

Index

- absolute impossibility 293–4, 296–7, 309–10
- Ago, Roberto 310
- amicus curiae* participation 339–40
 - framework 340–41
 - international financial institutions 341–3
 - limitations 343–4
 - non-disputing party requirement 342–3
 - opportunities 344
 - significant interest requirement 343
- Argentina
 - collective action clauses 141–2
 - expropriation, necessity defence 207–8
 - monetary transfer provisions restrictions 261
 - sovereign debt restructuring initiatives 120–21
 - regulatory powers 108–10
- bail-ins
 - admissibility 201–2, 210
 - background 16
 - compliance concerns 245
 - Cyprus banking crisis 2013 195–6, 322–4
 - background 241–2
 - bail-in litigation 244
 - expropriation, whether 205–6
 - financial assistance package 242–3
 - investment institution influences on 200–202, 322–4
 - Laiki Bank restructuring arrangements 243
 - stability levies 242–3
 - state actions 241–2
 - substantive remedies 207–10
 - definition 194–5
 - depositor challenges 197–8
 - BIT rights guarantees, and 253
 - causation 249–53
 - compliance issues 253–4
 - human rights 252–3
 - no creditor worse off principle, and 252–3
 - successful claims 250–51
 - discrimination, and 205–6
 - expropriation 245
 - identification 204–6
 - substantive remedies 206–10
 - investment protection law applicability 197–202
 - breaches of, as 245–6
 - no creditor worse off principle 252–3
 - non-arbitrariness 206
- bank deposits
 - bail-ins, as breach of BITs 245–9
 - deposit guarantees 81, 284–9
 - Iceland crisis 2008, *force majeure* defence 282–9
 - investments, qualification as 199–200, 245–9
- bank guarantees, arbitral interpretation 36
- Bank Recovery and Resolution Directive 195
- bank rescues
 - bail-ins
 - admissibility 201–2, 210
 - background 16
 - Cyprus banking crisis 2013 195–210, 241–4
 - definition 194–5
 - depositor challenges 197–8
 - discrimination, and 205–6
 - expropriation 204–10, 245

- investment institution involvement 200–202, 322–4
- investment protection law, applicability 197–202
- non-arbitrariness 206
- substantive remedies 206–10
- causation, and 217–19, 226–36
 - burden-sharing principle 237–8
 - claimant investor behaviour 227–8, 230–36
 - damages reduction 229–31
 - due diligence, and 228
 - foreign creditor challenges 236–9
 - foreign creditor prejudice 249–53
 - imprudent conduct 232–6, 250–51
 - intervening factors 227–32
 - loss of opportunity 230–31
 - no creditor worse off principle 237–9, 252–3
 - prior insolvency 232–6
 - unjust enrichment principle, and 229–30
- challenges, under BITs
 - causation, and 217–19, 226–36
 - certainty 215–16
 - economic loss, and 216–17
 - investment values, and 216
- deliberative approach 80–82
- due process, and 16, 206
- economic loss requirement 216–19
- expropriation, and 50, 204–10
- Icelandic bank collapse 80–82
- international investment law
 - bail-ins, applicability 197–202
 - conflicts, generally 80–82
 - international financial institutions, conflicts 322–4
- national treatment guarantees, and 80–81
- too big to fail measures 52
- trends 16
- Basel Committee on Banking Supervision (BCBS) 24–5
 - exclusions 62–3
- bilateral investment treaties
 - see also* investment arbitration; monetary transfer provisions
 - capital flow measures 266–7
 - conflicts between 267–72
 - necessity defence 277–8
 - non-precluded measures, and 276–7, 279, 334
- drafting, institutional influences on 333–4
- economic loss claims
 - causation 217–19
 - requirement 218–19
 - generally 257–8
 - history 257–8
- investment standards, applicability 334–5
- investments
 - arbitral interpretations 30–33
 - definitions 27–8, 53–4, 80, 198–200, 213–14, 245–6
 - deposits, inclusion 245–9
 - exclusions 53–4, 178–9
- investors, arbitral interpretation 37–88, 198–200
- key principles 258
- limitations 189–90
- monetary transfer provisions
 - conflict avoidance mechanisms 272–6
 - IMF Articles, and treaty interpretation 272–6
 - IMF Articles, interference with 260–61, 269–72
- sovereign debt restructuring, and fair and equitable treatment principle 185–7
 - generally 160–61
 - relevance 53–4, 178–9
- bonds
 - bondholders, identification 136
 - investment status 199–200
 - investments, arbitral interpretation 30–32
- Brady Initiative 120–21
- Bretton Woods system collapse 62
- capital flow measures
 - adoption trends 263–4
 - alternative imposition approaches 276–8

