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THE LEGAL LANDSCAPE OF INSOLVENCY OF BANKS AND FINANCIAL INSTITUTIONS: AN IMPERATIVE TO FOSTER SUSTAINABLE FINANCIAL GOVERNANCE

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ABSTRACT:

Banks and Financial institutions are integral to the country's economic framework. They ensure consistent economic growth and maintain the financial stability of the domestic and global economy. Insolvency of banks not only affects creditors but also disrupts the entire economic landscape and brings it to a complete standstill. The Insolvency and Bankruptcy Code of 2016 formulates a robust mechanism for the Corporate Insolvency Resolution Process and Liquidation mechanism, however, the code does not apply to banks and other Financial Service Providers. Insolvency of Banks is dealt with under the Banking Regulation Act of 1949. This article critically analyses the lacunae in the existing legal architecture and, by comparative jurisprudence, emphasizes the need for developing a robust legal framework to resolve bank insolvencies that balance the competing interests of stakeholders.

The paper explores the interplay between domestic and international legal regimes, focusing on key frameworks such as the Insolvency and Bankruptcy Code (IBC) in India, the Financial Stability and Development Council (FSDC), and international standards set by the Financial Stability Board (FSB) and the Basel Committee on Banking Supervision. It discusses how these legal frameworks have evolved in response to major financial crises, including the global financial crisis of 2008 and subsequent banking

failures, shaping current insolvency practices and regulations.

The article also attempts to evaluate and analyze the regulatory structure envisaged in The FRDI (Financial Resolution and Deposit Insurance) Bill of 2017. It also attempts to throw light on resolution tools such as “Bridge Service Providers”, Specified Service Providers, “Bail in”, etc, and their effectiveness in resolution. It also highlights the legislative guide by the UNIDROIT Working Group of Bank Insolvency, which provides guidelines for bank liquidation. This article proposes a comprehensive draft law that endeavors to address the complexities of Bank Insolvencies.

The study further highlights the role of regulatory bodies such as RBI and its global counterparts in preventing insolvencies of financial institutions and banks. Through examination of legislative developments, case laws, and case studies, this research underscores the importance of the stability of financial institutions for stable and sustainable financial and economic growth.

KEYWORDS: Insolvency and Bankruptcy Code (IBC), Bridge Service Providers, Bail-in, UNIDROIT Working Group of Bank Insolvency, FRDI (Financial Resolution and Deposit Insurance) Bill of 2017.

INTRODUCTION:

**வாரி பெருக்கி வளம்படுத்து உற்றவை
ஆராய்வான் செய்க வினை.**

As Thirukkural rightly emphasizes, a prosperous nation is one where wealth is nurtured and preserved by wise leadership, and the leader is duty-bound to prevent any potential risks to the wealth. Grounded in the normative financial principles articulated in the Thirukkural¹, this paper deals with one of the crucial institutional frameworks of the financial system, i.e., the Banking Sector and other Financial Service

¹ ChatGPT. (2025, April 6). *Grounded in the normative financial principles articulated in the*

Thirukkural... [Large language model]. OpenAI. <https://chat.openai.com/>.



Providers. Banks are inevitably the backbone on which the stability of the economy and a sound financial system is built.

Failure of financial institutions or banking meltdowns stagnates the entire economy. With Widespread Globalization, Bank failures not only impact the domestic economy but also have a ripple effect on the entire global economy, disturbing the foundations of the global financial systems, Banks collapsing has triggered two major financial catastrophes in recent times which damaged worldwide economic systems severely: first being the Great Depression during the 1930s and later the Great Recession starting in 2008. Major financial institution collapses, together with public trust breakdowns and mass deposit withdrawals, caused sustained economic stagnation and credit freezes, and investment decline, followed by rising unemployment rates. The 1930s witnessed approximately 9000 bank failures, which led to total savings losses that forced a deflationary downward economic cycle. The 2008 financial crisis revealed how the global banking systems had grown interconnected, thus spreading bank insolvency worldwide after Lehman Brothers collapsed and the housing market collapsed in 2008.

Post the 2008 Recession, the Financial Stability Board has formulated the International Key Attributes, 2014, underpinning the effective resolution regime for Financial Institutions. This also underlines the resolution of cross-border insolvencies.

