Reform of Latin American Banking Systems

Editors

Ernesto Aguirre
Legal Department,
International Monetary Fund (Washington, DC)

Joseph Norton
Centre for Commercial Law Studies (London)
SMU School of Law (Dallas)
Table of Contents

Preface .............................................................................................................. xiii
List of Contributors ......................................................................................... xv

PART I THE STRUCTURE OF BANKING SYSTEMS IN LATIN AMERICA

1. Basic Reforms of the Banking Systems in Latin America: ....... 3
   Comparative Analyses, Trends and Outlook
   Ernesto Aguirre
   1. Introduction ................................................................. 5
   2. The Reform Process ..................................................... 5
   3. Basis Trends of the Reforms ......................................... 8
   4. Conclusions ................................................................. 24
   5. References ................................................................. 25

2. The Structure of Banking Systems: Case Studies ................. 27
   2A. Brazil ........................................................................ 29
       María Celina B. Arraes
       1. Introduction ............................................................. 29
       2. Issues that Influenced the Banking Structure in Brazil .. 31
       3. The Structure of the Brazilian Financial System ....... 38
       4. Conclusions ............................................................. 44
       5. References ............................................................. 44

   2B. Ecuador ....................................................................... 45
       Pedro Manuel Pérez
       1. Introduction ............................................................. 45
       2. Member Organisations and Institutions ................. 45
       3. Authorised Banking Activities ............................... 47
       4. Rules of Financial Prudence .................................. 48
       5. Creation of a Bank and a Financial Group ............. 49
       6. Investments in Off-Shore Financial Institutions .... 50
       7. Development of the Banks .................................... 51
Contents

2C. Venezuela (1) ................................................................. 53
Luis E. Rivero
1. Introduction .............................................................. 53
2. The Current Structure .................................................. 53
3. Strengthening the Supervisory Bodies .............................. 54

2C. Venezuela (2) ................................................................. 57
Nelson Ortiz
1. Introduction .............................................................. 57
2. An Investment Banker’s View of the ‘Umbrella Effect’ .......... 57
3. Conclusion ................................................................. 59

2D. Canada: A Comparative Study ........................................ 61
Anthony Maxwell
1. Introduction .............................................................. 61
2. Canadian Banking Overview ......................................... 61
3. OSFI Overview .......................................................... 63
4. Evolving Banking System Structures – the Supervisory
   Challenge ................................................................. 64

PART II INTEGRATION OF FINANCIAL MARKETS
AND THE HARMONISATION OF LAW

3. European Union Banking Legislation and the Central and
   Eastern European Countries ........................................... 69
Paolo Clarotti
1. Introduction .............................................................. 71
2. EU Achievements to Date .............................................. 71
3. The Experience with the CEE Countries ........................... 79
4. Conclusions ............................................................... 87

4. Integration and Harmonisation of Financial Law in Mercosur ........................................................................ 91
4A. The Integration Process in Mercosur ................................ 93
Enrique Mario Goberna
1. Introduction: What is Mercosur? .................................... 93
2. Negotiations in the Financial Sector ............................... 95
3. Outlook ................................................................... 101

4B. Legislative Asymmetry and the Integration of Banking in
   Mercosur: A Preliminary Approach .................................. 107
Eva Holz
1. Introduction .............................................................. 107
2. Mercosur ................................................................. 108
### Contents

3. System and Legislative Asymmetries between Mercosur Countries. An Approach: Access to the Banking System, Activities Financial Entities are Allowed to Conduct

4. Summary and Perspectives

![Page 113](image1.png)

**PART III RULES AND DISCRETIONARY POWER IN RELATION TO TROUBLED BANKS**

5. Rules and Discretionary Power in Relation to Troubled Banks: Case Studies

5A. United States

*Ricki Tigert Helfer*

- 1. Introduction
- 2. The PCA Programme
- 3. Conclusions

5B. Bolivia

*Jacques Trigo Loubière*

- 1. Introduction
- 2. Bank Standardisation and Strengthening Processes
- 3. Intervention Processes – The Bolivian Experience
- 4. Compulsory Liquidation Processes
- 5. Conclusions

5C. Colombia

*Andrés M. Carvajal*

- 1. Introduction
- 2. The Institutional Framework
- 3. Intervention in Entities with Liquidity Problems
- 4. Intervention in Entities with Solvency Problems
- 5. Final Considerations