- benefits 264–5
- BIT provisions 266–7
 - conflicts between 267–72
- capital account restrictions 270–71
- challenges to 320
- contracting out 267–9, 279–80
- current account restrictions 269–70
- financial crisis, during 263–4, 319–20
- general principles 263
- IMF Articles of Agreement 264–5, 269, 320
- international investment law
 - international financial institutions, conflicts 319–20
 - regulation 267–8
- recognition 258–9
- state regulation
 - alternative approaches 276–8
 - necessity defence 277–8
 - non-precluded measures 276–7, 279, 334
 - restrictions 267–8, 270–71
 - rights 262–3
- systemic integration principle, and 272–6, 279
- treaty interpretation, and 272–6
- causation
 - bank rescues, and 226–36
 - burden-sharing principle 237–8
 - claimant investor behaviour 227–8, 230–36
 - damages reduction 229–31
 - due diligence, and 228
 - foreign creditor challenges 236–9
 - foreign creditor prejudice 249–53
 - imprudent conduct 232–6, 250–51
 - intervening factors 227–32
 - loss of opportunity 230–31
 - no creditor worse off principle 237–9, 252–3
 - prior insolvency, and 232–6
 - unjust enrichment principle, and 229–30
 - BITs, challenges under 217–19
 - break in chain 225, 227, 250
 - burden of proof, and 222
 - establishment, difficulties with 224–6, 228–9
 - factual vs. legal considerations 222
 - force majeure* defence 290–91, 312–13
 - general principles 221–6
 - indirect losses 224–5
 - internationally wrongful acts 219–26, 290
 - intervening acts 225, 227–32
 - proximity test 223, 231–2, 250
 - pure vs. transitive links 224–5
 - reasonableness and foreseeability 223–4
 - third party acts 225, 227, 250–51
- central banks
 - deliberative approach 83–4
 - independence 61–2
 - investment tribunal interactions 83–4
 - liquidity control measures 65–7
 - scrutiny 83–4, 239
 - unorthodox monetary policy measures 83–4
- Chile
 - capital flow measures 263
- choice of law, jurisdiction clauses 43
- claims, classification 148–9
- claims to money, arbitral interpretation 32–3
- collective action clauses
 - aggregated mechanisms 141–5
 - binding effect of majority decisions 131–2, 179–80
 - cram-down procedures, compared 148–9, 158
 - development 139–41
 - domestic regimes, and 132–4
 - European Stability Mechanism (ESM) 124–6, 143
 - generally 44, 47–8, 77
 - IMF promotion 140, 145
 - international recognition of restructuring measures 132–4
 - limitations 124–6, 131–2, 137, 143–4, 159, 165–6
 - market practice 145–6
 - minority creditor safeguards 153–4
 - national treatment principle 130–31

- negotiations, principles for 127–9
- procedural rules 129–30
- reform proposals 137–8
- retroactivity 133
- role 124–6, 134, 138
- single-limb voting mechanisms
 - 137–8, 144–5, 148–9, 153–7
- substantive decisions 130–31
- traditional mechanisms 139–41
- trends 145–6
- two-limb voting mechanisms 141–4
- unfair discrimination, prohibition
 - 157
- Colombia
 - capital flow measures 264
- conflict of norms, definition 270–72
- cram-down procedures 44
 - see also* collective action clauses
 - benefits 137–8
 - fair and equitable treatment, and
 - 151–2, 159
 - limitations 159
 - minority creditor safeguards 149–52, 158
 - municipality bankruptcy, principles for 147–8
 - purpose 146, 148
 - single-limb voting CACs, compared 148–9, 158
 - unfair discrimination, prohibition of 149–50
- Crawford, James 292
- currency regulation rights 262
- current account transactions, state restrictions 269–70
- Cyprus
 - banking crisis bail-in 2013 195–6, 322–4
 - background 241–2
 - bail-in litigation 244
 - expropriation, whether 205–6
 - financial assistance package 242–3
 - force majeure* defence 283
 - investment institution influences on 200–202
 - Laiki Bank restructuring arrangements 243
 - stability levies 242–3
 - state actions 241–2
 - substantive remedies 207–10
- debt management practices 136–7
 - due diligence 163–4
 - international framework
 - lack thereof 161–6
 - responsible lending principles 172–3
- deliberative approach to law
 - bank rescue measures 80–82
 - central banks, unorthodox monetary policies 83–4
 - principles 69–71
 - priority rules 72
 - rules, interpretation 71–2
 - sovereign debt workout measures 76–9
 - systemic integration
 - general principles 72–5
 - pluralist understanding 74–5
- deposit conversion into shares *see* bail-ins
- deposit guarantees
 - Directive 81, 284–9
 - Iceland bank crisis 2008, *force majeure* defence 282–9
- deposits *see* bank deposits
- dispute settlement *see* investment arbitration; ISDS
- Dodd-Frank Act 2010 55, 195
- dollar standard 60
- Dominican Republic
 - collective action clauses 141–2
- due diligence 163–4, 187
 - causation, in bank rescue challenges 228
- economic loss
 - causation, and 226–36
 - bank rescues 217–19, 226–36
 - burden-sharing principle 237–8
 - damages reduction 229–31
 - due diligence, and 228
 - general principles 221–6
 - imprudent conduct 231–6, 250–51
 - intervening factors 227–32