India, since its LPG reforms in 1991, is one of the budding economies in the world. Despite the international and domestic shocks, there has been steady economic growth in the country. Banks and other financial institutions are under the direct regulatory control of the Central Bank, i.e., the Reserve Bank of India. The RBI, through its Monetary Policy tools like Cash Reserve Ratio, Statutory Liquidity Ratio, Credit Rationing, etc., aims to maintain stability and prevent overwhelming risk taking by Financial Institutions. Despite these regulatory measures, Banks tend to fail.

In India, there is no consolidated framework for governing the resolution of Bank Insolvencies. The framework is scattered across legislation like the Banking Regulation Act, 1949, and the Financial Resolution and Deposit Insurance Bill, 2017, which was later withdrawn, and the Insolvency and Bankruptcy Code, 2016, which was extended to Financial Service Providers vide rules by the Ministry of Corporate Affairs.

With Internationalization, it is germane to formulate an international instrument that governs cross-border insolvency. The UNIDROIT Working Group Discussions seek to resolve structural weaknesses in the existing international legal regime governing Bank Insolvencies by formulating a legislative guide. With India assuming chairmanship and the RBI conferred with observer status, it is pertinent to analyse the legislative guide and its impact on the domestic law regime.

This paper throws light on the existing legal framework governing the Insolvency of financial institutions, the lacunae in it, and also examines the international framework in cross-border resolution action as formulated in the UNIDROIT Working Group, 2024.

BANK INSOLVENCY UNDER THE BANKING REGULATION ACT AND IBC

Under Section 38(3), an application for the winding up can be filed by the RBI of banking companies in the appropriate jurisdiction (where the registered office is situated) on the following grounds:

1. The bank has failed to comply with the requirements of Section 11 of the Act, i.e., maintenance of cash reserve ratio, etc.
2. Disentitled to carry on banking business by S.22
3. Prohibited from receiving fresh deposits by the RBI under S.35(a)
4. Continuance of Banking Business is detrimental to Public Interest
5. Failure of the scheme of amalgamation or reconstruction promulgated by the RBI



6. The Financial Statements of the Bank indicate that it is unable to pay debts.

If any lawful demand is not met within 2 days, the bank is deemed to be unable to pay debts². Upon perusal of the report, the High Court may grant a moratorium period of 6 months; if the company doesn't revive within such period, the banking company is wound up. The Reserve Bank of India is appointed as the official liquidator under Section 39, who has to file a preliminary report within 2 months of the winding-up order³. A 15-day notice is then sent to all preferential, secured, and unsecured creditors⁴. The court may dispense the meeting with the Committee of creditors⁵, if it appears to the court that such meeting would cause delay in the proceedings. Within 3 months from the date of winding up order, the official liquidator is to make arrangements for payment⁶ in the following order”

- i) Preferential payments
- ii) Depositors of Saving Accounts
- iii) Other Depositors
- iv) Secured Creditors
- v) Unsecured Creditors

The RBI is empowered under Section 45 to apply to the central government for a moratorium period of 6 months, when a banking company is unable to discharge its liabilities. The RBI formulates a scheme of Reconstruction or amalgamation within the said period in the interest of the public and depositors. This scheme entails the following:

1. Constitution, name, registered office, capital structure, Assets and liabilities of the entity post amalgamation.
2. It also outlines the entire transfer details of the assets and liabilities and the terms and conditions of transfer.

3. It can reduce the shareholders' rights and make provision for the appointment of the new board of directors, additionally specifying their tenure and powers.
4. Transfer of employees and payment of stakeholder claims.

Subject to modifications and objections of the affected parties, the scheme is placed before the Central Government for sanction. Upon Sanction, the scheme assumes binding effect.

