



**Jindal Global Law School**  
*India's First Global Law School*

# **INTERNATIONAL BANKING LAW**

## **Course Manual**

**Course Instructor: Kolawole Olalekan Afuwape**

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## I. General Information

Course Title: **International Banking Law**

Course Code:

Course Duration: **One Semester**

No. of Credit Units: .....

Medium of Instruction: **English**

Pre-requisites: **Nil**

Pre-cursors: **Nil**

Equivalent Courses: **Nil**

Exclusive Courses: **Nil**

## **II. Course Description**

The subject International Banking Law belongs to those specific fields of law dealing with rules and regulations regarding banking business operations which transcend national borders. Being in a globalized world, banks operate in other countries by way of their branches, subsidiaries, affiliates, and correspondent banks. Consequently, they fall under various bodies of laws, regulations, and international norms. Through studying this course, students will have an insight into the legalities involved in conducting international banking business and its transactions.

The course begins with an analysis of the fundamental concepts of the regulation and supervision of banks. In other words, these are the reasons for the regulation of banks, the purpose of bank supervision, and the function of international regulatory bodies to ensure financial stability. The learners will analyze various kinds of banking regulations as well as banking regulation and deregulation and challenges associated with banking regulation in a globalizing financial system of the world.

An essential part of this course is an examination of syndicated lending, which is one of the most crucial ways that international banks fund major projects and deals. Participants will learn about syndicated loans' structures and negotiations, how risks are divided between the lenders, and the legal importance of various clauses within the agreement. By doing practical work, participants will be able to gain experience in negotiating and drafting such complex financing deals.

Sovereign loans and sovereign debt restructurings are some other aspects of the course that are considered in relation to the legal and political challenges associated with the situation where a state enters the position of a borrower. In addition to many other issues, students will learn about the ways in which borrowers and lenders try to find solutions for their financial challenges.

The other important topic addressed is cross-border bank insolvency and resolution. Consideringly, banks operate in an environment where they can be

considered inter-connected with each other, their insolvency becomes a matter of concern from various legal perspectives. The course investigates international initiatives undertaken for this purpose.

Additionally, the course analyzes regulations for Anti-Money Laundering and Counter-Terrorist Financing, with a focus on the compliance requirements for financial institutions. The students will analyze the international standards, enforcement measures, and the involvement of banks in financial crime prevention.

Finally, the course covers Islamic banking and finance by analyzing the underlying tenets, contractual models, and regulatory issues that come into play. The students will be expected to analyze the feasibility of Islamic banking in the present-day financial system.

In general, the course is a perfect blend of theory and practice that helps to develop all those skills and knowledge that would be needed for the comprehension of the complicated sphere of international banking.

### **III.Course Aims**

1. Knowledge and understanding of the basic principles and concepts of international banking law
2. Knowledge about theory and regulation of banks operating in multiple jurisdictions
3. Developing skills to negotiate and draft complex loan transactions like syndicated loan agreements
4. Skills to restructure sovereign debts
5. Understanding the nuances involved in cross-border banking insolvency
6. Developing skills to negotiate and draft complex loan transactions like syndicated loan agreements.
7. Develop critical knowledge about Islamic Banking and its feasibility in the current regulatory framework.

## IV. Intended Learning Outcomes

Sl.	Intended Learning Outcomes	Teaching and Learning Activities	Assessment
1.	<p>a. Demonstrate ability to understand the business logic and interests of parties involved in negotiating loan syndications.</p> <p>b. Understand the nuances involved in negotiating and drafting clauses in a syndicated loan agreement.</p> <p>c. develops soft skills like teamwork and time management</p>	<p><u>Simulation Exercise-1</u> Students will be provided with a draft syndicated loan agreement along with specific questions. Entire class will be divided into teams. Each team is required to identify and redraft specific clauses that fails to conform to standards</p>	30 percent for Negotiating Syndicated Loan Agreement
2.	<p>. Demonstrate an ability to provide critical analysis of the legal issues, regulatory flaws and gaps in the literature.</p> <p>b. Demonstrate an ability to structure and organize</p> <p>c. Demonstrate an ability to coherently present ideas</p>	<p>Midterm: Open book Exam  (18<sup>th</sup> November 2018)</p>	40 percent
3.	<p>a. Demonstrate an ability to provide critical analysis of the legal issues, regulatory flaws and gaps in the literature.</p> <p>b. Demonstrate an ability to structure and organize</p> <p>c. Demonstrate an ability to coherently</p>	<p>End Term-Take Home Exam  (18<sup>th</sup> November 2018)</p>	30 percent

	present ideas		
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## V. Grading Scheme

