Aston Business School
Birmingham

BLM144 Law of Banking and Financial Regulation

Number of Aston Credits: 15

Number of ECTS Credits: 7.5

Staff Member Responsible for the Module:

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Mrs Basia Nowakowska, Room ABS 428, Extension 3185.

Pre-requisites for the module:

None.

Mode of Attendance:

On Campus

Module Objectives and Learning Outcomes:

This module provides students with the opportunity to explore the legal and regulatory framework governing banking and financial services in the United Kingdom. At the end of the module, students will:

- Understand the history and development of the UK framework governing the regulation of banking and financial services, and the proposals for reform of the UK system outlined by the Government (beginning with *A New Approach to Financial Regulation*, published by HM Treasury in 2010).

- Understand the operation and effect of the principal Acts in this area, including the Financial Services and Markets Act (2000), the Banking Act (2009), the Financial Services Act (2010) and new legislation proposed by the Government in 2010 and 2011.

- Understand the powers and remit of the current and proposed UK regulatory authorities and the manner in which they seek to achieve their regulatory objectives.

- Appreciate the significance of the European System for Financial Supervision and the role and responsibilities of the new European regulatory authorities and their relationship with banking and financial services regulators within Member States.

- Be able to critically appraise and evaluate the operation of the regulatory framework, demonstrating a thorough understanding of the justifications offered to support the regulation of banking and financial services

- Be able to reflect critically upon the pressures and influences driving worldwide and pan-European regulation of banking and financial services and understand the difficulties this brings.

Module Content:

Week 1: Introduction: legal concepts; sources of regulation; justifying and classifying regulatory intervention; macro-prudential and micro-prudential regulation; overview of current issues and debates; the financial crisis and the Turner Review; European and G20 recommendations and responses; overview of international (e.g. the US Dodd-Frank Act 2010) and European developments (e.g., the ESFS).

Week 2: Banking and financial services policy and law within the European Union; The European System of Financial Supervision; the role of the new European Authorities (the European Systemic Risk Board, European Banking Authority, European Insurance and Occupational Pensions Authority, and European Securities and Markets Authority); the role of Member States' regulators under the ESFS and the powers and responsibilities of the new European Authorities. The European Markets in Financial Instruments Directive (MiFID): the Framework Directive (2004/39/EC), Implementing Directive (2006/73/EC) and Implementing Regulation (No. 1287/2006). The supervision of credit rating agencies by the European Securities and Markets Authority.

Week 3: The UK framework: introduction and historical review; the Turner Review; the failure of the tripartite framework; the abolition of the Financial Services Authority and the move towards a 'twin peaks' model of prudential regulation with a greater role for authorities acting under the

auspices of the Bank of England (the FPC and PRA).

Week 4: Core provisions within the Financial Services and Markets Act (2000), the Banking Act (1998), the Banking Act (2009), the Financial Services Act (2010) and draft legislation bringing into force the new UK framework in 2012/2013; regulatory responsibility for macro-prudential regulation, micro-prudential regulation; trends in the development of regulatory frameworks in Europe and worldwide.

Week 5: The nature of banking and the meaning of 'bank'; the regulation of banks; the role of the new Prudential Regulatory Authority; the role of the Bank of England with regard to financial stability; the role of the Bank for International Settlements; the Basel Committee on Banking Supervision's *Core Principles for Effective Banking Supervision*; supervisory colleges under European law.

Week 6: Bank governance and the Walker Report (2009); the role of the risk committee and risk oversight; the chief risk officer's function; the relationship between the statutory auditor and financial regulators.

Week 7: The Capital Adequacy Directive (2006/47/EC and 2006/48/EC) and the European Commission's proposed reforms (2010). UK prudential standards for banks. Basel III.

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Week 8: Conduct of business regulation: the authorisation regime; the High Level Principles for Businesses; the approved persons regime; consumer protection. The role of the FSA and, from 2012/2013, the new authorities including the proposed Financial Conduct Authority.

Week 9: Revision

Week 10: Exam

Corporate Connections:

The module will draw on the experience of practitioners and market participants where possible.

International Dimensions:

This course is explicitly international in focus. The development of the UK's regulatory framework cannot be understood without knowledge of the European and international forces which continue to shape it, particularly following the recent financial crisis and, on 1 January 2011, the commencing of the new European System of Financial Supervision. References are made throughout the course to other jurisdictions and much of the academic literature considered is international in focus.

Contribution of Research:

This module draws upon research conducted by the lecturer as well as colleagues throughout the Business School.

Method of Teaching:

Lectures will introduce students to the core principles. Seminar style discussion will be held throughout the module, enabling students to draw upon their experiences of governance and regulation in their respective jurisdictions. Students must undertake reading and research between lectures and this work is essential if students are to gain the most from the teaching and do well in the examination. This independent reading and research will build on the lecture materials and is essential. Students will not pass the exam by relying only on the lecture slides. The learning hours below indicate how much time students should be spending on this module.