Despite the regulatory measures by the RBI and Statutory Sanctions, banks continue to fail, and the resolution mechanism proves to be ineffective in certain cases. One such instance is the failure of the Punjab and Maharashtra Co-operative Bank in the year 2019, the co-operative bank fabricated the financial statements, and the actual figure of NPA was not disclosed. High-risk lending to a single entity without any collateral, the HDIL group, led to the liquidity crisis. Facing severe regulatory restrictions, the bank was amalgamated into Unity Small Finance Bank; however, depositors only to Rs. 5 lakhs were protected under the Deposit Insurance and Credit Guarantee Corporation, and larger deposits are to be repaid in a phased manner within 10 years. This has led to an unreasonable delay in repayment. The PMC case has become a case study in risk, governance failure, and regulatory gaps. It also pushed RBI and the government to rethink the cooperative banking structure and explore more secure amalgamation models rather than abrupt liquidation.

Another notable incident is the Yes Bank Crisis in 2020, wherein the bank had issued higher bad loans to stressed companies, with the assets depreciating and poor loan recovery, the

² Avatar Singh, Banking Law and Negotiable Instruments 95(EBC Publications, Lucknow , 4th edn., 2018, Reprinted 2022)

³ The Banking Regulation Act, 1949(Act 10 of 1949), S. 41

⁴ The Banking Regulation Act, 1949(Act 10 of 1949) S. 41A

⁵ The Banking Regulation Act, 1949(Act 10 of 1949), S.42

⁶ The Banking Regulation Act, 1949(Act 10 of 1949), S. 43-A



withdrawal rate was at an alarming rate, leading to the inevitable failure of the bank.

The RBI issued a moratorium for 3 months and took complete control over the bank. The authorized capital structure was increased to 5000 crores from 800 crores,⁷ and SBI led a bailout and acquired 49% of the stake, followed by a follow-on public offering. Yes Bank executed crucial capital-raising measures that strengthened the bank's financial stability and led to its recovery after the crisis.

Resolution tools envisioned in the Banking Regulation Act, 1949, although effective, are limited to amalgamation and reconstruction. Through these tools, the resultant entity faces a financial burden, and the repayment of depositors is a concern.

India's legal infrastructure for resolving corporate insolvency is centered on the Insolvency and Bankruptcy Code, 2016 (IBC), a comprehensive statute that addresses the reorganization and liquidation of distressed companies. However, the IBC does not automatically extend to Financial Service Providers (FSPs), such as banks, insurance companies, pension funds, and Non-Banking Financial Companies (NBFCs), primarily due to their systemic importance and the potential for broader economic disruption in the event of failure (Ministry of Law and Justice, 2016). To address this limitation, Section 227 of the IBC authorizes the central government to include specified categories of FSPs under its purview in consultation with sector-specific regulators like the Reserve Bank of India (RBI).

To enhance oversight of NBFCs in particular, the RBI Act was amended in 2019, empowering the central bank to initiate measures such as restructuring, amalgamation, or division of stressed NBFCs (Reserve Bank of India, 2019). Despite this progress, other financial entities like insurers and pension funds still lack a tailored resolution mechanism. To bridge

this gap, the Ministry of Corporate Affairs (MCA) issued special rules in 2019—formally known as the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules. These rules provide a modified insolvency process for select FSPs, particularly focusing on systemically important NBFCs (MCA, 2019).

A key distinction from typical corporate insolvency procedures is that only the appropriate regulator can initiate proceedings against an FSP, preserving regulatory control over potentially sensitive institutions. Once admitted, an Administrator is appointed to manage the organization, and legal proceedings against the entity are suspended during the resolution process. A Committee of Creditors (CoC) is formed to evaluate resolution plans, which must adhere to both the IBC and applicable sectoral guidelines. If the regulator does not object within 45 days, the plan is considered approved. The Administrator may also consult an advisory panel, and the entire resolution process must be completed within the IBC's standard timeline of 330 days. If no viable plan is approved, the FSP enters liquidation, during which the regulator can offer input, and asset distribution follows the IBC's waterfall mechanism with necessary adaptations.

Although the FSP Rules offer a functional short-term approach to handling insolvency in select financial institutions, they are limited in scope and were never intended as a permanent solution. The situation highlights the need for a comprehensive and inclusive legal framework that can systematically address distress across the entire spectrum of financial service providers while maintaining financial stability.

⁷ Legal Complexities in Insolvency of Banking Companies, Nov. 19, 2022, Available at

<https://lawbhoomi.com/legal-complexities-in-insolvency-of-banking-companies/>. (April 7, 2025).