- investor behaviour 227–8, 230–36
- loss of opportunity 230–31
- no creditor worse off principle
 - 237–9, 252–3
- prior insolvency 231–6
- unjust enrichment principle, and
 - 229–30
- state responsibility 217–18
- economics, generally
 - classical theory 59–60
 - interest group influences 61
 - macroeconomic steering 59–60, 59–61, 73–4
 - post-war policy development 59–60
- England and Wales
 - sovereign debt restructuring, regulatory powers 106–8
- European Banking Union 317, 323
 - resolution decisions 328–9
- European Central Bank
 - discretionary powers 66–7
 - liquidity control measures 65–6
 - Outright Monetary Transactions Programme 65–7
 - powers 25
 - Securities Markets Programme 65–6
- European Convention on Human Rights
 - private debts, protection 226, 251–2
 - private property, right to enjoyment 251–2
- European Investment Framework 329–30
- European Stability Mechanism (ESM) 25, 66
 - collective action clauses, and 124–6, 143
 - establishment 120, 122–3, 316
- European Union
 - account obligations under 337
 - deposit guarantees 81
 - financial system reforms 25, 66
 - force majeure* defence 296–304, 312–14
 - investment arbitrations, investment institution defendants 344–6
 - mutual financial assistance regime 316–17
 - regulatory conflicts 201
 - US regulatory cooperation proposals 55–6
- expropriation 50, 334
 - bank rescues
 - bail-ins 204–6, 245
 - generally 50
 - quantum of damages 208–9
 - substantive remedies 206–9
 - definition 203–4
 - economic value, and 219
 - police powers doctrine, and 98
 - public purpose requirement 335–7
 - sovereign debt restructuring, and 90–91, 93, 129, 178–9
- fair and equitable treatment 334
 - cram-down procedures, and 151–2, 159
 - expropriation, and 50
 - financial crisis
 - activities during 50
 - breaches during 40–41, 52
 - holdout arbitration, and 78
 - legitimate expectations, and 49, 186–7, 335–6
 - necessity defence, and 78–9
 - rule of law, and 335–6
 - sovereign debt restructuring 323–4
 - conflicts 78–9, 126, 130, 185–7
 - workout procedures 78–9
 - standard, definition 155–6
 - substantive remedies 209–10
 - systemic integration principle, and 78–9, 337
- Fair and Transparent Arbitration Process (FTAP) 44
- FDI, systemic risk 65
- Federal Reserve liquidity control measures 65–6
- fiduciary duties
 - sovereign debt restructuring, and 175–6, 185
- financial assistance
 - Cyprus banking crisis 2013 bail-in package 242–3
 - EU mutual assistance regime 316–17

- forms
 - private 123–4
 - public 122–3
- IMF policy 39, 319–20
- financial crisis
 - Asian crisis 1998 263–4
 - bank rescues
 - exceptional state measures 212–14
 - expropriation, and 50, 204–6
 - necessity defence 51, 207
 - too big to fail measures 52
 - trends 16, 48, 211–12
 - capital flow measures, and 263–4, 319–20
 - characteristics 122
 - conditionality 122–3
 - Cyprus banking crisis bail-in 2013 195–6, 205–6
 - emergency measures, validity 50–51
 - fair and equitable treatment, and 40–41, 50, 52
 - financial assistance
 - IMF policy 39, 319–20
 - private 123–4
 - public 122–3
 - financial system reforms, and 25, 54–5
 - force majeure* defence
 - Cyprus 282
 - generally 282–4, 310–311
 - Iceland 2008 282–9, 310–311
 - ILC Articles and Commentary, and 308–10, 313–14
 - investment claims under BITs, and 305–15
 - functional separation theory, and 57–8, 64–7
 - Greek debt crisis 47–8, 91
 - Iceland deposit guarantees crisis 2008 282–9
 - investment institution influences on policies 48, 200–202
 - investment law and financial system interactions 5–6, 10, 20–22
 - microperspective focus impacts 64–5
 - necessity defence, and 51, 336–7
 - policy focus 64
 - private creditor challenges 38–42
 - recourse exclusions during 53–4
 - scrutiny during 21
 - sovereign debt restructuring powers 112–13
 - State behaviour during 38–41
 - systemic risk identification and treatment 64–7
 - transnational cooperation, influences on 6
- financial regulation
 - deliberative approach, generally 69–71
 - financial crisis, and
 - exclusions 53–4
 - influences on 57
 - functional separation theory 57–8, 64–7
 - international economic law, and conformity with 71–2
 - systemic integration 72–5
 - reform proposals 52–4
 - ring-fencing 52–3
 - sovereign debt definition 53–4
 - trends 57
- financial stability
 - restoration, key concepts 122–3
- Financial Stability Board 24–5, 68
- Financial Stability Oversight Council (FSOC) 68
- force majeure* defence
 - absolute impossibility 293–4, 296–7, 309–10
 - choice, role 291–2, 294, 309–10
 - financial crisis, role
 - Cyprus 282
 - generally 282–4, 310–311
 - Iceland 2008 282–9, 310–311
 - ILC Articles and Commentary, and 308–10, 313–14
 - investment claims under BITs, and 305–15
 - foreseeability 290–92, 297–9, 307, 312, 331–2
 - fortuitous events, and 291–2
 - general principle 281, 288, 310–311, 331–2
 - causation 290–91, 312–13
 - EU law, under 296–304, 312–14

