



## From the Co-Chairs



### From the Co-Chairs:

Here is the second issue of the 2018 IBA Banking Law Committee Newsletter, and also the first online only, e-bulletin version of the newsletter.

Thanks to the efforts of our Publications Officer, Phillippe Dupont, from Arendt & Medernach SA, Luxembourg, the newsletter is a collection of interesting articles from a number of jurisdictions illustrating changes and developments in the financial sector.

Changes in financial law are always subject to animated discussions at IBA international financial law conferences and at the IBA Annual Conference. It was no different in Amsterdam at the 35th IBA International Financial Law Conference. Passionate panel discussions and evening social events organised by the host committee made the conference a great success.

Spending time in the Eternal City is always very exciting. The excitement becomes even greater at the thought of meeting so many friends and colleagues, attending interesting workshops and panel discussions, and participating in innumerable social events in absolutely spectacular settings. This is what the 2018 IBA Annual Conference is offering this October.

The Banking Law Committee has sponsored three panel discussions as its contribution to the Annual Conference. For some years now, we have been focusing on the regulatory aspects of Fintech. The time has come to ask the question of how Fintech can serve society. Panellists taking part in the session titled 'The role of FinTech, lending and international organisations in delivering aid in humanitarian crises' will discuss how people living in crisis-affected regions can be better assisted by humanitarian organisations thanks to new finance technologies, new technical devices and new funding mechanisms (Tuesday 9 October, 16:15 - 17:30).

Behind any motion picture, *La Dolce Vita* included, there has always been a basic requirement: to get financing! The session on Wednesday 10 October (14:30 - 15:45), entitled 'Motion picture finance', will explore some options for doing so.

The third session led by the Banking Law Committee is on the subject of transactions involving distressed financial assets, and is entitled 'The good, the bad and the ugly: Who's who in transactions involving distressed financial assets? The originator, the investor and the regulator's perspective' (Thursday 11 October, 11:15 - 12:30). The market for these transactions is facing new challenges from both its players and its regulators. These demanding developments require a new approach, which speakers at this

session will discuss.

Our Committee co-sponsors a few other sessions, including 'Trends and perspectives of international arbitration in disputes involving financial institutions' (Thursday 11 October, 16:15 - 17:30) and another entitled 'Whose second life is it anyway? Personal information and financial services' (Friday 12 October, 9:30 - 10:45). This second session will discuss one of today's hottest issues: the use and transfer of personal data by and between financial institutions, including Fintech companies.

The Banking Law Committee has also promised to contribute to a special project launched by the IBA Legal Practice Division: 'The Guide on Best Practices in Conducting Internal Investigations'. We invite members of the Banking Law Committee with related experience to join the project.

We are very much looking forward to meeting you all in Rome.

**Ewa Butkiewicz**, Wardynski & Partners  
Warsaw, Poland  
[ewa.butkiewicz@wardynski.com.pl](mailto:ewa.butkiewicz@wardynski.com.pl)

**Giuseppe Schiavello**, Schiavello & Co  
Rome, Italy  
[giuseppe.schiavello@schiaavello-co.com](mailto:giuseppe.schiavello@schiaavello-co.com)

## Articles

### ***Reports on sessions of the Banking Law Committee at the 35th IBA International Financial Law Conference in Amsterdam***

**Art finance**  
by Dimitris E Paraskevas, Elias Paraskevas Attorneys 1933, Athens

The Art Basel & UBS Report estimates that global sales in the art market increased by 12 per cent from 2016 to 2017 to \$63.8bn.

In 2018, a painting by Leonardo Da Vinci broke every record when it was sold for \$450m. All ten of the most expensive paintings in the world, works by De Koonig, Cezane, Gaugin, Pollock, Rothko, Rembrandt, Picasso, Mogdiliani and Lichtenstein, have sold for more than \$165m each! Although paintings are the most valuable artworks, other asset classes including sculptures, precious jewellery and

### ***Reports on sessions of the Banking Law Committee at the 3rd IBA Asia-based International Financial Law Conference, Hong Kong SAR***

**Evolution of online payment systems and lessons for Asia**  
by Rein van Helden, Stibbe, Amsterdam

The panel discussed online payment systems, in particular the different models and challenges, regulatory oversight, specific risks relating to money laundering and fraud, the role of cryptocurrencies and the challenges ahead.

[Read more...](#)

**Acquisition and leveraged financing: continuing the conversation**  
by Naoyuki Kabata, Anderson Mori & Tomotsune, Tokyo

stones, furniture, wine and cars have sold for record prices and famous collections like the Yves Saint Laurent and the Rockefeller were auctioned for astronomical amounts.

