

Bank Insolvency

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Overview

- Background and need for international guidance
- UNIDROIT Project on Bank Insolvency: Process 2019-2022
- Content of the future instrument on Bank Liquidation proceedings
- Next steps



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Background

- Why are banks special?
- Global financial crisis (2008)
- Introduction of bank resolution regimes for banks that are systemic in failure (FSB 'Key Attributes of Effective Resolution Regimes for Financial Institutions', 2011)



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Need for international guidance on liquidation of banks

- Gap in international legal architecture:
small and medium-sized banks
- Differences in insolvency laws across
the world

Ordinary corporate insolvency laws

Modified corporate insolvency laws

Bank-specific insolvency laws



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Project on Bank Insolvency: Process



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- Proposals by the European Banking Institute and Banca d'Italia (2019); inclusion in Work Programme 2020-2022
- Institutional support; partnership Bank for International Settlements' (BIS) Financial Stability Institute
- Exploratory workshop (June 2021)
- Upgrade of priority level (Sept/Dec 2021)
- Establishment of Working Group



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Working Group on Bank Insolvency



- Chaired by Governing Council Member Stefania Bariatti (University of Milan)
- Ten expert Members
- More than thirty Observers (international and regional organisations, central banks, banking supervisors, deposit insurance agencies), incl. from the African continent
- Special working arrangements



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Sessions and intersessional work

First Working Group session

- 13-14 December 2021 (Rome & online)
- Issues Paper

Intersessional work: Thematic subgroups

- **Subgroup 1:** Scope and definitions, Objectives, Institutional models, Procedural and operational aspects
- **Subgroup 2:** Preparation, Grounds for opening insolvency proceedings, Tools, Funding
- **Subgroup 3:** Creditor hierarchy, Financial contracts, Banking groups, Cross-border aspects

Second Working Group session

- 11-13 April 2022 (Rome & online)
- Revised Issues Paper and three Subgroup Reports

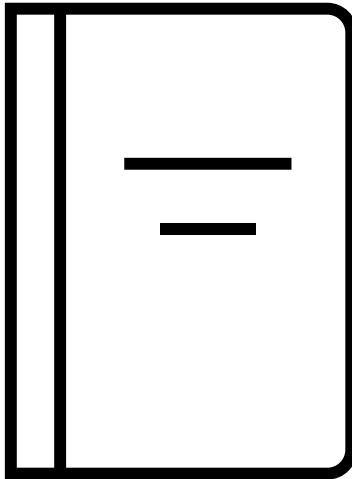


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Form

A guidance document, containing various chapters addressing key aspects of bank liquidation proceedings, setting out options and providing recommendations, where appropriate



Guide on Bank Liquidation Proceedings

Content

List of subtopics currently considered

- Scope and definitions
- Objectives
- Institutional models
- Procedural and operational aspects
- Preparation
- Grounds for opening insolvency proceedings
- Tools
- Funding
- Creditor hierarchy
- Financial contracts
- Banking Groups
- Cross-border aspects

Aim:

Helping countries make their bank liquidation frameworks more effective



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Scope and definitions

Subgroup

1

Scope (complement to existing instruments)

- Banks that do not meet the conditions for application of the applicable resolution framework
- Parts of a bank that are liquidated within a resolution process

Focus on traditional banks and other deposit-taking institutions

- Relevant questions: 'institution-focused' or 'functional' approach? Including FinTechs or not?
- Flexibility to apply the framework to other entities that carry out bank-like activities (deposit-taking, lending) provided they are included in the regulatory perimeter

Definitions

- E.g., 'bank', 'banking group', 'bank failure management', 'insolvency', 'liquidation'



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Content of the future instrument

- **Objectives:**
 - Value maximisation and depositor protection
 - Relevance of financial stability
 - Possible additional guiding principles
- **Institutional arrangements:**
 - Predominantly administrative *versus* predominantly court-based models – hybrid models?
 - Modular, outcomes-based approach (e.g., involvement of administrative authorities in the initial phase)
 - Judicial review and appeals rights
- **Procedural and operational aspects:**
 - Selection, appointment, remuneration of persons managing the liquidation process
 - Legal protection, accountability
 - Legal standing to petition for insolvency
 - Requirements for bank's management and liability



Content of the future instrument

- **Preparation:**

- Proportionality
- Advance planning?
- Cooperation among authorities
- Other preparatory actions (valuation, preparation for a transfer of assets and liabilities), confidentiality and public disclosure

- **Grounds for opening liquidation proceedings:**

- General considerations (e.g., inappropriateness of traditional grounds)
- Financial and non-financial grounds
- Interaction with revocation of the banking license

- **Tools and powers:**

- Atomistic liquidation
- Transfer to a private acquirer
- Other tools (e.g., bridge bank)
- Pros and cons depending on circumstances, cost-benefit analysis
- Safeguards

- **Funding:**

- Sources of funding (DIS)
- Purposes (pay-box, transfer)
- Constraints



Content of the future instrument

- **Creditor hierarchy:**
 - General principles
 - Depositor claims
 - Secured creditors
 - Subordination
- **Financial contracts:**
 - Enforceability of close-out netting or short stay?
- **Banking groups:**
 - Groups and other networks (e.g., cooperative banks, institutional protection schemes)
 - Group-level solutions?
- **Cross-border aspects:**
 - Recognition, support
 - Cross-border cooperation
 - Safeguards



Project on Bank Insolvency: Next Steps

Third Working Group session

- 17-19 October 2022, Brussels
- Ongoing: Cross-jurisdictional survey and work in subgroups

Fourth and fifth Working Group session

Spring 2023 and Autumn 2023

Finalisation

- Consultations
- Submission to Governing Council



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Thank you for your attention!
Any Questions?

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