Letter Grade	Percentage Of marks	Grade Definitions	
O	80% and above	Outstanding	Outstanding work with strong evidence of knowledge of the subject matter, excellent organizational capacity, ability to synthesize and critically analyse and originality in thinking and presentation.
A+	75 to 79.75%	Excellent	Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize critically and analyse
A	70 to 74.75%	Good	Good understanding of the subject matter, ability to identify issues and provide balanced solutions to problems and good critical and analytical skills.
A-	65 to 69.75%	Adequate	Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.
B+	60 to 64.75%	Marginal	Limited knowledge of the subject matter, irrelevant use of materials and poor critical and analytical skills.
B	55 to 59.75%	Poor	Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials.
B-	50 to 54.75%	Pass	“Pass” in a pass-fail course. “P” indicative of at least the basic understanding of the subject matter.
F	Below 50%	Fail	Fails in the subject

## VI. Methods of Assessment

1	Simulation Exercise on Syndicated Loans	30
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	(2 <sup>nd</sup> November 2018)	
2	Mid-term Exam (Open Book) (10 <sup>th</sup> October 2018)	40
3	End Term Take Home Exam (18 <sup>th</sup> November 2018)	30
Total		100

Students are expected to attend all classes and to complete all required readings and assignments. Information on these assignments will be provided in the class. Attendance in lectures is mandatory. Students who fail to be present for 75% of the lectures for the semester without compelling extenuating circumstances will fail.

## VII. Teaching Methodology

There will be three hours of lectures per week. Students are expected to read the course materials in advance of each class. If, however, one is unable to prepare for class on a particular day, please email before the start of class.

## VIII. Online Sources and Plagiarism

### **Online Sources**

Online sources can be classified into reliable, unreliable and outright bogus. The Internet is an open domain in which all and sundry can create web pages and indulge in propaganda, falsification or misrepresentation of events. Please avoid sources like Wikipedia and Investopedia that might provide generic but unverified information about certain aspects of international banking.

The few sources that can help you with basic information and which is unbiased are: websites of established newspapers, magazines and journals. Students should always consult with the instructors about the veracity and authenticity of a particular website and its suitability for researching topics covered in this syllabus.

### **Plagiarism**

Any idea, sentence or paragraph you cull from a web source **must be credited** with the original source. If you paraphrase or directly quote from a web source in the exam, presentation or essays, the source must be explicitly mentioned. You *SHOULD NOT* feel free to plagiarize content, be it from scholarly sources (i.e. books and journal articles) or from the Internet. The university has strict rules with consequences for students involved in plagiarism. **This is an issue of academic integrity on which no compromise will be made**, especially as students have already been trained in the perils of lifting sentences or paragraphs from others and claiming authorship of them.

## IX. Course Structure

Module	Title	Hours	Teaching Weeks
	Introduction to International Banking	1	Week 1
1	Fundamentals of Banking	9	Week 1 & 2
2	Syndicated Loans	15	Week 3 to 5
3	Restructuring Sovereign Debts	10	Week 6 to 7
4	Cross-Border Banking Insolvency	10	Week 8 to 9
5	Anti-Money Laundering	5	Week 10
6	Islamic Banking	5	Week 11

## ***Fundamentals of International Banking***

### **Weeks 1 & 2**

#### **Overview**

In this module we aim to understand the basics of banking regulation and the need for regulation. We examine the models of banking regulation and the principles of regulation. We aim to understand the basic issues that need to be addressed in the regulation of banks. This module seeks to unpack the arguments for regulation and de-regulation.

#### **Rationale for Regulation**

Banks operate in multiple jurisdictions like subsidiaries, branches or agencies and are subject to regulatory provisions of that jurisdiction. Given that regulatory environments vary from jurisdiction to jurisdiction we need to understand varied regulatory models.