[Read more...](#)

**Report on Young Lawyers session  
by Timo Lehtimäki, Waselius &  
Wist, Helsinki**

Josh Hogan welcomed the guests and the panellists to the Young Lawyers session, and gave a brief introduction about the International Bar Association for the benefit of new participants, in particular the young lawyers present for the first time.

Arthur Davis presented the distinguished panellists: Caroline Phillips from Slaughter and May, London, Dieuwertje de Leeuw from DLA Piper, Amsterdam and Jeff Bullwinkel from Microsoft Europe, with Hogan from McCann Fitzgerald, Dublin, and Davis from Addisons, Sydney, both co-chairing. Davis also shared briefly his experience as a lawyer, wanting to highlight in particular that the longer he has practised law, the more impressed he is with the rule of law and the certainty it gives to society.

[Read more...](#)

**Bail-inable bonds: panacea, placebo  
or Pandora's box?  
by Benedikt Maurenbrecher,  
Homburger, Zurich and Michael  
Steen Jensen, Gorrissen Federspiel,  
Copenhagen**

Bail-inable bonds are debt securities which, in a resolution of a bank, can be written down or converted into equity by the competent regulator to absorb losses and facilitate the recapitalisation of the bank in the event of resolution. Co-Chairs Benedikt Maurenbrecher and Michael Steen Jensen introduced the session, explaining the basic concept of bail-inable bonds and positioning them as

This session was a sequel to the session on acquisition and leveraged financing at the 2nd IBA Asia-based International Finance Law Conference in Singapore. The purpose of this session was primarily to discuss the recent trend in the practice of acquisition and leveraged financing, focusing on the contrast among Asian countries, as well as between Asian countries and the United States/Europe market.

[Read more...](#)

a tool developed in the aftermath of the great financial crisis. On the one hand, governments had vowed never to use taxpayers' money again to bail out banks creditors. On the other hand, this increased the risk that the shortfall would have to be borne by uninsured (or even insured) bank deposits.

[Read more...](#)

**Compounding interest under the Italian law framework**  
by **Francesco Marchini, Tonucci & Partners, Milan**

Compounding interest (also known as the capitalisation of the interest or the 'interest on interest') is the process by which interest accrued, due and unpaid by a debtor is incorporated into the principal, which is the basis over which any interest agreed between the creditor and debtor is calculated.

[Read more...](#)

**What legal framework for Fintechs?**  
by **Silvestre Tandeau de Marsac, FTMS Avocats, Paris**

Financial technology, or so-called Fintech, is defined as any technological innovation that aims to compete with traditional finance methods in the delivery of financial services. By extension, Fintech describes a broader industry in which companies use new and sometimes disruptive business models, diverse technologies (including artificial intelligence) and economic strategies to address existing or emerging issues in the financial services industry.

[Read more...](#)

**Fondario mortgage loans under Italian law and case law**  
by **Francesco DIALTI, CBA Studio Legale, Milan**

The purposes of this article are to: provide a brief overview of the concept of 'finanziamento fondiario' (a peculiar type of real estate mortgage loan under Italian law), and discuss the legal consequences triggered if the ratio of: (1) the amount of a finanziamento fondiario to (2) the value of the underlying real estate asset securing the finanziamento fondiario exceeds 80 per cent.

[Read more...](#)

**Virtual perfection: digital assets on a blockchain**  
by **Russell DaSilva, Pillsbury Winthrop Shaw Pittman, New York and Andrea Tinianow, Global Kompass Strategies, Delaware**

We are moving into a digital world in which nearly everything of material value can be represented digitally on a blockchain. Assets will be in unit form and native to the blockchain, like cryptocurrency; or a digital avatar of something that exists outside the blockchain, such as a car or house; an intangible asset, such as a right to intellectual property; or securities, such as shares in a corporation. Having things represented digitally makes them easier to track and transfer. The units on the distributed ledger become a store of value, and

ownership of these units can be moved around easily. Moreover, because the blockchain maintains an immutable record of all the transactions registered on it, it retains a perfect record of the provenance of each unit that is transferred; that is, every transfer becomes part of a complete record of all transactions that preceded it and provides complete transparency into the history of the unit being purchased.