- international law, and 289–95, 303–4
- of law, as a 300–304, 307–8
- limitations on use 303–4
- thresholds 294–5
- international financial institutions, and 330–32
- internationally wrongful acts 281–2, 289–91, 308–10, 313–14, 330–32
- investment arbitration
 - judicial interpretation 307–8
 - use trends 306–7
- involuntary conduct 291–4, 309–10
- irresistible events 290, 331–2
- lex specialis vs. lex generalis* 314
- limitations
 - general principle of law, as 303–4
 - semi-public debt restructuring 117
- material/relative impossibility 290–94, 298–9, 312–13, 332
- necessity defence, and 292–5, 308–9, 311–12, 332
- state rights and responsibilities 281–2, 289–91, 308–10, 313–14, 330–32
- systemic integration principle, and 313
- foreign creditors and investors
 - bank rescues, and causation challenges 236–9
 - prejudice 249–53
 - capital flow measures, benefits 266–7
 - financial crisis, *force majeure* defence 286–7
 - national treatment principle conflicts 184–5
 - obligations, failure to meet 168–9
- foreign direct investment, systemic risk 65
- Foreign Sovereign Immunities Act (New York) 43
- foreseeability
 - causation 223–4
 - force majeure* defence 290–92, 297–9, 307, 312, 331–2
- Friedman, Milton 61
- functional separation theory
 - adequacy 66–7
 - development 59–64
 - financial crisis influences 57–8, 64–7
 - foreign direct investment, and 65
 - generally 57–8
 - limitations 62–3, 67
 - liquidity control measures 65–7
 - responses and remedies 58, 67–9
- Germany
 - sovereign debt restructuring, regulatory powers 110–111
- global financial system
 - coordination, lack of 8–9
 - definition 4, 23–6
 - deregulation 24
 - development 9–10, 316–17
 - global financial stability, and 24–5
 - investment arbitration, and conflicts 23, 26–7, 45–53
 - interconnections 4–9, 23, 26–7, 38–45
 - private international creditor access 27–30, 38–42
 - right to regulate, and 49–53
 - sovereign debt dispute settlement 42–5, 321–2
 - judicial forum, need for 26
 - liberalisation 24
 - limitations 8–9, 25–6
 - re-regulation, and 6–7, 24
- Gold, Joseph 265
- good faith principle
 - holdout arbitration, and 78–9
 - responsible lending principles 176
- Great Depression 60
- Greece
 - sovereign debt restructuring 47–8, 91, 320–21
 - collective action clauses 141–2, 157, 321
- Hayek, Friedrich 61, 63–4
- holdout arbitration 46–8, 77–8, 180
- necessity defence, and 78–9

- Iceland
 - financial crisis 2008, *force majeure* defence 283–9
- ICSID Convention 4
 - investments, definition 33–7, 199
- India
 - Model BIT, monetary transfer provision 280
- indirect expropriation 203–4
 - and bail-ins 204–6
 - economic value, and 219
- insolvency
 - law, purpose 129
 - sovereign insolvency trends 121–2
- International Capital Market Association (ICMA) 140–41, 144, 153
- International Clearing Union 60
- international economic law
 - deliberative approach
 - practical implications 75–84
 - principles 69–72
 - sovereign debt workout measures 76–9
 - systemic integration, and 72–5
 - rules
 - interpretation 72–3
 - priority 71–2
- international financial institutions
 - bank rescue involvement 200–202, 322–4
 - criticisms 169–70
 - decisions, implications 317–18
 - establishment 24–5, 60–61, 68
 - financial crisis, policy influences 48, 200–202
 - international investment law conflicts 318–19
 - bank rescues 322–4
 - capital controls 319–20
 - sovereign debt restructuring 320–22
 - internationally wrongful acts, responsibility and liability for 317–18, 324
 - investment arbitration
 - defendants, as 344–6
 - investment standards, and deference 337–8
 - interpretation 334–8
 - investment agreement drafting 333–4
 - proportionality 335–7
 - public purpose requirement 335–7
 - investment treaties, influences on 333–4
 - lex lata* interpretation 68–9
 - limitations 68–9
 - macro-prudential role 68
 - piercing institutional veil 329–30
 - regulatory interdependence 68–9
 - sovereign debt restructurings, and 130–31
 - state rights and responsibilities, and attribution 325–30, 346–7
 - conditional lending 326–7
 - control mechanisms generally 324
 - EU investment framework 329–30
 - force majeure* defence 330–32
 - resolution decisions 328–9
 - supra-institutional conflicts 328–9
 - systemic risk management role 68–9
 - too big to fail measures 52
 - transferring powers to, purpose 317–18
 - without prejudice clauses 20, 208
- international investment agreements
 - debt restructuring exclusions 53–4, 178–9
 - drafting constraints 333–4
 - financial instruments qualification under 27–30
 - international institutional influences 333–4
 - investment law interactions 9
 - investment protection coverage trends 9, 54–6
 - investments, definition 27–30, 80, 198–200
 - law-making trends 21–2
 - limitations 21–2, 55–6
 - private international creditor access, and 27–30
 - purpose 196–7
 - scrutiny exemptions 21, 82