RESOLUTION TOOLS UNDER THE FRDI BILL:

With the 2008 financial crisis and the recommendations of the FSA Key Attributes, 2014, the need for a separate and comprehensive framework for the resolution of insolvency for Financial Service Providers was necessitated. This was further stressed in the RBI Report of the Working Group on Resolution Regime for Financial Institutions, 2014,⁸ and the report of the Draft Code on Resolution of Financial Firms by the Ministry of Finance, 2016, recommended the formation of FRDIC and led to the development of the Financial Resolution and Deposit Insurance Bill, 2017. The Financial Resolution and Deposit Insurance Bill, 2017 (FRDI Bill) presented a new framework to govern financial institutions along with deposit insurance measures while providing specific guidelines for resolving bankrupt financial entities.

The provisions of the FRDI Bill were designed for banking distress resolution because they operated alongside the Insolvency and Bankruptcy Code, 2016 (IBC). The FRDI Bill, together with the IBC, formed a complete framework that was predicted to strengthen financial stability throughout the Indian economy.

The Indian Government implemented the Financial Resolution and Deposit Insurance (FRDI) Bill 2017 to handle financial institution resolutions, including banks and insurance companies, plus non-banking financial corporations, during times of crisis while protecting consumers and preserving financial stability, and reducing public expenses. The Resolution Corporation functioned as an autonomous regulatory entity responsible for monitoring financial entities, where classification occurred based on risk factors from low to severe, and its role involved working together with RBI, along with SEBI, IRDAI,

and PFRDA, to develop prompt resolution frameworks. The Resolution Corporation would hold extensive authority along with management of deposit insurance systems and creation of resolution plans, together with options for mergers and asset transfers, and bridge service providers and liquidation, along with the discretionary bail-in provision to execute liability adjustments through conversion to equity or alternative instruments. Public experts expressed critical opposition towards the Bill during its review period because it weakened depositor protections and failed to define deposit insurance thresholds while also raising concerns about the bail-in provision. The strong opposition to the Bill led to its cancellation in 2018, even though its main issues persist in current discussions about Indian financial sector stability and regulatory change.

BAIL IN AS A RESOLUTION TOOL:

The bail-in procedure helps troubled financial institutions become solvent through debt-to-equity conversions or reduced obligation amounts, which enables them to prevent required external taxpayer bailouts. Regulation authorities obtained resolution capabilities under the FRDI Bill through the implementation of powers to make creditors and substantial depositors contribute funds toward resolution expenses (FRDI Bill, 2017). The bail-in provision under the Financial Stability Board's Key Attributes for Effective Resolution Regimes gained public concern in India because of its theoretical alignment with best international practices. The potential negative effect on depositor trust presented the main difficulty for this approach. Public confidence in banks faced potential deterioration, according to critics, despite deposit insurance retention because resolution authority discretion regarding protected deposits could not be fully

⁸ Understanding the cross-border aspects in bank insolvency: UNIDROIT & India, February 12, 2024, available at <https://www.amsshardul.com/insight/understanding->

[the-cross-border-aspects-in-bank-insolvency-unidroit-india/](https://www.unidroit-india.org/).



understood by retail depositors⁹ (Reddy, 2018). A challenge emerged due to unclear thresholds and triggers that defined when bail-in execution mechanisms would impact depositor funds. Financial literacy remained low while household savings formed the main pillar of banking activities in this country, which produced major social and political challenges when considering bail-in implementation. The Bank Recovery and Resolution Directive (BRRD), which introduced the bail-in mechanism, became a part of European Union financial sector reforms in 2014 after the 2008 crisis. The new approach utilizes bank funds to absorb failure costs, thereby preventing moral hazard phenomena while promoting better financial stability¹⁰ (European Parliament & Council, 2014). The directive provides €100,000 insurance coverage for deposits; however, retail investors and uninsured depositors from the middle class are exposed to possible losses. The resolution of Banco Popular in 2017 revealed a severe vulnerability because many retail bondholders lost all their assets, according to Enria (2019)¹¹. The participation of retail investors within bail-ins becomes problematic because these stakeholders usually demonstrate lower financial capabilities and lesser risk understanding compared to institutional stakeholders (Avgouleas & Goodhart, 2017)¹².

