# Bank insolvencies in Central and Eastern European legislation

Dr. Richárd Bódis presents us with an overview of certain aspects of the special regime applied in bank insolvencies in Central and Eastern European legislation, with a focus on the Czech Republic, Estonia, Hungary, Latvia, Lithuania, and Poland[1]

FINANCIAL INSTITUTIONS IN GENERAL HAVE A VERY SPECIAL ASSET STRUCTURE AND OCCUPY A UNIQUE ROLE WITHIN THE ECONOMY

**The financial crisis of 2008 affected the economic players more than ever, with the winding-up of a large number of financial institutions worldwide. Due to the specialisation of banks among other legal entities, insolvency is a scenario to be avoided, with restructuring being the more favourable solution.**

The EU established a framework for the recovery and resolution of financial institutions in economic distress by introducing the Bank Recovery and Resolution Directive (BRRD).[2] Even if in a number of cases the Member States were able to intervene in time with the help of the BRRD, sometimes the worst-case scenario of insolvency is inevitable.

## Legal framework: general remarks

Financial institutions in general have a very special asset structure and occupy a unique role within the economy, thus requiring special know-how. This is mainly derived from the three characteristic functions of a bank:[3]

- Banks hold highly liquid liabilities (deposits payable on demand), while they generally hold long-term loans on the asset side (which are difficult to sell or to borrow against).
- Services of banks are fundamental to the functioning of a state's economy.
- Banks translate monetary policy into the economy.

Therefore, the usual methods applied in insolvencies might not be effective, and it is in every state's interest to maintain a legal framework aimed at smooth winding-up of insolvent financial institutions.

Since financial services are highly regulated, it is no surprise that winding-up financial service providers is thoroughly regulated as well. The complex structure of banks and the large amount of assets justify deviating from the general selection process of IPs. Most jurisdictions refer bank insolvency cases to a special group of IPs, sometimes even to the competent regulation authority directly.

Internationally, an almost endless number of solutions is applied regarding the legal framework, with a focus on who is to be in charge of bank insolvencies, what preconditions are to apply for opening proceedings, what special rights should the creditors be entitled to, and so on. We should like to provide a short description of the key specialties in the countries reviewed, subject to an overview as follows.

## Domestic overview

### *How is it regulated?*

In most of the jurisdictions reviewed, the act on financial enterprises sets special rules on the insolvency of financial institutions, deviating from the general act on insolvency proceedings. An exception is the Czech Republic, where rules on the insolvency of banks are incorporated in the act on insolvency proceedings.

### *How is the IP appointed?*

In certain countries – such as Lithuania and Poland – the general method of appointing the IP applies. Thus, in Lithuania the IP is selected randomly by IT-driven automatic means.

In the Czech Republic and Latvia, insolvency administrators holding a special permit should be appointed as IPs.

In Estonia and Hungary special organisations affiliated with the domestic financial supervisory authority enjoy exclusive competence to act as an IP in cases of bank insolvency.

### *What are the key specialties?*

One of the key specialties is that in some jurisdictions only the financial supervisory authorities are entitled to initiate bank insolvency proceedings. This applies to Hungary, Latvia, and Lithuania. In these jurisdictions the supervisory authority should therefore be informed about petitions for insolvency filed by other creditors.

In Estonia creditors are also entitled to file for the insolvency of a bank, with previous approval of the financial supervision authority, while in the Czech Republic, besides creditors, the debtor bank itself is also entitled to file for insolvency.

According to the Polish model, a bank must notify the supervisory authority if it becomes insolvent, in which case the authority decides on acquisition of the debtor by another bank or on filing a petition for insolvency.

The BRRD was implemented in all jurisdictions providing a special regime for restructuring financial institutions. However, in Hungary and the Czech Republic, general proceedings aiming at restructuring a bank – existing parallel to the BRRD – cannot be initiated.

Furthermore, claims by creditors arising from deposits placed with financial institutions should not only be satisfied in a privileged manner in all jurisdictions, but also special deposit guarantee schemes[4] apply, securing deposits to the amount of at least €100.000.

## Conclusion

All the jurisdictions subject to review apply special procedures in cases of bank insolvencies. These are closely supervised or controlled by the domestic supervisory authorities. The EU's current focus in connection with financial institutions in financial difficulties is on restructuring proceedings, providing special guidelines for the supervisory authorities to monitor the financial stability of banks, and also providing the necessary tools for intervention. The BRRD, however, does not provide for harmonised rules on financial institutions where restructuring fails.

As our research has shown, significant differences exist in the jurisdictions reviewed regarding proceedings aiming at winding-up an insolvent bank, such as IP selection methods or eligibility for applying for insolvency. Insolvency proceedings for groups of companies in the financial sector need further harmonisation as well.

A review of the current resolution mechanism due by the end of this year might come to conclusions on these issues as well.[5] ■

**IN SOME JURISDICTIONS ONLY THE FINANCIAL SUPERVISORY AUTHORITIES ARE ENTITLED TO INITIATE BANK INSOLVENCY PROCEEDINGS**

**Footnotes:**

1 Contributing authors are: Frank Heemann, partner, bnt attorneys in CEE (Vilnius), Karl Järvelaid, junior associate, bnt attorneys in CEE (Tallinn), Karel Kotrba, junior associate, bnt attorneys in CEE (Prague), Jarosław Sobstel, junior associate, bnt attorneys in CEE (Warsaw), Dr. Arnas Stonys, senior associate, bnt attorneys in CEE (Vilnius), Dominika Wagrodzka partner, bnt attorneys in CEE (Warsaw), Niklāvs Zieds, junior associate, Klauberg BALTICS (Riga)

2 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.

3 Eva Hüpkes, Insolvency – "Why a special regime for banks?", CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW, VOL. 3 (International Monetary Fund, Washington DC, 2003).

4 Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

5 Further harmonising EU insolvency law from a banking resolution perspective? link: www.europarl.europa.eu/RegData/etudes/BRIE/2018/614514/IPOL_BRI(2018)614514_EN.pdf