- international investment law
 - deliberative approach
 - bank rescue measures 80–82
 - central banks, unorthodox
 - monetary policies 83–4
 - generally 84–5
 - practical implications 75–84
 - principles 69–72
 - sovereign debt workout measures 76–9
 - systemic integration, and 72–5
 - development 9
 - financial stability, and 21
 - functional separation theory 57–8
 - holistic understanding 84
 - international financial institutions,
 - conflicts 318–19
 - bank rescues 322–4
 - capital controls 319–20
 - sovereign debt restructuring 320–22
 - internationally wrongful acts 218–19
 - damages, and 219–21
 - law-making trends 21–2
 - national treatment principle 80–81, 130–31
- international investment treaties
 - expropriation rules 203–4
- International Law Commission
 - Articles on the Responsibility of State for Internationally Wrongful Acts 174, 208, 218–19
- International Monetary Fund
 - Articles of Agreement
 - BIT interference with 260–61, 270–71
 - capital flow measures provisions 264–5
 - monetary transfer clauses, generally 260–61
 - systemic integration principle, and 272–6, 279
 - treaty interpretation, and 272–6
 - collective action clauses, promotion 140, 145
 - financial assistance policy 39, 319–20
- Heavily Indebted Poor Countries Initiative 121
- multilateral surveillance 62
- purpose and functions 24–5
- sovereign debt restructuring reforms 158
- International Organisation of Supreme Audit Institution (INTOSI) 174
- International Organization of Securities Commissions (IOSCO) 24–5
- internationally wrongful acts
 - force majeure* defence 281–2, 289–91, 303–4, 308–10, 313–14
 - general principle 331
 - institutional responsibilities and liabilities 317–18, 324
 - necessity defence 277–8
 - state rights and responsibilities 174, 208, 218–19, 317–18
 - attribution 325–30, 346–7
 - causal relationships, and 219–26, 290
 - damages, and 219–21
 - EU investment framework 329–30
 - resolution decisions 328–9
- investment arbitration
 - amicus curiae* participation 339–40
 - framework 340–41
 - international financial institutions 341–3
 - limitations 343–4
 - non-disputing party requirement 342–3
 - opportunities 344
 - significant interest requirement 343
- choice of jurisdiction clauses 43
- dispute settlement mechanisms
 - generally 4
 - ISDS sovereign debt claim disputes 42–5, 321–2
 - parallel proceedings, and 45, 48
- force majeure* defence
 - judicial interpretation 307–8
 - use trends 306–7
- global financial system, and
 - conflicts 23, 26–7, 45–53
 - interconnections 23, 26–7, 38–45

- private international creditor
 - access 27–30, 38–42
 - right to regulate, and 49–53
 - sovereign debt dispute settlement mechanism 42–5
- IMF capital flow measures policy 320
- implications 7
- international investment institutions, and 338
 - amicus curiae* participation 339–44
 - defendants, as 344–6
- investment treaties, framework under
 - advantages 177–8
 - consistency, need for 180–82
 - investment, definition exclusions 53–4, 178–9
 - legitimacy concerns 182–3
 - limitations 177–83
 - sovereign debt, relevance to 177–83
 - standards, lack 180–82
- investor behaviour influences 187–8
- methods, choice 196–7
- practice development trends 29–30
- protected investments
 - arbitral interpretation trends 30–33
 - definition 27–30
- sovereign debt restructuring
 - collective action clause claims 154–7
 - generally 135–6
 - holdout arbitration 46–8, 77–8, 180
 - investment treaties, under 177–83
 - judicial proceedings 90–92, 94
 - trends 29–30
- investment risks principle 49–50
- investment standards
 - deference 337–8
 - interpretation 334–8
 - investment agreement drafting 333–4
 - proportionality 335–7
 - public purpose requirement 335–7
 - systemic integration principle, and 337–8
- investments
 - bank guarantees as 36
 - bonds as 30–32
 - claims to money as 32–3
 - definition
 - bank deposits as 245–9
 - BITs, under 27–33, 53–4, 80, 196, 198–200, 213–14, 245–6
 - double-barrelled test 33–5
 - ICSID Convention, under 33–7, 199
 - intention of contracting parties, and 34–7
 - interpretation, arbitral practice 30–33
 - limitations 54–5
 - objective requirement approach 34–6
 - Salini* test 34–5, 80
 - sovereign debt, exclusion from 53–4, 94, 178–9
 - loans as 31–3
 - majority shareholding as 29
 - promissory notes as 36
- investor behaviour
 - bank rescues, causation 227–8, 230–36
 - imprudent conduct, and 231–6, 250–51
 - investment arbitration, relevance 187–8
- investor protection
 - investment risks principle, and 49–50
 - law, development influences 63
- investor-state dispute settlement *see* ISDS
- investors
 - arbitral interpretation 37–8
 - business interests, influences of 136–7
 - definition 37–8, 198–200, 245–6
 - investors rights, limitations 7
- ISDS (investor-state dispute settlement)
 - amicus curiae* participation 339–40
 - framework 340–41
 - international financial institutions 341–3
 - limitations 343–4
 - non-disputing party requirement 342–3
 - opportunities 344