5D. Mexico

*Gabriel Reyes*

- 1. Introduction
- 2. The Crux of the Issue
- 3. Selective Aspects
- 4. Implementation and Improvements of Norms
- 5. Conclusions
PART IV INTERNATIONAL TRENDS IN BANKING SUPERVISION

6. Recent Trends in Banking Supervision: Effectiveness of the Present Supervisory Paradigm – Problems and Solutions ... 171
   Raimundo Poveda
   1. Introduction: The Current Supervisory Paradigm .... 173
   2. Refining the Model .............................. 174
   3. Other Supervisory Models ......................... 174
   4. Recent International Trends Applicable to Banking Supervision: Problems and Solutions

7. Supervisory Trends: Case Studies ............................ 183
   7A. Guatemala ........................................ 185
   Robert A. Gutiérrez
   1. Introduction ...................................... 185
   2. Risks Related to Bank intermediation ........... 185
   3. Impact of Globalisation on Regulation and Supervision ... 188
   4. Necessary Conditions for Effective Bank Supervision ...... 190
   5. New Approach to Supervision ...................... 191
   6. Essential Principles for Effective Bank Supervision .... 193
      Issued by the Basle Committee
   7. Safety Net ...................................... 194
   8. Conclusion ...................................... 197

7B. Venezuela ............................................ 199
    Francisco V. Debera
    1. General Framework – The Basle Committee’s Basic Principles for Bank Supervision .... 199
    2. Different Approaches of Bank Supervision ............. 200
    3. Globalisation of the Financial Systems ................ 206
    4. Consolidated Supervision .......................... 207

7C. Colombia ............................................ 209
    Efrain Forero
## PART V  STRUCTURE OF THE INSTITUTIONS OF BANKING SUPERVISION AND REGULATION

8. The Experience of Developed Countries and the Possible Implications for Latin America and Other Developing Countries  
*Joseph J. Norton*

1. Introduction .................................. 215
2. The Basle Core Principles for Effective Banking Supervision .................................. 218
3. The Role of the Central Bank in Regulation and Supervision of Banks ................. 219
4. 'Functional' versus 'Institutional' Regulation ........................................... 224
5. The Single 'Mega' Regulator for the Financial Marketplace .......................... 227
6. The Core Principles and the Basic Pillars of a Regulatory and Supervisory System ........................................... 236
7. Conclusions: Implications for Banking Regulation and Supervision in Emerging Markets .............................. 239

## PART VI  EFFECTIVENESS OF THE PRESENT SUPERVISORY PARADIGM: PROBLEMS AND SOLUTIONS

9. Institutional Structures: Case Studies .................................................. 243
9A. Costa Rica ........................................ 245
   *Maggie Breedy Jalet*

1. Introduction ........................................ 245
2. Autonomy of the Agency Regulating and Supervising the Financial Entities .......... 246
3. Integration of Surveillance Functions to Carry Out the Surveillance of Financial Groups .......................... 247

9B. Argentina ........................................ 251
   *Miguel Angel Ortiz*

1. Introduction ........................................ 251
2. The Argentine Structures ........................................ 251
3. Co-ordinated Action and the 'Tequila' Crisis ........................................ 253
4. The Challenge of Conglomerates ........................................ 254
5. Supervision and Market Discipline ........................................ 255

*Patricio Bustamante*

1. Introduction ........................................ 259
2. Evolution of the Specialised Financial System .......... 259
3. Towards a Universal Banking Scheme .................. 262
4. Current Structure of the Financial System and the Supervisory Bodies ........ 265
5. More About the CNBV ................................ 274
6. Other Bodies ......................................... 279
7. A Single Supervisory Entity or Several? Advantages .... 280 and Disadvantages

### PART VII  CRISES OF THE ASIAN FINANCIAL SYSTEM AND ITS CONSEQUENCES FOR LATIN AMERICA

11. 'Asian Contagion' and Latin America .................... 285

*Joseph J. Norton*

1. Introductory Remarks .................................. 287
2. Recent International Finance Crises .................... 288
3. Implications of Recent East Asian Financial Crises .... 294
4. Law Reform and Financial Stability .................... 300
5. Law Reform in the Search for Financial Stability and Sustainable Development in Latin America ........ 308
6. Concluding Remarks .................................. 315

12. The Impact of the Asian Crisis on Latin America ........ 321

*SELA (The Permanent Secretariat of the Latin American Economic System)*

1. Introduction ........................................ 323
2. Risk Ratings: The Position of Latin American Countries ... 323
3. Foreign Trade: Poor Prospects ........................ 328

Index .................................................. 335