Complex hierarchical creditor systems combined with varying implementation practices in different member states create problems for effective resolution, which can trigger banking system confidence issues. The EU's bail-in tool experience in financial markets highlights the necessity of a more detailed method to use bail-in tools when middle-class savings make up a significant part of banking systems.

UNDROIT LEGISLATIVE GUIDE ON CROSS-BORDER INSOLVENCY:

At the beginning of the UNIDROIT Legislative Guide on Bank Liquidation, the authors explain why dedicated banking laws need to exist because of banks' distinct operational requirements. Banks function under public trust because they need maturity transformation and leverage with short-term funding to operate, yet these elements make them more vulnerable to liquidity crises that can trigger systemic contagion. The Guide establishes that corporate insolvency laws fail to address bank failure cases because procedural delays and insufficient depositor protection capabilities, and broader financial stability risks make such systems ineffective. The Guide functions in countries across the economic development spectrum because it meets the requirements of both emerging and advanced economies with existing resolution standards, including the FSB Key Attributes of Effective Resolution Regimes and the UNCITRAL Model Law on Cross-Border Insolvency. The Guide implements core legal frameworks which apply principles of legal certainty combined with due process, as well as predictability and transparency and efficiency, and proportionality. The objectives of the Guide focus on reducing value destruction in financial institutions as well as safeguarding public trust in banking sector institutions while preserving essential banking operations during liquidation and encouraging an international collaborative framework.

1. Institutional Arrangements

The chapter outlines in depth which institutions need to be established for implementing an effective bank liquidation framework. Three basic kinds of

⁹ Reddy, Y. V. (2018). *Concerns on FRDI Bill and Bail-In Clause*. Economic and Political Weekly, 53(3), 10–12.

¹⁰ Avgouleas, E., & Goodhart, C. A. E. (2015). Critical reflections on bank bail-ins. *Journal of Financial Regulation*, 1(1), 3–29. <https://doi.org/10.1093/jfr/fju009>

¹¹ Enria, A. (2019). *Resolution of Banco Popular: lessons learned*. Single Resolution Board. <https://www.srb.europa.eu>.

¹² European Parliament & Council. (2014). *Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD)*. Official Journal of the European Union.



institutional systems - administrative, judicial, and hybrid - exist under inspection. A Designated Liquidation Authority (DLA) must receive statutory powers while operating independently as per the Guide recommendations to undertake failed bank liquidations. The Designated Liquidation Authority exists independently, but it could also be integrated into one of several financial safety net institutions, including central banks and deposit insurance corporations, and financial supervisory authorities. The essential framework of bank liquidation includes specific governance structures and supervision through parliament as well as independent audits and strong internal control systems. The chapter explains how fiduciary standards and ethical codes, and conflict-of-interest protocols apply to court-appointed or administrative liquidators during their licensing process. This essay details the operational roles of creditor committees and advisory panels, and information management units that serve as supporting bodies. Efficient coordination between the DLA and the resolution authority, and the fiscal authorities stands as the key factor for success according to the implementation strategy.

2. Procedural and Operational Aspects

The Guide outlines every step and operational plan required throughout the process of bank liquidation management. A supervision entity at first submits the petition for liquidation while authorities determine the applicable court or decide through their administrative capabilities to issue liquidation orders that must inform all stakeholders of this process. The operational guidelines of the Guide establish a complete process for liquidation entry, which mandates essential procedures like liquidator selection and liability freeze, and asset reporting, besides notifications to all bank stakeholders and counterparty action suspension. The guideline requires the implementation of asset management registers together with real-time MIS reporting systems, along with standardized documentation templates. Systemic risk assessment and identification of essential banking operations requires the implementation of Preliminary Impact Assessments

as per guidelines. The finance sector promotes efficiency by implementing automated claims processing systems and blockchain-based asset tracing alongside e-government tools and AI-driven document analysis and automated claims processing systems. Transparency measures include regular publication of progress reports together with creditor meetings and public access to public registries according to the guidelines.