Method of Assessment and Feedback:

This module is assessed by examination and coursework, each of which is weighted 50%. The examination is 3 hours in length and closed book in format. Its objective is to assess students' ability to engage critically with the material covered on the course and provide personal interpretation. The coursework enables students to undertake independent research and will provide, e.g., the opportunity for greater reflection on the justifications offered to support the regulation of the financial markets. In recent years, the coursework has given students the opportunity to consider the manner in which banks are regulated within the UK.

All students have the option of submitting practice essays, based on past exam questions, in order to get feedback on their writing style and guidance on how to improve their work. It is important that all students make use of this opportunity. Individual feedback is also

available on students' performance in the examination and coursework. Feedback and guidance is also available throughout the module in the weekly sessions, in the lecturer's office hours or by e-mail.

Further details about both forms of assessment will be provided at the start of the course. In addition, at the end of the module, students are able to receive individual feedback on their coursework and exam performance.

Learning Hours:

Lectures and discussion sessions	24
Revision session	3
Examination	3
Coursework research and preparation	40
Private study, directed reading and research	80
Total	**150**

Essential Reading

Important note:

Please wait until the start of the course before purchasing any books. The best student textbook covering the course topics (MacNeil, 2005) has become out of date and for this reason is unlikely to be recommended this year (although parts of it will remain useful).

The most useful books and other materials for the course are:

- Ferran, E., *Principles of Corporate Finance Law*, Oxford, Oxford University Press, 2008.
- Financial Services Authority, T*he Turner Review: a regulatory response to the global banking crisis*, London, 2009 (here http://www.fsa.gov.uk/pubs/other/turner_review.pdf).
- HM Treasury, *A new approach to financial regulation: judgement, focus and stability*, London, 2010 (here: http://www.hm-treasury.gov.uk/consult_financial_regulation.htm).

- HM Treasury, *A new approach to financial regulation: building a stronger system*, London, 2011 (here: http://www.hm-treasury.gov.uk/d/consult_newfinancial_regulation170211.pdf).

- Hudson, A., *The Law of Finance*, London, Sweet and Maxwell, 2009.

- MacNeil, I., *An Introduction to the Law on Financial Investment*, Oxford, Hart Publishing, 2005.

In addition to the essential reading from textbooks, articles and other material is provided through Blackboard and students will be referred to this throughout the course. Students are advised to read a good quality UK newspaper each day – ideally the *Financial Times* – because many of the topics covered in the course feature within the press on a regular basis.

Indicative Bibliography:

Avgouleas, E., *The Mechanics and Regulation of Market Abuse: A Legal and Economic Analysis*, Oxford, Oxford University Press, 2005.

Avgouleas, E., *The Governance of Global Financial Markets and International Financial Regulation*, Cambridge, Cambridge University Press, 2011.

Bamford, C., *Principles of International Financial Law (Student edition)*, Oxford, Oxford University Press, 2011.

Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision*, BIS, 2006 (available here: http://www.bis.org/publ/bcbs129.htm).

Bazley, S. and Haynes, A., *Financial Services Authority Regulation and Risk Based Compliance*, Tottel Publishing, 2006.

Benjamin, J., *Financial Law*, Oxford, Oxford University Press, 2007.

Blair, M., Walker, G. and Purves, R., *Financial Services Law*, Oxford, Oxford University Press, 2009.

Blair, M. and Walker, G., *Financial Markets and Exchanges Law*, Oxford, Oxford University Press, 2007.

Blair, M., *Blackstone's Guide to the Financial Services and Markets Act 2000*, Oxford, Oxford University Press, 2009.

Boatright, J., *Ethics in Finance*, Oxford, Blackwell Publishing, 1999.

Casey, J-P. et al.., *The MiFID Revolution*, Cambridge, Cambridge University Press, 2009.

Centre for Policy Studies, *The Leviathan is still at large: an open letter to Mr. John Tiner, Chief Executive, FSA*, London, Centre for Policy Studies, 2005.

Cheffins, B., *Company Law: Theory, Structure and Operation,* Oxford, Oxford University Press, 1997.

Clarke, M., *Citizens' Financial Futures – The Regulation of Retail Investment Financial Services in Britain,* Aldershot, Ashgate, 1999.

Davies, P., *Gower and Davies' Principles of Modern Company Law,* London, Sweet and Maxwell, 2008.

Dewatripont, M., *The Prudential Regulation of Banks*, Cambridge (USA), MIT Press, 2010.

Ellinger, E. et al., *Ellinger's Modern Banking Law*, Oxford, Oxford University Press, 2010.

Faure, M. and Stephen, F., *Essays in the Law and Economics of Regulation*: *in honour of Anthony Ogus*, Intersentia, 2008.

Ferran, E., *Principles of Corporate Finance Law*, Oxford, Oxford University Press, 2008.

Ferran, E., *Building an EU Securities Market*, Cambridge, Cambridge University Press, 2004.