Firstly, it is important to explore the rationale for regulating banks. Prior to the 2008-2009 financial crisis in the US, academics and regulators argued that it is better to de-regulate the banking sector while others argued for more regulation. This week we will understand the rationale for and against regulation and de-regulation

#### **Required Reading**

##### **Why Regulate Banks?**

1	Benson and Kaufman, "The Appropriate Role of Bank Regulation", 106 <i>The Economic Journal</i> 688 (1996).
2	Kevin Dowd, (1996) "The Case for Financial Laissez-Faire" <i>The Economic Journal</i> , 106, 679-687.

Secondly, should single regulators or multiple regulators be involved in regulation of banks? Nature of banking activity has changed over the last three decades wherein banks were confined to mere deposit taking activities. Modern day banks are involved in securities underwriting, insurance activities and other financial innovations because of which banks are subject to multiple regulators in some

jurisdictions like US and India. This subjects banks to compliance norms of multiple regulatory bodies. However, United Kingdom, Singapore and Nordic countries have moved to a single regulatory environment as this can reduce gaps in regulation and turf wars between regulators.

<b>Required Reading Who Should Regulate?</b>	
1	Schooner, H.M and Taylor, M., "United Kingdom and United States Responses to the Regulatory Challenges of Modern Financial Markets" 38 <i>International Law Journal</i> 317 (2003).
2	Briault, C., <i>REVISITING THE RATIONALE FOR A SINGLE NATIONAL FINANCIAL SERVICES REGULATOR</i> (London: Financial Services Authority, 2002).
3	Abrams, R. and Taylor, M., <i>ISSUES IN THE UNIFICATION OF FINANCIAL SECTOR SUPERVISION</i> , (IMF Working Paper 00/213, 2000)
4	Goodhart, C.A.E., 'The organizational structure of banking supervision', (Basel: Financial Stability Institute Bank for International Settlement, 2000).
5	Philip Rawlings, "Reform of bank regulation in the United Kingdom: the opening salvo" 25 <i>Journal of International Banking Law and Regulation</i> 522-528, (2010).

Thirdly, most jurisdictions have a Central Bank which is involved in monetary policy, supervisory functions and acting as a lender of last resort in case banks fail. Independence from political interference enables Central Bank to function in an objective manner that can ensure effective regulation and supervision of banks. However, the recent financial crisis in US and parts of Europe has raised questions about the failure of Central Banks in preventing large-scale financial crisis and failure of banks.

<b>Central Banks</b>	
1	Howard Davies and David Green, <i>BANKING ON THE FUTURE: THE FALL AND RISE OF CENTRAL BANKING</i> (Princeton University: New Jersey, 2010) Chapter 1.
2	Schooner, H.M., "Central Banks' Role in Bank Supervision in the United States and United Kingdom" 28 <i>Brooklyn Journal of International Law</i> 411, (2003).

## **Further Reading**

1. Taylor, M., "Redrawing the regulatory map", 5 *Journal of Financial Regulation and Compliance Law* 463, (1996).
2. Dow, S.C., "Why the Banking System Should Be Regulated", 106 *The Economic Journal* 698, (1996).
3. Goodhart, C.A.E., Hartmann, P., Llewellyn, D., Rojas-Suarez, L and Weisbord, S., *FINANCIAL REGULATION: WHY, HOW AND WHERE NOW?* (London: Rutledge, 1998)
4. Ortino, S., "International And Cross-Border Co-Operation Among Banking Supervisors: The Role of the European Central Bank", 15(4) *European Business Law Review*, 715, (2004).
5. Quiroz Rendon, D., "The Formal Approach to Banking Regulation" 2 *Journal of International Banking Regulation* 27, (2001).
6. Goodhart, C.A.E., "The organizational structure of banking supervision", 31 *Economic Notes* 1, (2002).
7. Llewellyn, D., *THE ECONOMIC RATIONALE FOR THE FINANCIAL REGULATION* (London: FSA Occasional Paper 1, 1999).

