

Launch of P.R.I.M.E. Finance Arbitration Rules: dispute resolution in global financial markets

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The P.R.I.M.E. Finance dispute resolution services and its Arbitration and Mediation Rules were launched at the opening conference of P.R.I.M.E. Finance in the Peace Palace in The Hague on 16 January 2012. Dutch Minister of Finance Jan-Kees de Jager officially opened P.R.I.M.E. Finance, which offers dispute resolution services in the area of complex financial products.

The P.R.I.M.E. Finance foundation (Panel of Recognized International Market Experts In Finance) was established with the aim of facilitating dispute settlement, reducing legal uncertainty and fostering stability in the global financial markets. Jeffrey Golden, visiting professor at the LSE, has been a strong advocate for founding an arbitral institute for complex financial disputes. See [here](#). After a round table meeting with leading legal and financial experts organized by the Dutch not-for-profit organization World Legal Forum Foundation in the Peace Palace on 25 October 2010, it was decided that a world financial tribunal would be established in The Hague. See [here](#).

The panel includes internationally renowned experts in the field of both finance as well as dispute resolution. Among the panel members are retired and sitting judges, central bankers, regulators, representatives from private practice and derivative market participants (both dealer and buy side). For the Finance experts list see [here](#) and the dispute resolution experts list see [here](#). The composition of the panel is very diverse, in terms of gender and geographic reach (e.g. from England to Nigeria).

These experts are eligible to be appointed as arbitrator under the P.R.I.M.E. Finance Arbitration and Mediation Rules. Also, these experts are available to assist in judicial training and the development of library resources relevant to complex product and standard form financial contract disputes. P.R.I.M.E. Finance aspires to represent the greatest source in the world of collective knowledge and experience of documentation, law and market practice for derivatives and other complex financial products.

Secretary-General of P.R.I.M.E. Finance, NautaDutilh's arbitration specialist Gerard Meijer, presented the first edition of the institute's Arbitration Rules during the opening conference. These rules have been inspired by the 2010 UNCITRAL Arbitration Rules and have been adjusted, to tailor to the needs of arbitration in the financial markets. Input has been sought from the dispute resolution experts on the panel, including Johnny Veeder, Judge Stephen Schwebel, Albert Jan van den Berg and Jan Paulsson. The P.R.I.M.E. Finance Arbitration Rules will be published on the website of the institute on 18 January 2012. See [here](#). The Secretary-General announced that the board will take into account feedback from users and may adopt a second edition of the rules after 6 to 12 months.

Distinctive features of the P.R.I.M.E. Finance Rules include the following. First of all, the P.R.I.M.E. Finance Rules provide for an arbitration institute that will administer the arbitral proceedings, whereas UNCITRAL Rules have been written for ad hoc arbitration. The Secretary-General of the Permanent Court of Arbitration (“PCA”) in The Hague has accepted to serve as appointing authority, if so requested by a party. Exclusively persons identified on the panel of experts will be eligible to be appointed as arbitrator, unless otherwise agreed by the parties. See article 8 P.R.I.M.E. Finance Rules. For reasons of transparency, this list of experts is public.

The P.R.I.M.E. Finance Rules oblige a candidate arbitrator pursuant to article 11 to disclose any circumstances likely to give rise to justifiable doubts as to availability (as well as impartiality and independence). This provision should contribute to an efficient and speedy arbitration process.

One of the conclusions from the market sounding process that took place before the P.R.I.M.E. Finance Rules were drafted was that market participants value a speedy resolution of these type of conflicts. The Rules have been tailored to this need by including rules on interim measures and fast track arbitration.

Article 26 of the P.R.I.M.E. Finance Rules provides that the arbitral tribunal may, at the request of a party, grant interim measures if it finds that it has prima facie jurisdiction to decide the claim. A party in need of urgent provisional measures that cannot await the constitution of the arbitral tribunal may make an application for such measures to be rendered by an emergency arbitrator in the form of an order under article 26a and the Emergency Arbitration Rules attached to the P.R.I.M.E. Finance Rules. Such order shall not bind the arbitral tribunal and shall not prejudice a final decision of the tribunal on the merits. In addition parties may make an application for provisional measures in referee arbitral proceedings, as referred to in article 1051(1) Dutch Code of Civil Procedure. It is noted that the parties should agree that the seat of arbitration is located in The Netherlands, in order to benefit from Dutch law that provides that the referee arbitral award is an arbitral award.

Another distinctive feature of the P.R.I.M.E. Finance Rules is that awards may in principle be made public with the consent of all parties. Also, P.R.I.M.E. Finance may publish an award or an order in its entirety, in anonymised form, under the condition that no party objects to such publication within one month after receipt of the award. These provisions, set out in article 34 of the P.R.I.M.E. Finance Rules, aim to support the overall goal of P.R.I.M.E. Finance, which is to create a vast body of case law in the area of complex financial products to increase legal certainty.

The fact that P.R.I.M.E. Finance has based its Arbitration Rules on the UNCITRAL Rules should form a solid basis for the arbitral proceedings under these rules. These rules have been well-tested and are widely accepted around the world. In combination with the list of internationally recognized experts, this should be a good basis for market participants to start including references to the P.R.I.M.E. Finance Rules in their contracts. At the opening conference Gay Evans, Vice Chairman of the Board and Non-Executive Chairman Europe of the International Swaps and Derivatives Association, Inc., (“ISDA”) stated that although ISDA does not officially endorse the P.R.I.M.E. Finance Arbitration Rules – nor the rules of any other arbitral institute for that matter – ISDA “highly supports” this initiative. Originally bankers were deemed to have an antipathy against arbitration (see [here](#)), but recent years have seen a marked increase in the use of arbitration in the financial sector. Last year, ISDA organised a consultation process on the use of arbitration in ISDA Master Agreements. See [here](#). ISDA’s support may be a critical success factor for P.R.I.M.E. Finance arbitration. Should ISDA proceed with including model arbitration clauses for use in conjunction with the ISDA Master Agreement, it would be wise not to limit the model seats of arbitration to each of England and New York, as suggested in its November 2011 consultation memorandum. One of the main drivers of the establishment of P.R.I.M.E. Finance is that many counterparties in emerging countries are increasingly reluctant to accept that any dispute will be resolved in England or the United States. As a result, the

Netherlands was elected as base for P.R.I.M.E. Finance, due to its neutral position in the financial markets and its renowned infrastructure for international dispute resolution. Also in view of the fact that the PCA has authorised the conduct of arbitral hearings at the Peace Palace, The Hague would be a logical choice for the seat of arbitration in such arbitration clauses.