Bank Failures and Bank Insolvency Law in Economies in Transition

Editors

Rosa M. Lastra
Centre for Commercial Law Studies, Queen Mary and Westfield College

Henry N. Schiffman

KLUWER LAW INTERNATIONAL
THE HAGUE – LONDON – BOSTON
# Table of Contents

*Foreword by Emmanuel Maurice*  
*Preface by Charles Goodhart*  
*List of Contributors*

## PART I  BANK INSOLVENCY IN ECONOMIES IN TRANSITION

1. **Banking Crises and the Macro-economic Context**  
   *Philip Molyneux*  
   1. Background 3  
   2. Emergence of Core Banks 4  
   3. A Note on the 'Too-Big-To-Fail' (TBTF) Doctrine 5  
   4. The Japanese Experience 7  
   5. A Perspective on European Bank Failure and the Policy Response 10  
   6. Candidates for Protection 13  
   7. Macro-economic Consequences of Banking Crises 14  
   8. Conclusion 17  
   9. References 18

2. **Crisis Management and Lender of Last Resort**  
   *Rosa M. Lastra*  
   1. Introduction 21  
   2. The 'Conventional Wisdom' on LOLR 22  
   3. Systemic Risk or Contagion Risk 23  
   4. Moral Hazard 26  
   5. The Breakdown of the 'Conventional Wisdom' on LOLR 27  
   6. Illegal State Aid? 30  
   7. The LOLR in a Changing Financial Environment 31  
   8. Conclusion 33  
   9. References 34

3. **Deposit Insurance for Economies in Transition**  
   *Geoffrey P. Miller*  
   1. Introduction 37
Table of Contents

2. A Brief Survey of Deposit Insurance Programmes 37
3. The Uneasy Case for Deposit Insurance in Transitional Economies 39
4. Optimal Design for Deposit Insurance in Transitional Economies 50
5. Alternatives to Deposit Insurance in Transitional Economies 56
6. Conclusion 66
7. References 67

Crisis Management and Lender of Last Resort and Deposit Insurance in Economies in Transition: Comment—Routes To Systemic Stability 71
Geoffrey E. Wood
1. Introduction 71
2. The History of LOLR 71
3. Why Such Stability? 73
4. Banks and Banking Systems 74
5. Supervision 75
6. Deposit Insurance 75
7. Overall Conclusions 77
8. References 77

PART II LEGAL ISSUES IN BANK INSOLVENCY IN ECONOMIES IN TRANSITION

4. Legal Measures to Manage Bank Insolvency in Economies in Transition 81
Henry N. Schiffman
1. Introduction 81
2. General Considerations 83
3. Key Provisions for Bank Insolvency Law 95
4. References 105

5. Government Intervention: The Inadequacy of Bank Insolvency Resolution—Lessons from the American Experience 107
Gerald N. Olson
1. The Recent American Context 107
2. The Inadequacies of Bank Insolvency Laws 110
3. Government Agonizing Over Capital Adequacy Standards 118
4. FDIC Control Over Insolvent Banks 134
5. The Repressiveness of the FDIC Superpowers: Complications from the Insolvency of the Federal Deposit Insurance Funds 138
Table of Contents

7. Special Treatment for Certain Banks: 'Too Big To Fail' 151
8. Bank Assets and 'Bad Banks': The 'Southwest Plan', the RTC and Other Government 'Bail-Out' Schemes 154
9. Concluding Observations 161
10. Examples of Repressiveness of FDIC 'Superpowers' 162
11. References 168

6. Treatment of Financial Contracts in Financial Institutions Insolvency 171

Joyce M. Hansen and Nikki M. Poulos
1. Introduction 171
2. Netting 171
3. Legal Netting Framework 174
4. Federal Insolvency and Bankruptcy Law 176
5. Rights of Counterparties to Financial Contracts 178
6. Pre-Emption Provisions of FDICIA 181
7. Depositor Preference 184
8. Agreements Enforceable Against the FDIC 184
9. Conclusions 186

PART III CASE STUDIES

7. Building a Strong Banking Sector in Transition Economies: The Case of Moldova 189

Warren Coats, Betsy Faulk and Walter Faulk
1. Preface 189
2. Introduction 189
3. Background 192
4. Key Features of Moldova's Strategy 194
5. Summary of Experience 197
6. Lessons 214
7. Banking Sector Strategy 216
8. Banking Strategy Update 227
9. References 267

8. The Venezuelan Banking Crisis 1994–1995 269

Ruth de Krivoy
1. Introduction 269
2. The Venezuelan Economy 269
3. The Financial System 270
4. The 1989 Economic Reform Programme 272
5. 1992–1993: The Lead Up to the Crisis 273
7. The Role of the Central Bank 277
8. The Aftermath 277
9. Recommendations 278
Table of Contents

PART IV INTERNATIONAL EFFORTS

9. International Co-operative Efforts and Implications for Law Reform 293
   Joseph J. Norton
   1. Introduction 293
   2. The Development of an International Programme for Financial Stability in Emerging Markets 294
   3. Regional Efforts in the Realm of Financial Stability 298
   5. Law Reform in the Search for Financial Stability and Sustainable Development in Emerging Markets 300
   6. Concluding Remarks 308
   7. References 309

10. Legislation Related to Bank Insolvency in the European Union 311
    Paolo Clarotti
    1. Introduction 311
    2. Winding-Up and Reorganization Measures for Credit Institutions 312
    3. Deposit Guarantee Schemes 318
    5. References 325

Index 327