- significant interest requirement 343
- collective action/ cram-down clauses 44, 47–8, 77, 158–9
- forum shopping 43
- holdout arbitration impacts 46–8
- limitations and conflicts 45–6
- parallel proceedings 45, 48
- sovereign debt claim disputes 42–5, 321–2
- Italy
 - bank rescues, investor protection challenges 232–3
- Jenks, Wilfred 270
- Keynes, John Maynard 59–60, 62, 73–4
- Laiki Bank *see* Cyprus
- law, generally
 - deliberative approach 69–71
 - general principles
 - force majeure* defence as 300–304, 307–8
 - rule of law, public purpose 335–6
 - indeterminacy impacts on 70–71
 - paradoxes 69–70
- legitimate expectations
 - fair and equitable treatment 49, 186–7, 335–6
 - transparency, and 186–7
- lex generalis, force majeure* defence 314
- lex specialis, force majeure* defence 314
- loans, arbitral interpretation 31–3
- London Club 136
- macroeconomic steering 59–60, 73–4
- Malaysia
 - capital flow measures 263–4
- material impossibility 290–94, 298–9, 312–13, 332
- monetary transfer provisions
 - see also* capital flow measures
 - BIT provisions 266–7
 - conflict avoidance measures 272–6
 - IMF Articles, and treaty interpretation 272–6
 - IMF Articles, interference with 260–61, 269–72
 - classification 258–9
 - contracting out 267–9, 279–80
 - exceptions and deviations 259–61
 - foreign investor benefits 266–7
 - functions 266–7
 - non-precluded measures 276–7, 279, 334
 - systemic integration principle, and 272–6, 279
 - Type I obligations 258–9
 - Type II obligations 259–61
 - most favoured nation treatment
 - sovereign debt restructuring, and 130–31
 - national treatment guarantees 80–81
 - national treatment principle
 - collective action clauses 130–31
 - international investment law, and 80–81, 130–31
 - sovereign debt, conflicts 184–5, 189
 - necessary third party concept 344
 - necessity defence
 - capital flow measures 277–8
 - expropriation, in bank rescues 51, 207
 - financial crisis 51, 336–7
 - force majeure* defence, and 292–5, 308–9, 311–12, 332
 - holdout arbitration, and 78–9
 - internationally wrongful acts, and 277–8
 - investment standards, and 334
 - purpose 207
 - right to regulate, and 112
 - sovereign debt restructuring 112, 128
 - systemic integration principle, and 75, 337
 - no creditor worse off principle 237–9, 252–3
 - non-precluded measures 276–7, 279, 282, 289, 334

- obligation, arbitral interpretation 30
- odious debt theory 127–8
- Outright Monetary Transactions Programme 65–7
- Paris Club 135–6, 165
- Paulwelyn, Joost 270
- pecuniary loss *see* economic loss
- Peru
 - bank rescues, investor protection challenges 233–6
- police powers doctrine *see under* sovereign debt restructuring
- Ponzi schemes 41–2
- Principles on Responsible Sovereign Lending and Borrowing (PRSLBs)
 - binding nature and enforcement 176–7
 - co-responsibility principles 174–5, 187–8
 - debt management practices 172–3
 - development 161, 170
 - fiduciary duties, and 175–6, 185
 - fragmentation, influences on 171–3, 189–90
 - good faith principle, and 176
 - investor behaviour, and 187–8
 - legitimacy, influences on 173–7, 189–90
 - limitations 188–90
 - purpose 170–71, 189–90
- priority, rules of 72
- private creditors
 - financial crisis, state behaviour challenges 38–42
 - ISDS, validity as dispute settlement mechanism 42–5
- private debt restructuring, state powers 114–16
- private financial assistance, forms 123–4
- promissory notes, arbitral interpretation 36
- property rights
 - restriction measures, validity 251–2
 - right to enjoyment of personal property 251–2
- proportionality
 - investment standards, and 335–7
 - personal property rights restrictions 252
- protected investments
 - definition 27–30, 245–6
 - interpretation, arbitral practice 30–33
- proximity test, causation 223, 231–2, 250
- public financial assistance, forms 122–3
- public good defence 107
- public interest, personal property rights restrictions 251–2
- public purpose requirement, investment standards 335–7
- quasi-sovereign debt restructuring 116–18
- re-regulation 6–7, 24
- reasonableness, causation 223–4
- relative impossibility 290–94, 298–9, 312–13, 332
- right to regulate *see* state rights and responsibilities
- ring-fencing 52–3
- Romania
 - force majeure* defence 307
- rule of law 335–6
- Russian Federation
 - force majeure* defence 308
 - sovereign debt restructuring, regulatory powers 105–6
- Sax, Joseph 97–8
- scrutiny
 - central banks 83–4, 239
 - financial crisis, during 21
 - international investment agreement exemptions 21, 82
- Securities Markets Programme 65–6
- security entitlements, arbitral interpretation 30–31
- semi-public debt restructuring, state powers 116–18