## **Syndicated Loan Agreements**

### **Weeks 3 to 7**

#### **Overview**

Financial institutions operate in multiple jurisdictions and fund major projects that involve high risks and large capital. The risk is often shared between financial institutions through loan syndications. This course looks at the procedure and legal aspects involved in negotiating syndicated loan agreements by examining the structure of syndicated loan agreements and analyzing the role of key clauses in such agreements. To have a better understanding of these clauses, students will be provided with a draft syndicated loan agreement wherein they will have to respond to certain specific questions related to key clauses. Aim of the course is to develop skills to negotiate and draft complex loan transactions like syndicated loan agreements.

#### **Legal Aspects of Loan Syndication**

Banks agree to join loan syndications to share the risks involved in large-scale lending activities. To facilitate loan syndications borrower initially appoints an Arranger who takes the responsibility of finding lenders for the borrower. Through legal documents like Letter of Intent and Mandate Letter borrower and Arranger formalize their relationship. To solicit lenders a Memorandum of Information (MOI) is drafted by the borrower and Arranger. Prospective Lenders rely on the MOI to assess the risk involved in funding the borrower's venture. The process of creating a loan syndication involves multiple parties like borrower, Arranger, Lenders and agents who have certain duties and liabilities.

Required Reading	
1	Proctor, C., <i>THE LAW AND PRACTICE OF INTERNATIONAL BANKING</i> (Oxford: Oxford University Press, 2010) 767-820.
2	Concha, R. & Chatterjee, S.K., "Legal aspects of syndicated loan agreements", 9 <i>Company Lawyer</i> 91, (1988).

<b>Duties and Liabilities of the Arranging Bank</b>	
1	Skene, R.G., "Syndicated loans: arranger and participant bank fiduciary theory", 20 <i>Journal of International Banking Law and Regulation</i> 269, (2005).
2	Petkovic, D., "Arranger's Liability in the Euro-Markets", 125 <i>Banking Law Journal</i> 49, (2005).
<b>Lenders Rights</b>	
1	Rawling, P., "The management of loan syndicates and the rights of individual lender", 24 <i>Journal of International Banking Law and Regulation</i> 179, (2009).

### **Negotiating a Syndicated Loan Agreement**

Vital part of loan syndication is negotiating the terms of the agreement between the lenders and the borrower. This involves an understanding of the business logic and interests of the various parties. Before drafting complex clauses like MAC clause, negative pledge clause, pari passu, broken fund indemnity clause etc it is vital to understand the perspectives of lenders and borrowers. This module seeks to develop the understanding and drafting skills of students by requiring them to resolve the issues in a **draft agreement**.

<b>Required Reading</b>	
1	Buchheit, L.C., <i>HOW TO NEGOTIATE EURO CURRENCY LOAN AGREEMENTS</i> (New York: International Financial Law Review, 2000) 1-198.
2	Julien, F. & Lamontagne, J.M., "Material adverse change and syndicated bank financing: Part 1" 19 <i>Journal of International Banking Law and Regulation</i> 172, (2004).
3	Julien, F. & Lamontagne, J.M., "Material adverse change and syndicated bank financing: Part 2" 19 <i>Journal of International Banking Law and Regulation</i> 193, (2004).
4	Buchheit, L.C., Jeremiah S.P., "Hung for PariPassu: Part I", 23 <i>International Financial Law Review</i> 20, (2004).
5	Buchheit, L.C., Jeremiah S.P., "Hung for PariPassu: Part II", 23 <i>International Financial Law Review</i> 47, (2004).
6	Grupo Hotelero Urvasco SA v Carey Value Added SL & Anor [2013] EWHC 1039 (Comm)

## **Restructuring Sovereign debts**

### **Weeks 8 to 10**

#### **Overview**

This module deals with the complexities involved in lending to sovereign borrowers. Lending to sovereign borrowers requires certain safeguards especially against default. Creditors collectively seek action against sovereign borrowers that results in restructuring the debt rather than exercising the option of legal action. This module provides an understanding of the various tools and strategies that can be employed by the parties to facilitate restructuring of sovereign debts. Greek debt crisis will be used as a case study to understand the restructuring of a sovereign debt.

