



# INSOLVENCY LAW ACADEMY

# BANK INSOLVENCY

# THOUGHT LEADERSHIP

Insolvency Law Academy has taken leadership in this area and started a number of initiatives to help in preparing the policy making and development of eco-system for a robust insolvency law for banks and financial institutions.

With the progress of The International Institute for the Unification of Private Laws (UNIDROIT) work on Bank Insolvency, discussions on the need for a legislation to deal with insolvency of financial institutions have gained momentum in India. Some policy decisions in this area are expected in the near future. The Government of India and the Reserve Bank of India would be required to make many significant policy choices.

The debate regarding the necessity of special rules for banks is not new, but was already under way early in the 20th century when a wave of bank failures swept across the United States and Europe. The banking crisis of the 1930's led to the recognition that some form of oversight and control was necessary to protect national economies from financial instability and individual depositors against losses. There were 532 bank failures around the globe from 2008 through 2019. From 2020, there have been six failures until June, 2023. After the 2008 global financial crisis, the international community has developed a legal framework to manage the failure of "too big to fail" financial institutions in a way that preserves financial stability. These efforts had culminated in revamped legal infrastructure for the international banking system. However, much progress remains to be made. In particular, there is no international guidance on how to deal effectively with the failure of small and medium-sized banks. The global banking regulatory architecture left a part untouched. Where financial distress concerned a bank which was too small to cause systemic damage, or an already insolvent financial institution, which needed to be liquidated without any additional resolution, there exists neither a set of international standards nor mechanisms for adequate coordination and cooperation. This last stage relating to bank liquidation is left purely to domestic legislation, which often differed substantially from country to country. This situation -it was argued- was creating problems in practice, had a potential for important financial disruption (mainly, but not only, at domestic level), and could be addressed by a global institution, which was not necessarily part of the global financial ecosystem, producing an international standard.

UNIDROIT project on Bank Insolvency aims at addressing the current gap in the international legal architecture, by developing an international soft law instrument covering the key features of bank liquidation proceedings. The preparation of a guidance document on Bank Insolvency is expected to be adopted by 2024. The work is conducted in cooperation with and with the support of the BIS Financial Stability Institute.

In India, the Financial Resolution and Deposit Insurance (FRDI) Bill was introduced in the Indian Parliament in the year 2017 to deal with insolvency of firms in the financial sector. In 2018, the Bill was withdrawn owing to multiple reasons. In order to provide a temporary mechanism for the resolution of financial service providers under the Insolvency and Bankruptcy Code, 2016. In the meantime, discussion on the need for insolvency law for financial institutions has continued albeit passively. Recently, with progress of UNIDROIT work, discussions on the need for a legislation to deal with insolvency of financial institutions have gained momentum. Some policy decisions on this are expected in the near future. While there are many nuances of the insolvency framework for insolvency of financial institutions which will be discussed at an appropriate stage, the government would be required to make many significant policy choices.

**A substantial part of the work of the Committee will be presented at the ILA Annual Conference scheduled from 9th to 11th February, 2024.**

# COMPOSITION OF THOUGHT COMMITTEE

Insolvency Law Academy has constituted a Thought Committee under the chairmanship of Mr. T.K. Viswanathan, former Law Secretary, Government of India, and the Chairman of Bankruptcy Law Reforms Committee to undertake :

- RESEARCH AND STUDIES
- LEAD THE DEBATE ON THE SUBJECT
- ENGAGE WITH THE STAKEHOLDERS
- PREPARE POLICY BRIEF
- PRESENT IT TO THE POLICY MAKERS



**T.K. VISWANATHAN**  
(Chairman)

Chairman, Bankruptcy Law, Reforms Committee



**ABIZER DIWANJI**  
(Member)

EY India Financial Service Leader, Ernst & Young



**BAHRAM N. VAKIL**  
(Member)

Partner, AZB & Partners



**CYRIL SHROFF**  
(Member)

Managing Partner, Cyril Amarchand Mangaldas



**DR. M.S. SAHOO**  
(Member)

Distinguished Professor, NLU, Delhi; Former Chairperson, IBBI, National Law University, Delhi



**N S VISHWANATHAN**  
(Member)

Former Deputy Governor, Reserve Bank of India



**DR. NEETI SHIKHA**  
(Ex Officio Member)

Lecturer, University of Bradford



**SUMANT BATRA**  
(Member)

President Insolvency Law Academy, India



**SANJEEV PANDEY**  
(Member)

Consultant, Centre For Advanced Financial Research And Learning, Reserve Bank of India



**PROF. WAN WAI YEE**  
(Ex Officio Member)

Adjunct Professor (Research and Internationalisation), School of Law, city of Hong Kong, Singapore

The Chairperson may, in consultation with Insolvency Law Academy, invite any other expert from India or abroad as a special invitee to the Thought Committee. He may form sub-group(s) of the Thought Committee to carry out any particular task assigned to it.

# CHAIR ON BANK INSOLVENCY

**A Chair on Bank Insolvency ('Chair') under the Regional Centre for Insolvency and Bankruptcy, Hyderabad will be constituted and for a term of three years. The Chair is a joint venture of ILA and ICFAI Law School. The physical seat of the Chair will be mutually decided by the Steering Committee.**



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