- shareholder interests, as form of investment 29
- Single Resolution Board (SRB) 317, 323, 337
- sovereign debt, generally
 - bonds, role 136
 - debt management practices 136–7
 - international framework, lack 161–6
 - responsible lending principles 172–3
 - default, international law
 - implications 92–3
 - dispute settlement
 - collective action/ cram-down
 - clauses 44, 47–8, 77, 158–9
 - difficulties 136–7
 - forum shopping 43
 - holdout arbitration 46–8, 77–8, 180
 - ISDS mechanisms 42–5, 321–2
 - negative impacts 45–52
 - parallel proceedings 45, 48
 - pari passu* clauses 43
 - positive impacts 42–5
 - reform proposals 44–5
 - foreign investors, failure to meet obligations 168–9
 - international framework
 - cohesion, need for 161–6
 - limitations 161–2
 - investment, exclusion from definition 53–4, 94, 178–9
 - police powers doctrine 49–53, 91–4
 - Argentina, in 108–10
 - background 90–91
 - England and Wales, in 106–8
 - financial crisis, and 112–13
 - Germany, in 110–111
 - international law, and 96–9, 112–13
 - judicial rulings 90–92, 94, 99–114
 - justification for 98–9
 - modification, influences on 111–14
 - necessity defence 112
 - principle 96–9
 - private debt restructuring 114–16
 - Russian Federation, in 105–6
 - semi-public/ quasi-sovereign debt restructuring 116–18
 - standards, national interpretations 99–114
 - US, in 101–5
 - political influences 136
 - renegotiation procedures 135–6
 - responsible lending and borrowing principles (PRSLBs)
 - binding nature and enforcement 176–7
 - co-responsibility principles 174–5, 187–8
 - debt management practices 172–3
 - development 161, 170
 - fiduciary duties, and 175–6, 185
 - fragmentation, influences on 171–3, 189–90
 - good faith principle, and 176
 - investor behaviour, and 187–8
 - legitimacy, influences on 173–7, 189–90
 - limitations 188–90
 - purpose 170–71, 189–90
 - trends 76–7
 - Sovereign Debt Resolution Mechanism (SDRM) 76
 - sovereign debt restructuring
 - see also* Principles on Responsible Sovereign Lending
 - adverse consequences 89–90
 - applicable laws 136–7
 - collective action clauses
 - aggregated mechanisms 141–5
 - binding effect of majority decisions 131–2, 179–80
 - cram-down procedures, compared 148–9, 158
 - development 139–41
 - domestic regimes, and 132–4
 - European Stability Mechanism (ESM) 124–6, 143
 - generally 44, 47–8, 77
 - IMF promotion 140, 145
 - international recognition of restructuring measures 132–4
 - limitations 124–6, 131–2, 137, 143–4, 159, 165–6

- market practice 145–6
- minority creditor safeguards 153–4
- national treatment principle
 - 130–31
- negotiations principles 127–9
- procedural rules 129–30
- reform proposals 137–8
- retroactivity 133
- role 124–6, 134, 138
- single-limb voting mechanisms
 - 137–8, 148–9, 153–7
- substantive decisions 130–31
- traditional mechanisms 139–41
- trends 145–6
- two-limb voting mechanisms
 - 141–4
- unfair discrimination, prohibition
 - 157
- conflicting state roles 169–70
- contractual restrictions 127–8
- debt exchanges 130
- debtor-creditor negotiations
 - opening, principles 127–9
 - role 123–4
- deliberative approach 76–9
- domestic regimes, under 132–4
- expropriation, and 90–91, 93, 98,
 - 129, 178–9
- factors influencing 89–90
- fair and equitable treatment, and
 - 78–9, 126, 130, 185–7, 323–4
- fiduciary duties, and 175–6, 185
- good faith principle, and 79
- Greek debt crisis 47–8, 91, 320–21
 - collective action clauses 141–2,
 - 157, 321
- holdout arbitration 46–8, 77–8, 180
- international financial institutions
 - international investment law
 - conflicts 320–22
 - role 130–31
- international framework
 - coordination, lack 161–6
 - standards and practice 126–7
- international law conflicts 126–7
- investment arbitration
 - collective action clause claims
 - 154–7
 - generally 135–6
 - holdout arbitration 46–8, 77–8, 180
 - judicial proceedings 90–92, 94
 - legitimacy issues 167–70, 173–7
 - legitimate expectations, and 186–7
 - London and Paris Clubs 135–6
 - negotiations format 135–6
 - odious debt theory, and 127–8
 - principles 135
 - public interest role 167
 - purpose 89
 - repudiation, passive vs. positive 92–3
 - right to regulate (police powers
 - doctrine)
 - Argentina, in 108–10
 - background 90–91
 - England and Wales, in 106–8
 - financial crisis, and 112–13
 - Germany, in 110–111
 - international law, and 96–9,
 - 112–13
 - judicial rulings 90–92, 94, 99–114
 - justification for 98–9
 - modification, influences on
 - 111–14
 - necessity defence 112
 - principle 96–9
 - private debt restructuring 114–16
 - Russian Federation, in 105–6
 - semi-public/quasi-sovereign debt
 - restructuring 116–18
 - standards, national interpretations
 - 99–114
 - US, in 101–5
 - state rights 91–4
 - UNCTAD principles
 - background 15, 90–91, 161
 - purpose 15, 127, 157
 - workout measures 76–9
 - Sovereign Debt Tribunal 44
 - sovereign immunity, limitations 43
 - sovereign insolvency trends 121–2
 - state rights and responsibilities
 - co-responsibility principle 174–5,
 - 187–8
 - currency regulation 262–3
 - fiduciary relationships, and 175–6,
 - 185