[Read more...](#)

**Ukraine: new cram-down mechanism to facilitate debt restructurings coming**  
by Igor Lozenko, Sayenko Kharenko, Kyiv

The economic turbulence encountered by Ukraine and its businesses recently prompted an increase in interest in and more detailed attention paid to the debt restructuring mechanisms available to distressed Ukrainian borrowers and their creditors. As a result, the Ukrainian market saw a successful use of foreign law instruments, such as a scheme of arrangement under English law with a number of landmark restructurings of the bond and bank debts of large borrowers.

[Read more...](#)

**Allocation of supervisory responsibilities to ensure compliance with anti-money laundering legislation in the EU**  
by Barbara Bandiera, Studio Legale RCC, Milan

The European Central Bank (ECB) supervises banks in the euro area and in countries that choose to participate in the Single Supervisory Mechanism (SSM).

Preventing the use of the financial system for money laundering purposes

**Debt restructuring in India: ushering in a new era**  
by Jayesh H, Juris Corp, Mumbai

Banks and financial institutions in India have seen a dramatic rise in non-performing assets (NPAs), with gross numbers of NPAs rising approximately 125 per cent between 2001 and 2017. Since 2001, the Reserve Bank of India (RBI) has introduced a number of measures for the timely recognition of stressed assets and their restructuring. Yet, despite these measures, NPA figures have continued to grow, and have become an enormous problem for the banking system in India and the Indian economy. This has led to some drastic steps being taken by the RBI, and also the Government of India (GOI).

[Read more...](#)

**Central Bank of Brazil completes the regulatory framework for the issuance of secured real estate bonds**

by Eduardo Castro, Pedro Eroles and Pedro Augusto Cunha, Machado Meyer, São Paulo

Financing the real estate segment has always been essential for the development of the real estate market in Brazil, where the certificates of real estate receivables (certificados de recebíveis imobiliários (CRIs)) and real

is not one of the tasks of the ECB. When the SSM Regulation was drafted, legislators saw the close linkages between anti-money laundering (AML) and criminal law, and between counter terrorism financing (CTF) and that of security policy, each of which falls to national competences. As is explicit in Recital 29 of the SSM Regulation, the ECB should fully cooperate, as appropriate, with the national authorities responsible for the prevention of money laundering. The ECB relies on the competent national authority to share information proactively. Therefore, closer cooperation among relevant authorities is needed. In this respect, the ECB welcomes the Fifth European Union AML Directive as a step towards enhancing cooperation between relevant authorities.

[Read more...](#)

estate credit bonds (letras de crédito imobiliário (LCIs)) are traditional and widely used funding sources. With the issuance of the additional necessary regulations by the Central Bank of Brazil (BACEN) last May, a new funding source has arisen: secured real estate bonds (letras imobiliárias garantidas (LIGs)).

[Read more...](#)

**Cryptocurrency offerings, exchanges and payments in France: towards a mix of hard and soft law**  
by Jean-François Adelle and Jean-Guillaume Follorou, Jeantet AARPI, Paris

The French market has recently witnessed fast-growing interest from entrepreneurs and investors in fundraising and trading in cryptocurrencies. Fundraising transactions based on crypto-assets in France rose to a value of EUR 130m by December 2017, and the digital economy ecosystem of blockchain applications is flourishing.

[Read more...](#)

**Challenging developments in Portugal: an overview of PSD2 and Fintech**  
by Rodrigo Formigal and Lourenço Álvares, Abreu Advogados, Lisbon

The development of new technologies is opening up banks to new services

**Main changes introduced by the newly adopted Swiss financial services regime for portfolio managers**  
by Frédérique Bensahel and Jean-Marie Kiener, FBT Avocats, Geneva

The new legislative package regarding the provision of financial services in Switzerland has finally been adopted and is expected to take effect on 1 January 2020. As anticipated, portfolio managers active in Switzerland must now prepare to be subject to a supervisory regime and comply with new regulatory duties.

[Read more...](#)

**Regulation of digital financial technologies in the Russian Federation**  
by Anton Dzhuplin and Natalia Danilova, ALRUD Law Firm, Moscow

Until autumn 2017, there was no regulation in Russia relating to

and allowing new players to step in and take an increasingly important role in the financial services industry. Innovations in areas such as artificial intelligence, machine learning, crowdfunding, mobile payment and cryptocurrencies are already exerting considerable pressure, but only regulatory-driven open banking coupled with a boom in financial technology companies (Fintechs) will enable disruptive change in, pretty much still, traditional retail banking.