Ferrarini, G. and Wymeersch, E., *Investor Protection in Europe: Corporate Law Making, the MiFD and Beyond*, Oxford, Oxford University Press, 2006.

Fisher, J et al., *The Law of Investor Protection,* London, Sweet and Maxwell, 2003.

Frase, D., *Law and Regulation of Investment Management,* London, Sweet and Maxwell, 2011.

Faure, M. and Stephen, F., *Essays in the Law and Economics of Regulation: In Honour of Anthony Ogus*, Intersentia, 2008.

Freshfields, *Financial Services: Investigations and Enforcement,* Tottel Publishing, 2005.

Goodhart, C., *The Regulatory Response to the Financial Crisis*, Edward Elgar Publishing, 2009.

Gray, J. and Hamilton, J., *Implementing Financial Regulation*, John Wiley & Sons, 2006.

Grote, R. (ed.), *The Regulation of International Financial Markets*, Cambridge, Cambridge University Press, 2009.

Gullifer, L. and Payne, J., *Corporate Finance Law: Policy and Principle*, Oxford, Hart Publishing, 2011.

Haynes, A., *Financial Services Law Guide* (3rd edition), Tottel Publishing, 2006.

Haynes, A., *International Banking: Law and Practice*, Bloomsbury Professional, 2010.

Hollington, R., *Shareholders' Rights*, London, Sweet and Maxwell, 2010.

Hopt, K. and Wymeersch, E., *Capital Markets and Company Law*, Oxford, Oxford University Press, 2003.

Hudson, A., *The Law of Finance*, London, Sweet and Maxwell, 2009.

Katz, E. (ed.), *Financial Services Regulation in Europe*, Oxford, Oxford University Press, 2008.

Kokkoris, I. and Olivares-Caminal, R., *Antitrust Law amidst Financial Crises*, Cambridge, Cambridge University Press, 2010.

Kurnatowska, M. et al., *A Practitioner's Guide to Law and Regulation of Financial Crime*, London, Sweet and Maxwell, 2010.

Lowry, J. and Reisberg, A., *Pettet's Company and Capital Markets Law*, London, Longman, 2008.

MacNeil, I., *An Introduction to the Law on Financial Investment*, Oxford, Hart Publishing, 2005.

MacNeil, I. (ed.), *The Future of Financial Regulation*, Oxford, Hart Publishing, 2010.

McVea, H., *Financial Services Law and Regulation: Text and Materials*, London, Sweet and Maxwell, 2011.

Moloney, N., *EC Securities Regulation,* Oxford, Oxford University Press, 2008.

Moloney, N., *How to Protect Investors: Lessons from the EC and the UK (International Corporate Law and Financial Market Regulation)*, Cambridge: Cambridge University Press, 2010.

Montagu, G. and Weston, M., *Banking and Capital Markets Companion,* Bloomsbury Professional, 2010.

Morgan, B. and Yeung, K., *An Introduction to Law and Regulation: Text and Materials*, Cambridge, Cambridge University Press, 2007.

Mwenda, K. *Legal Aspects of Financial Services Regulation and the Concept of a Unified Regulator*, World Bank, 2006.

Nelson, P., *Capital Markets Law and Compliance: The Implications of MiFID*, Cambridge, Cambridge University Press, 2008.

Newton, A., *Compliance: Making Ethics Work in Financial Services,* London, Pitman Publishing, 1998.

Ogus, A., *Regulation*, Oxford, Hart Publishing, 2004.

Panasar, R. and Boeckman, P., *European Securities Law*, Oxford, Oxford University Press, 2010.

Perry, J. and Toube, D., *The Financial Services and Markets Act: A Practical Legal Guide*, London, Sweet and Maxwell, 2006.

Proctor, C., *Law and Practice of International Banking*, Oxford, Oxford University Press, 2010.

Rider, B., Alexander, K. and Linklater, L., *Market Abuse and Insider Trading*, London, Tottel Publishing, 2009.

Russen, J., *Financial Services: Authorisation, Supervision and Enforcement – A Litigator's Guide*, Oxford, Oxford University Press, 2006.

Scott, H., *International Finance*, London, Sweet and Maxwell, 2004.

Tison, M. (ed.), *Perspectives in Company Law and Financial Regulation*, Cambridge, Cambridge University Press, 2009.

Usher, J., *Law of Money and Financial Services in the EC,* Oxford, Oxford University Press, 2011.

Wood, P., *Law and Practice of International Finance*, London, Sweet and Maxwell, 2007.

Wood, P., *Regulation of International Finance*, London, Sweet and Maxwell, 2011.

Web Based Reading:

Robert Goddard's website contains updates on many of the topics covered in the course and links to relevant websites and materials:
http://www.corporatelawandgovernance.blogspot.com

Note also the excellent resources available on Professor Alastair Hudson's website:
http://www.alastairhudson.com

Further links are provided on Blackboard.