- financial crisis, international law
 - breaches during 40–41
- foreign interests, injury to 217–18
- international institutions, conflicts
 - attribution 325–30, 346–7
 - conditional lending 326–7
 - EU investment framework 329–30
 - force majeure* defence 330–32
- internationally wrongful acts 174, 208, 218–19, 317–18
 - causal relationships, and 219–26, 290
 - damages, and 219–21
 - force majeure* defence 281–2, 289–91, 303–4, 308–10, 313–14
 - necessity defence 277–8
 - resolution decisions 328–9
- pecuniary loss 217–18
- private creditor challenges 38–42
- public good defence 107–8
- right to regulate 49–53, 91–4
 - arbitral vs. enterprise capacity of state 97–8
 - Argentina, in 108–10
 - background 90–91
 - England and Wales, in 106–8
 - financial crisis, and 112–13
 - Germany, in 110–111
 - international law 96–9, 112–13
 - judicial rulings 90–92, 94, 99–114
 - justification for 97–9
 - modification, influences on 111–14
 - necessity defence 112
 - principle 96–9
 - private debt restructuring 114–16
 - Russian Federation, in 105–6
 - semi-public/ quasi-sovereign debt restructuring 116–18
 - sovereign debt restructuring 91–4, 99–114
 - standards, national interpretations 99–114
 - US, in 101–5
- sovereign debt restructuring
 - conflicting state roles 169–70
 - legitimacy issues 167–70, 173–7
 - right to regulate 91–4, 99–114
- systemic integration principle
 - definition 73
 - fair and equitable treatment, and 78–9, 337
 - force majeure* defence, and 313
 - international economic law, and 72–5
 - investment standards interpretation 337–8
 - macroeconomic steering, and 73–4
 - monetary transfer provisions 272–6, 279
 - necessity defence, and 75, 337
 - parties, interpretation 273
 - pluralist understanding 74–5
 - principle 272–4
 - risks 73–5
- systemic risk
 - concept development 64
 - foreign direct investment 65
- systemically important financial institutions (SIFIs) 212–13
- third parties
 - acts of, causation 225, 227, 250–51
 - necessary third party concept 344
- Tinbergen, Jan 61–2
- title, arbitral interpretation 30
- too big to fail measures 52
- Trans-Pacific Partnership (TPP) 54–5
- Transatlantic Trade and Investment Partnership (TTIP) 55
- treaty interpretation
 - conflict of norms, definition 270–72
 - contracting out presumption 268–9, 279–80
 - IMF Articles of Agreement, incorporation 272–6
 - impossibility 293–4
 - investment institution influences 334–8
 - investment standards
 - deference 337–8
 - drafting 333–4
 - interpretation 334–8
 - proportionality 335–7
 - public purpose requirement 335–7

- rules 71–2
- systemic integration principle 72–5, 272–6
 - monetary transfer provisions, and 272–6, 279
- UNCTAD sovereign lending principles, and 15, 90, 127, 157
- UNCITRAL
 - Legislative Guide on Insolvency Law 148–9, 157
 - Rules on Transparency 340
- UNCTAD principles on responsible sovereign lending and borrowing
 - background 15, 90, 161
 - purpose 15, 127, 157
- unfair discrimination, prohibition
 - collective action clauses 157
 - cram-down procedures 149–50
 - generally 156
- United Kingdom regulatory powers
 - private debt restructuring 115–16
 - semi-public debt restructuring 116–17
- sovereign debt restructuring 106–8
- United States regulatory powers
 - private debt restructuring 101–5
 - semi-public debt restructuring 116–17
 - sovereign debt restructuring 101–5
- Uruguay
 - collective action clauses 141–3, 145
- Venezuela
 - force majeure* defence 307–8
- vulture funds 43
- Waibel, Michael 45
- White, Harry 60
- WTO
 - financial market liberalisation 24
 - investment treaty limitations 8–9
 - policy development 63
 - priority rules 72