#### **Restructuring Tools**

When a sovereign borrower fails to repay the loan, it raises multiple questions. Can creditors sue the sovereign borrower in some other jurisdiction to recover the money? Is there an international forum to resolve issues between the sovereign borrower and creditors? What can the creditors do to recover the money? At present there are hardly any forums through which creditors can recover money barring the intervention from large number of countries. Further, private creditors have refused to be part of collective action taken by majority of the creditors and exercised the option of recovery in foreign jurisdictions. This module attempts to understand the complex problem of recovering dues from sovereign nations by examining the implications of pari passu clauses, collective action clauses, exit consent clauses, mandatory reinstatement of principal etc. In the process we analyze the Greek Debt crisis to understand the clauses in action.

Required Reading	
1	Buchheit, L.C. & Gulati, M., <i>Responsible Sovereign Lending and Borrowing</i> , (Jan 2010). Available at SSRN: <a href="http://ssrn.com/abstract=1584624">http://ssrn.com/abstract=1584624</a> or <a href="http://dx.doi.org/10.2139/ssrn.1584624">http://dx.doi.org/10.2139/ssrn.1584624</a>
2	EML and NML Ltd. vs Republic of Argentina, 695 F.3d 201, 203 (2d Cir. 2012).
3	Arora, A., & Caminal, R.O., "Rethinking The Sovereign Debt Restructuring Approach", 9 <i>Law And Business Review of The Americas</i> 101, (2004).

4	Garcia-Hamilton, J., “ Required Threshold to Restructure Sovereign Debt”, 27 <i>Loyola of Los Angeles International and Comparative Law Review</i> 249, (2005).
<b>Case Study- Greek Debt Crisis</b>	
1	Buchheit, L.C. & Gulati, M., <i>How to Restructure Greek Debt</i> , (May 2010). Available at SSRN: <a href="http://ssrn.com/abstract=1603304">http://ssrn.com/abstract=1603304</a> or <a href="http://dx.doi.org/10.2139/ssrn.1603304">http://dx.doi.org/10.2139/ssrn.1603304</a>
2	Gulati, M. & Meyer, Z.M., <i>Engineering an Orderly Greek Debt Restructuring</i> , (January 29, 2012). Available at SSRN: <a href="http://ssrn.com/abstract=1993037">http://ssrn.com/abstract=1993037</a> or <a href="http://dx.doi.org/10.2139/ssrn.1993037">http://dx.doi.org/10.2139/ssrn.1993037</a>

## **Cross-Border Bank Insolvency**

### **Weeks 11 to 13**

#### **Overview**

Failure of banks in the recent financial crisis also raises questions about insolvency proceedings and the winding up of multi-national banks that operate in multiple jurisdictions. Given the complex structure and operations of multinational banks it raises issues related to insolvency proceedings in various jurisdictions. This module examines some of the complexities involved in resolving cross-border banking insolvencies.

#### **Understanding bank insolvency proceedings**

Legal implications of bank liquidation vary in different jurisdictions depending on whether it is a branch or subsidiary. Banks operate in multiple jurisdictions and insolvency of cross-border banks raise concerns whether it should result in liquidation or rehabilitation and whether home or host country regulator should initiate these actions. An effort is made to understand the rationale for a separate regime to deal with cross-border bank insolvency proceedings.

Required Reading	
1	Hupkes, E., <i>INSOLVENCY – WHY A SPECIAL REGIME FOR BANKS? CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW</i> , Vol. 3 (Washington DC: International Monetary Fund, 2003)
2	Lastra, R.M., “Cross-border bank insolvency: legal implications in the cases of banks operating in different jurisdictions”, 6 <i>Journal of International Economic Law</i> 79, (2003).
3	Baxter, T.C., Joyce M., & Sommer, J. H., “Two Cheers for Territoriality: An Essay on International Bank Insolvency Law” 78 <i>American Bankruptcy Law Journal</i> 57, (2004).

#### **International Law Principles applicable to Cross-border bank insolvency and Developments in the EU**

It is vital to understand the international, regional, and bilateral rules regarding issues of cross-border insolvency. Attempt is made to understand international law principles applicable to cross-border insolvency and understand concepts like ring-fencing and the applicability of UNCITRAL model. In addition, this module aims to understand the progress made by the Basel Committee on Banking Supervision

regarding the international regulation of branches and subsidiaries. In the process we also seek to understand how the EU has progressed in its efforts to resolve the cross-border bank insolvency within EU.

