

Module Title: International Financial Services Law
Credit Points: 20 ECTS / 40 UK credits

Overview:

At a time of crisis on the global markets, this module seeks to enable students to address the major regulatory and contractual aspects of financial services law. The module deals with the institutional structures created to protect international financial transactions. There will be a particular focus on the impact that European Union legislation is having on the area, with a number of the key regulations being examined in detail. The module is suitable for those seeking to work in law firms which have international financial services as a significant part of their workload, but also for those who hope to work directly in the financial services sector.

Aims (To provide students with):

- an understanding of the regulatory framework of international financial services
- a knowledge of the principles that underlie the regulatory framework
- the ability to apply the regulatory framework and the underlying principles to the conduct of business by national and multi-national financial institutions
- an understanding of the structure of the international financial services sector;
- an ability to discuss the interrelation between different financial services;
- an ability to analyse the regulatory and contractual issues which arise in this field and relate them to theories of business regulation and control more generally;
- an ability to propose solutions to the major difficulties encountered in the legal control of international financial services.

Module Content

- Introduction
 - Introduction to the nature of international financial services, and the origins of current approaches
- Financial institutions
 - Discuss the forms and structures of the financial institutions and entities subject to regulation
 - Case study of IFSC
- Banking relationship. Analyse the relationship between a credit institution and its customers under the following headings:
 - Contract, incl. implied terms, unfair contract terms regulations
 - Liability in tort as between bank and customer – negligence, defamation, deceit
 - Fiduciary duty and conflict situations
 - Confidentiality and data protection, data protection legislation and ECHR, commercial privacy, anti-money laundering
 - Consumer credit, legislation regulating consumer credit, treatment of consumer
 - Set-off and reporting bank's exposure to regulatory authorities; set-off and enforceability
- Structured finance / securitisation. Analyse the roles of the parties involved and the legal and commercial issues under the following headings:
 - Originator and transfer to special purpose vehicle; separation of SPV from originator, true sale
 - Noteholder
 - Tax
 - Insolvency, isolating SPV from risks of insolvency
 - Securities, issue and redemption
 - Stock exchange listing, requirements, ISE, LSE, NASDAQ, NYSE
 - Effect of substantive consolidation
 - Transfer of assets to a special purpose company
- Mutual funds. Analyse the various kinds of mutual funds and their requirements.
 - Undertakings for Collective Investments in Transferable Securities (UCITS)
 - Non-UCITS
 - Units trusts and investment companies

- Authorisation, mutual fund trading authorization, letters of authorisation
- Supervision, risk-based supervision
- Stock exchange listing, benefits in access to investor capital and international investor base
- Prime brokers, centralized clearing facility, global custody, securities lending and financing
- Financial services in the EU. Discuss recent developments in Europe under the following headings:
 - Investment services and securities regulation;
 - Financial Services Action Plan (FSAP) and the Lamfalussy Report
 - Prospectus Directive
 - E-Commerce Directive
 - Distance Marketing of Financial Services Directive
 - Market Abuse Directive
 - Capital Adequacy Directive
 - Payments Services Directive
 - Consumer Credit Directive
- Substantive regulation. Analyse the regulation of conduct of financial institutions under the following headings:
 - Insider dealing
 - Prudential rules, maintaining stability and protecting users
 - Investor compensation, legislation governing compensation
 - Advertising, standards authority, rules for financial promotions, exemptions
 - Money laundering, incl. civil and criminal liability
- Insider dealing. Analyse the practice of insider dealing and the parties involved.
 - Origins of insider dealing
 - Primary insider and Secondary insider
 - Exemptions
 - Civil and criminal liability
 - Enforcement
 - Position at common law in England and the US, Fyffes v DCC Reform
 - Exploring continuing challenges, proposed solutions and approaches International Financial Services Law and the impact of globalisation

Indicative Reading

- Frase, D, 2004, Law and Regulation of Investment Management, 2004, Sweet & Maxwell Ltd
- Alcock, A., 2000. The Financial Services and Markets Act 2000 : a guide to the new law, Bristol: Jordans.
- Barrett, M., 2008. Financial Services Advertising:law and Regulation, Clarus.
- Donnelly, M., 1999. The Law of Banks and Credit Institutions, Round Hall Ltd.
- Hapgood, M., 2006. Paget's Law of Banking 13th ed., Butterworths Law.
- Hudson, A., 2008. Securities Law, Sweet & Maxwell.
- Breslin, J., Ireland, L.S.O., 2003. Banking & Corporate Financial Services Professional Practice Guide, Routledge Cavendish.
- Wood, P.R., 2007. Set-off and Netting, Derivatives, Clearing Systems: v. 4 2nd ed., Sweet & Maxwell.

Assessment methods

70% Exam

30% Thesis