEMAs and ICOMs - documentation sponsored by the Foreign Exchange Committee that meets at the NY Fed - was discussed. This possibility was similarly raised with ISDA. A need for judicial and, in relevant jurisdictions, regulatory education was also emphasized.

At the ISDA meeting, the discussion focused on the suitability of the P.R.I.M.E. Finance facility to deal with or contribute to issues arising in cases involving cross border insolvencies. It was announced that grant funding had been obtained for HE the Honourable Sir David Baragwanath KCNZ, QC to conduct research for P.R.I.M.E. Finance at the Netherlands Institute for Advanced Study in the Humanities and Social Sciences in Wassenaar, the Netherlands in the autumn of 2011 (September – December) aimed at classifying the types of market cases that had arisen and the possible contribution that P.R.I.M.E. Finance could make to such cases in the future. This initiative was particularly well received by participants at the meeting.

### **2.3 Dublin EFMLG meeting (22 March 2011)**

By invitation of Mr. Antonio Sáinz de Vicuña, General Counsel of the European Central Bank, Chairman of the European Financial Markets Lawyers Group and P.R.I.M.E. Finance Advisory Board member, WLF presented at a meeting in Dublin of the EFMLG and discussed the P.R.I.M.E. Finance project with senior counsel from leading European banks. One of the items that got attention was the extent of the cooperation with the Permanent Court of Arbitration (PCA) in The Hague. Under the UNCITRAL Rules, as modified for P.R.I.M.E. Finance, the PCA Secretary General can act as appointing authority for P.R.I.M.E. Finance in cases where the parties are unable to reach an agreement on the experts that should be assigned to the case. The cooperation with the PCA is regarded as valuable for P.R.I.M.E. Finance and scope for expanding that cooperation will continue to be explored.

### **2.4 Paris Expert meeting - De Pardieu Brocas Maffei (26 April 2011)**

In Paris, WLF met with local representatives from corporate end-users, commercial banks and private practice. Participants expressed interest in any contribution that P.R.I.M.E. Finance could make to harmonize views on key legal and contractual issues. Concern was voiced about the current conflict in judicial results arising from the cases being heard and decided in different jurisdictions. It was also suggested that P.R.I.M.E. Finance could make a helpful contribution by commenting on local court decisions as they arose. Furthermore, the training of judges and regulators and others about the markets (and training market experts about dispute settlement) as well as a reporting out session on relevant cases, each were welcomed and encouraged by the participants in this meeting.



## **2.5 Frankfurt Expert meeting - European Central Bank Offices (2 May 2011)**

The most recent P.R.I.M.E. Finance Market Expert meeting took place at the offices of the European Central Bank in Frankfurt. Representatives from commercial banks, the German high court, private practice and academics joined for this meeting. The tension in recent Continental court cases between the parties' choice of law and relevant local law and the difficulties sometimes encountered in bringing expert testimony into proceedings in civil code jurisdictions were discussed. Consideration was again given to the further tension between the parties' interest in confidentiality and the market's interest in publishing results, with several participants expressing the view that the publication of at least excerpts from P.R.I.M.E. Finance awards would be helpful. There was also considerable interest in the potential that P.R.I.M.E. Finance represented for bringing down the cost of dispute settlement in the cases it was equipped to hear. The need for P.R.I.M.E. Finance to create and maintain a database containing case law related to complex financial instruments was stressed by all in the room.

### **3. Other milestones**

In addition to talking with market parties around the world, the WLF team undertook several important steps in order to bring the establishment of P.R.I.M.E. Finance closer:

- i) The P.R.I.M.E. Finance Advisory Board has been composed;
- ii) The Articles of Association of the P.R.I.M.E. Finance foundation have been drafted;
- iii) A governing structure of P.R.I.M.E. Finance has been put into place;
- iv) A preliminary list of nominees to the P.R.I.M.E. Finance Expert List has been formulated;
- v) The P.R.I.M.E. Finance Arbitration and Mediation rules have been drafted, and the cooperation with the PCA has been finalized;
- vi) The P.R.I.M.E. Finance website and logo are in the process of being finalized, intended to be launched in June: [www.primefinancedisputes.org](http://www.primefinancedisputes.org).
- vii) From September to November 2011, HE the Honourable Sir David Baragwanath KCNZ, QC will perform a research study on scope and the type of cases that would benefit from the establishment of P.R.I.M.E. Finance and funding for this project has been obtained.

### **4. Future steps**

Meetings with potential cooperating entities and funding sources are planned and in the process of being scheduled. Meetings with market experts in Moscow, Dubai and Shanghai are being organized. Nominees to the first P.R.I.M.E. Finance Expert List are being contacted. An organizational board meeting of the P.R.I.M.E. Finance foundation is scheduled for 29 June 2011 in The Hague. A formal opening event will be arranged for later in the year.

### **Further reading on P.R.I.M.E. Finance**

[Click here to \(pdf\)](#) to find selected press articles concerning the P.R.I.M.E. Finance project. For questions and comments about P.R.I.M.E. Finance, please contact the general manager at the World Legal Forum foundation: Ms. Camilla Perera: [c.perera@worldlegalforum.org](mailto:c.perera@worldlegalforum.org)

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