<b>Required Reading</b>
<b>Regulation</b> EC Regulation on insolvency proceedings (Council Regulation (EC) No 1346/2000 of 29 May 2000)
<b>Articles</b>  Jens-Hinrich Binder, Cross-border coordination of bank resolution in the EU: All problems resolved? <i>European Company and Financial Law Review</i> , Volume 13, Issue 4, Pages 575–598
 Campbell, A., <i>ISSUES IN CROSS-BORDER BANK INSOLVENCY: THE EUROPEAN COMMUNITY DIRECTIVE ON THE REORGANIZATION AND WINDING-UP OF CREDIT INSTITUTIONS</i> (Washington D.C : International Monetary Fund, 2002)
 Gillian, G.H., Lastra, R.M. and Nieto, M.J., “Bankruptcy and reorganization procedures for cross-border banks in the EU: Towards an integrated approach to the reform of the EU safety net” 17 <i>Journal of Financial Regulation and Compliance</i> 240, (2008).

### Further Reading

European Commission (2010) “Study on the feasibility of reducing obstacles to the transfer of assets within a cross-border banking group during a financial crisis” Available at [ec.europa.eu/internal\\_market/bank/docs/.../rep141\\_108\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/.../rep141_108_en.pdf)

Lastra, R.M., *CROSS-BORDER BANK INSOLVENCY* (Oxford University Press, 2010).

## ***Anti-Money Laundering and Terror Financing***

### **Weeks 14 &15**

#### **Overview**

In this module we aim to understand the challenges posed to international banking by money laundering and terror financing. The increased instance of terror financing through network of international banks has raised concerns about the gaps and loopholes in the existing regulation and supervision of banks. It remains a question as to whether efforts made by Basel Committee along with other international organizations are effective in preventing money laundering and terror financing.

#### **Money Laundering Typologies**

Banks have been used effectively to launder money for several decades and efforts to plug laundering require an understanding of the typologies of laundering.

Required Reading	
1	European Union Committee of House of Lords, <i>MONEY LAUNDERING AND THE FINANCING OF TERRORISM</i> , (London: The Stationery Office, 2009). Chapter 1.
2	FATF & OECD, <i>MONEY LAUNDERING AND TERRORIST FINANCING TYPOLOGIES 2004-2005</i> , (Paris: OECD, 2005). Available at <a href="http://www.ctif-cfi.be/website/images/EN/typo_fatf/35003256.pdf">http://www.ctif-cfi.be/website/images/EN/typo_fatf/35003256.pdf</a>

#### **International Architecture and Implementation at domestic level**

The Financial Action Task Force (FATF) came up with forty recommendations to counter money laundering activities. These recommendations led to legislative measures in various countries that require banks to comply with customer due diligence, report suspicious money transactions and closely observe transactions carried out by politically exposed persons. In addition, FATF recommendations to combat terror financing have led to measures that seek to curb financing of terror.

To understand how the FATF recommendations have been adopted by country government we examine the legislative measures in UK. The Proceeds of Crime

Act 2002, UK Money Laundering Regulation 2007 and the Serious Crime Act 2007 aim to prevent money laundering and impose obligations on banks. Banking institutions have the burden of training their staff and have to comply with reporting procedures. This module examines the effectiveness of these measures in preventing or deterring money laundering through banking institutions.

Required Reading	
<b>International Framework</b>	
1	Alexander, K., "The International Anti-Money-Laundering Regime: The Role of the Financial Action Task Force", 4 <i>Journal of Money Laundering Control</i> 231, (2001).
2	(FATF), <i>The Forty Recommendations</i> , Available at <a href="http://www.fatf-gafi.org/pdf/40Recs-2003_en.pdf">http://www.fatf-gafi.org/pdf/40Recs-2003_en.pdf</a> .
3	Basel Committee on Bank Supervision, <i>Customer due diligence for banks</i> , paragraphs 8–17. (2001), Available at <a href="http://www.bis.org/publ/bcbs85.pdf">http://www.bis.org/publ/bcbs85.pdf</a> .
4	Mundial, <i>Combating Money Laundering And The Financing Of Terrorism: A Comprehensive Training Guide (Vol. 2 Of 7): Legal Requirements To Meet International Standards</i> (Washington :The World Bank, 2009).
<b>UK Regulation</b>	
1	Proctor, C., <i>THE LAW AND PRACTICE OF INTERNATIONAL BANKING</i> (Oxford:Oxford University Press, 2010) 739-756.
2	Ryder, N., "The Financial Services Authority, the Reduction of Financial Crime and the Money Launderer – A Game of Cat and Mouse", 67 <i>Cambridge Law Journal</i> 635, (2008).
3	Demetis, D. & Angell, I., "The risk based approach to AML: representation, paradox, and the 3rd Directive", 10 <i>Journal of Money Laundering and Control</i> 412, (2007).