[Read more...](#)

financial technologies, especially dealing with cryptocurrencies, initial coin offerings (ICOs) and smart contracts. Since then, the President of the Russian Federation issued instructions on the development of laws to regulate digital technologies in the financial sphere. Following this edict, the Russian Federation now plans to implement a number of amendments, including to the Civil Code of the Russian Federation, that will deal with the status of cryptocurrencies and tokens, and to regulate issues connected with mining activities, and the issuance and circulation of cryptocurrencies and tokens (the 'New Regulations'). At this stage, there is a plan to introduce into law the concept of the operator ('Operator') responsible for the exchange of cryptocurrencies and tokens with other cryptocurrencies or tokens or to fiat money and vice versa.

[Read more...](#)

**Recharacterisation of repurchase and reverse repurchase agreements: the Nigerian perspective**  
**by Olubusola Oyeyosola Diya and Onyinyechi Iwuoha, Aellex Legal Practitioners and Arbitrators, Lagos**

Repurchase agreements ('repos') are undertakings where a party buys securities from a counterparty for a specified price with an agreement that the counterparty will repurchase the securities at a later date. A reverse repo is the flip side of a repo. The term repo or reverse repo may be applied to the same transaction, depending on the perspective of the parties. Repos and reverse repos have similar characteristics to secured lending agreements, and may be said to resemble collateralised borrowing/lending.

[Read more...](#)

## Structuring of bank charges in Germany

by Herbert Wiehe, CMS Hasche Sigle, Cologne

Driven by recent decisions rendered by the German Federal Court of Justice (Bundesgerichtshof (BGH)), in the last two years, the German banking market has been undergoing serious changes in the area of law relating to bank charges. Originally, courts in Germany assumed that, within certain limits, bank charges could also be stipulated validly in the banks' general terms and conditions. After the Federal Court of Justice changed its case law with regard to consumer loan agreements, the two judgments rendered on 4 July 2017 (XI ZR 562/15 and XI ZR 233/16) also caused a turnaround in the area of commercial loan agreements.

According to the aforementioned two judgments and other subsequent rulings, in many cases, charges payable to the lending bank cannot be stipulated validly in general terms and conditions for business loan agreements either. It must be noted that the following rulings do not apply to individual agreements. Bank charges can be stipulated in individual agreements at any time. The requirements imposed by case law on an individual agreement or contract clauses are, however, extremely strict.

[Read more...](#)



REGISTER YOUR INTEREST

OFFICIAL CORPORATE  
SUPPORTER



IBA Terms and Conditions for committee articles 1. Articles for publication should be submitted to the committee's Newsletter Officer for review. 2. Articles will be uploaded to the committee's publication page in the first instance, and are accessible to committee members only. 3. The article must be the original work of the author, should not have been previously published, and should not currently be under consideration by another publisher. If it contains material that is someone else's copyright, the unrestricted permission of the copyright owner must be obtained and evidence of this submitted with the article and the material should be clearly identified and acknowledged within the text. The article shall not, to the best of the author's knowledge, contain anything which is libellous, illegal, or infringes anyone's copyright or other rights. 4. Copyright shall be assigned to the IBA and the IBA will have the exclusive right to first publication, both to reproduce and/or distribute an article (including the abstract) ourselves throughout the world in electronic, printed or any other medium, and to authorise others (including Reproduction



acknowledgement of the IBA. Such permission may be obtained from IBA Content at [editor@int-bar.org](mailto:editor@int-bar.org)  
To view the full Terms and Conditions for publishing committee content, [click here](#)



London

São Paulo

Seoul

The Hague

Washington DC

We process your personal information for carefully considered and specific purposes which enable us to provide our services, but which we believe also benefit you, our members and delegates. Our [Privacy Policy](#) includes how you can object to any processing and set your preferences with regard to our communications.

Our mailing address is: International Bar Association, 4th Floor, 10 St Bride Street, London, EC4A 4AD, United Kingdom Tel: +44 (0)20 7842 0090, Fax: +44 (0)20 7842 0091

---

#### Disclaimer

This e-mail is confidential and may also be legally privileged. If you are not the intended recipient, you may not disclose, copy, circulate or use this e-mail or the information contained in it. Please contact us immediately and delete the e-mail (including any attachment).

A list of the firm's partners and lawyers admitted to the Luxembourg bar is available at our offices, 41A, avenue J.F. Kennedy, L-2082 Luxembourg. Principals, senior advisors and advisors have a status equivalent to partners, senior associates and associates respectively, but are not admitted to the bar.

Any opinion or advice contained in this e-mail or any attachment is intended solely for the intended recipient and is subject to our terms of business available on the firm's website [www.arendt.com](http://www.arendt.com) (under About Us / Terms of Business).

You should protect your IT system from viruses and other attacks: we accept no responsibility for damage that may be caused by them.