3. Grounds for Opening Liquidation Proceedings

The chapter extensively explains all possible circumstances that trigger the start of a liquidation process. The guide divides the basis for opening liquidation proceedings into two categories, which include insolvency-based and regulatory-based standards. The insolvency-based grounds of liquidation include balance sheet insolvency, which means liabilities surpass assets, as well as cash-flow insolvency, where debts cannot be paid when they become due. Regulatory triggers encompass persistent non-compliance with prudential norms (e.g., capital adequacy, liquidity coverage ratio), withdrawal of the banking license, and a formal determination of non-viability. The Guide promotes objective conditions based on transparent quantitative metrics to include CET1 ratios along with leverage ratios and stress test outcomes for support. The regulatory framework includes initial assessment by administrators alongside consultations with stakeholders who have the right to submit appeals during the process. Early intervention measures alongside resolution triggers and liquidation thresholds interact with each other according to the Guide through a continuous range of supervisory actions that match the bank's increasing level of distress.

4. Liquidation Tools

The chapter presents several specific legal instruments that assist banks in carrying out liquidation processes in an organized manner. The Guide divides these measures into asset-side and liability-side tools since resolution mechanisms focus on preserving systemic banks. Buyers utilize four types of transactions when



purchasing assets, including the Purchase and Assumption (P&A) process alongside portfolio exchange programs and entire bank buying deals and temporary bridge bank setups, and Asset Management Vehicles (AMVs). The legal structure of P&A transactions derives from governmental authority for selective asset transfers while eliminating the requirement for creditor agreements and safeguarding purchasers against inheritance debts. Bridge banks function as short-term, temporary organizations that obtain specific bank operations and assets from insolvent banks under controlled time restrictions, along with governmental oversight responsibilities. AMVs constitute off-balance sheet entities that acquire distressed assets through discount-based valuations and securitization deals and special servicer mandates. The Guide contains example clauses for contract transfer while also stating how affected creditors should be treated equally and the due diligence procedures, and general contract valuation requirements. The guide includes provisions about market sounding procedures alongside inter-agency coordination and also establishes the requirements for triggering backup liquidation plans when tools fail.

5. Funding and Financial Support

The Guide presents comprehensive guidance about financing operations that help both deposit protection procedures and bankrupt estates. The guide advocates for deposit insurance plans that operate ahead of operations and identifies premium mechanisms based on risk evaluation to reach a specific deposit coverage level. The Guide gives step-by-step instructions on how to perform payouts by explaining SCV systems and depositor data verification, followed by disbursement methods of direct bank transfers and agent bank networks, and prepaid card payments. The guide investigates emergency financing sources, which include bridge loans in addition to Emergency Liquidity Assistance (ELA) and central bank-supplied liquidity through last-resort lending. The procedures contain multiple protection measures which combine requirements for collateral and conditionalities and fiscal guarantees with debt recovery protocols. The

Guide recommends that deposit insurers should obtain statutory subrogation rights and priority position in recovering funds while seeking transparency from public authorities when allocating funds. Before potential emergency responses, the guide recommends performing liquidity simulation exercises and designing stress tests of payout capacity, together with conducting public awareness campaigns.

6. Creditor Hierarchy and Distribution of Assets

This section presents a complete statutory procedure that explains both financial reasons and procedural aspects for creditor placement ranking. The Guide establishes a single claim hierarchy which starts by allocating funds to administrative expenses before moving on to secured claims, after which follows preferred claims of tax authorities and employees alongside insured depositors and then uninsured depositors and general unsecured creditors, and finally subordinated debt holders and shareholders. The Guide emphasizes specific guidelines for legislative definition clarity while warning against dependencies on retrospective policy transformations and requiring jurisdictions to work together to eliminate artificial case selection. The handling of intricate claims relies on the estimated value of contingent liabilities, while derivatives are valued according to close-out netting rules alongside claims adjudication tribunals. The accounting standards that supplement pro rata distribution rules include methods for interim dividends and final distribution protocols, together with reconciliation and final audit requirements. The Guide features electronic systems to process claims together with advanced pooling methods for risk-covered claims and procedures that connect foreign claimants during cross-border situations.