## Further Reading

1. Wolosky, L. & Heifetz, S., "Regulating Terrorism", 34 *Law and Policy in International Business* 1, (2002).
2. Wheatley, J., "Ancient Banking, Modern Crimes: How Hawala Secretly Transfers the Finances of Criminals and Thwarts Existing Laws", 26 *University of Pennsylvania Journal of International Law* 347, (2005).
3. Myers, J.M., 'Disrupting Terrorist Networks: The New US and International Regime for Halting Terrorist Funding', 34 *Law and Policy in International Business* 17, (2002).
4. Daudi, A.A., "Invisible Bank: Regulating the HAWALA System in India, Pakistan and the United Arab Emirates", 15 *Indiana International and Comparative Law Review* 619, (2004).

## **Islamic Banking**

### **Weeks 16 & 17**

#### **Overview**

Islamic Banking has in recent times drawn attention to new modes of business opportunities and more specifically to the idea of risk-free or low-risk banking. Financial crisis in 2008-2009 brought to fore the need to examine and exploit the positives inherent in Islamic Banking. In this module we examine the nuances involved in Islamic Banking and the challenges in regulating it.

#### **Theoretical Foundations**

Islamic Banking relies on five key principles enshrined in the Sharia Law. Multiple Islamic financial products and financial transactions can be developed which comply with these key principles. Islamic banking facilitates something as common as deposit taking activity to complex activities like project financing. We explore the philosophy underlying Islamic Banking in several modern financial products.

Required Reading	
Historical and Ideological Background of Islamic Banks	
1	Aldohni, A.K., <i>THE LEGAL ASPECTS OF ISLAMIC BANKING: A COMPARATIVE LOOK AT THE UNITED KINGDOM AND MALAYSIA</i> (Rutledge: Oxon, 2011), Chapter 2.
<b>Theoretical Foundations of Islamic Banking</b>	
2	Proctor, C., <i>THE LAW AND PRACTICE OF INTERNATIONAL BANKING</i> (Oxford: Oxford University Press, 2010) 767-820.

#### **Regulating Islamic Banking**

Islamic Banking services are being offered in western countries and are not merely restricted to Middle East Asia, Pakistan or Malaysia. Such services are being offered by mainstream banks in UK to attract customers who believe in the Sharia principles. However, this has raised certain concerns as Islamic banking services are offered by creating a Sharia Supervisory Board (SSB) within the bank. The SSB consists mainly of Sharia Scholars and are involved in validating the various transactions and products offered by banks. SSB operations can be subject to modern day corporate governance norms as its activities may be seen as vital to the functioning of the

banks. Questions arise as to whether SSB member fulfills the regulatory requirements imposed by the corporate governance norms.

<b>Regulation of Islamic Banks</b>	
1	Aldohni, A.K., <i>THE LEGAL ASPECTS OF ISLAMIC BANKING: A COMPARATIVE LOOK AT THE UNITED KINGDOM AND MALAYSIA</i> (Rutledge: Oxon, 2011) Chapter 3-7.
2	FSA, <i>Islamic Finance in the UK: Regulation and Challenges</i> (London: FSA, 2007).
<b>Cases</b>	
1	<i>Beximco Pharmaceuticals Ltd. v Shamil Bank of Bahrain EC</i> [2004] APP.L.R 01/28.
2	<i>The Investment DAR company KSCC v Blom Development Bank SAL</i> [2009] EWHC 3545 (CH).