7. Group Dimension

The chapter discusses banking group and financial conglomerate liquidations that become more challenging because of operational entanglements inside the group structure. Diligent planning needs to be done across every organization in a group structure



because of the GLP requirement with entity financial statements and mapping for intra-group deals and shared service documentation. The article introduces substantive consolidation as a way to conduct joint proceedings between financially interconnected yet separated legal entities with integrated operations and obscure accounting divisions. The guidelines provide solutions for contractual ring-fencing situations together with third-party clauses and conflicts between different jurisdictions. The document stresses the need to create Lead Liquidator Models together with Joint Coordination Committees (JCCs) and uniform protocols for communicating with creditors. In addition, the guide proposes testing intra-group guarantees under stress conditions and identifying potential cross-border impacts while establishing agreement-based service standards. The framework presents model legal cooperation documents for entity agreements along with suggested voting procedures for creditors between different business entities.

8. Cross-Border Aspects

The chapter explores both legal and operational hurdles that appear during international bank liquidations. The framework enhances the core concepts of the UNCITRAL Model Law on Cross-Border Insolvency through recognition mechanisms while encouraging cooperation between courts and judicial support. Enabling legislation about foreign proceeding recognition must exist together with procedures for foreign representative appointment and execution of international protocols. The Guide provides standardized tools, including templates related to Memoranda of Understanding (MoUs) and model court cooperation agreements and real-time communication protocols. The paper covers the accessibility of assets located outside a country's borders and details how to execute foreign court decisions while addressing matters regarding priority rules between different legal systems and branch establishment versus subsidiary operations. The document includes detailed instructions about how to incorporate electronic registries with virtual hearings and data-sharing networks that follow privacy regulations and banking confidentiality standards. The

Guide helps harmonization of substantive rules by supporting initiatives for regional standards and the development of unified legal taxonomies.

CONCLUSION AND SUGGESTIONS:

The existing Indian bank insolvency structure under the 1949 Banking Regulation Act depends on both Reserve Bank of India administration and DICGC management, yet lacks an organized process for bankrupt bank liquidation. Insolvency framework weaknesses became clear when bank sector problems emerged because they revealed severe systemic issues, and delayed stoppage times and non-transparent resolution procedures. The non-passage of the Financial Resolution and Deposit Insurance (FRDI) Bill, 2017, resulted in unresolved problems, including resolution trigger definitions as well as depositor protection and creditor priority rules, and banking operation continuity and international collaboration procedures.

Under the proposed FRDI Bill, the Resolution Corporation (RC) would establish itself as a dedicated resolution authority along with defined resolution tools that include bail-in and bridge service providers, and asset transfer and assisted mergers. The adopted resolution tools maintained conformity with worldwide rules defined in the Key Attributes of Effective Resolution Regimes from the Financial Stability Board. The legislation lost support because regulators questioned how the Resolution Corporation would function independently while government-controlled resolution tools. They also disagreed on whether depositors should be merged into the resulting financial institutions. The resolution tools, including purchase and assumption (P&A) methods and bridge institutions and portfolio transfers, maintain their technical viability, especially for non-systemic institutions. These instruments demonstrate effectiveness alongside equity when protected by safeguards that are implemented in a proper sequence under judicial supervision.

The UNIDROIT Legislative Guide on Bank Liquidation creates a strong worldwide standardized



legal structure that addresses the present statutory gap. India's regulatory objectives match with the clear guidelines in the Guide regarding procedural certainty and institutional independence, and proportionate tools implementation alongside depositor safety. The Guide functions as a model for improving the FRDI Bill by establishing optimal resolution and liquidation processes and supplements current laws while showing potential as a template for reconstruction of the FRDI Bill.

The phased adoption of the Guide for India should begin with a detailed legal and institutional assessment, followed by creation of a new Financial Institutions Liquidation and Resolution Code and reorganization of the Resolution Corporation. The Banking Regulation Act requires legislative changes to enable specific bankruptcy triggers and establish a clear creditor order, and define resolution procedures. India needs to develop a cross-border insolvency solution built from the UNCITRAL Model Law, which will handle the growing international activity in its banking sector. Modern resolution-ready bank insolvency frameworks should be urgently implemented since they would bridge the gap that exists between India's traditional legal system. A foundation exists for developing an interoperable and robust bank insolvency system through the combination of the UNIDROIT Guide and the FRDI Bill technical structure.

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