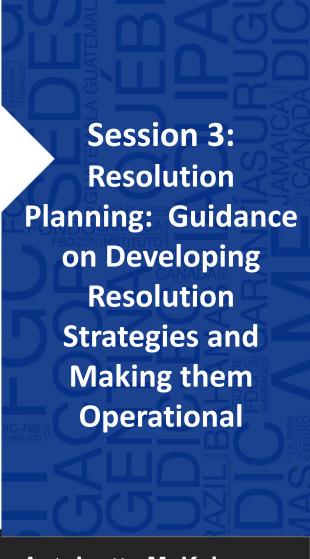


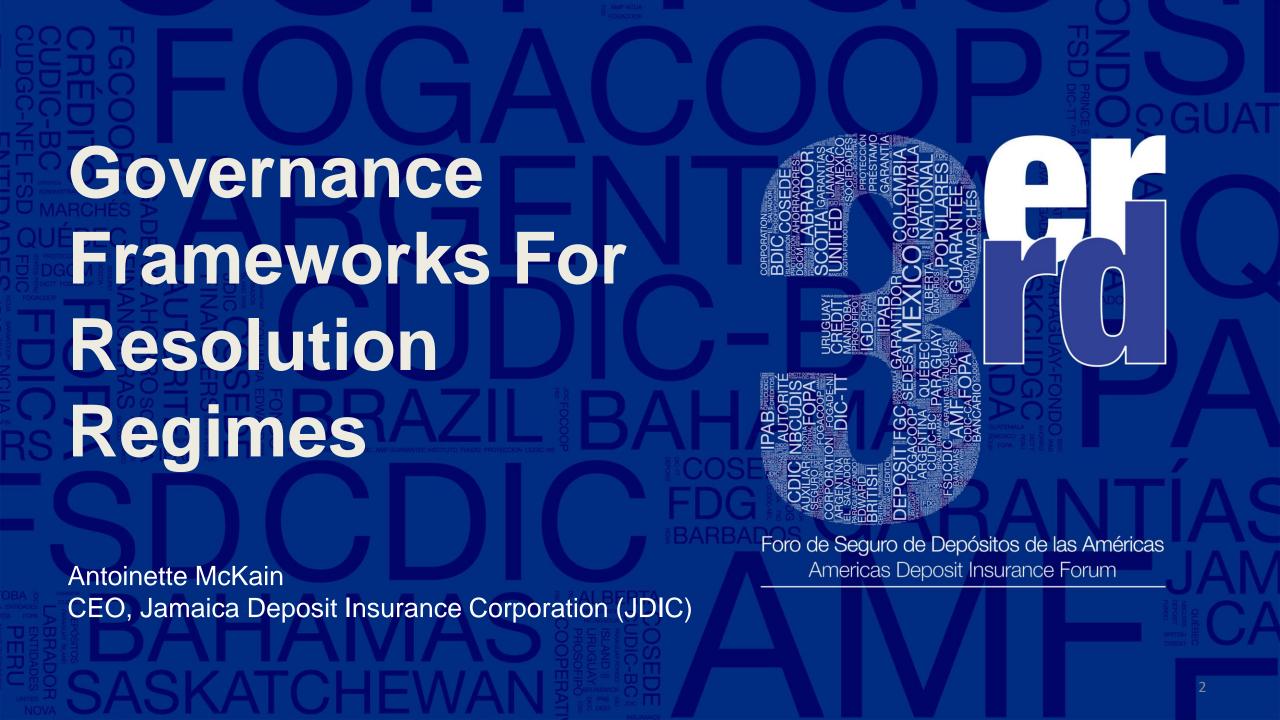
Foro de Seguro de Depósitos de las Américas Americas Deposit Insurance Forum







Antoinette McKain



Overview of Presentation

- I. International Best Practice Standards: Governance Frameworks for an Effective Resolution Regime
- II. Case Studies: Analysis of Governance Practices in Dealing with the Resolution of Banks
- III. Challenges Faced by Jurisdictions in Establishing Effective Governance Frameworks for Resolution
- IV. Selected Jurisdictions: Reforms to Strengthen Resolution Framework
- V. Recommendations
- VI. Discussions



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Governance of Regulators: OECD Best Practice Principles for Regulatory Policy

Effective Governance comprises consistent policies covering the roles and functions of regulatory agencies, in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.









International Standards: Governance Framework for an Effective Resolution Regime

IADI Core Principles for Effective Deposit Insurance Systems (2014)



interest.
minimizes the potential for conflict of
institutional structure of the DI
from external interference. The
transparent, accountable, and insulated
independent, well-governed,
The DI should be operationally

FSB Key Attributes of Effective Resolution Regimes for Financial Institutions (2014)

The resolution authority (RA) should have operational independence consistent with its statutory responsibilities, transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms.

BCBS Core Principles for Effective Banking Supervision (2012)



The supervisor should have operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy, adequate resources and be accountable for the discharge of its duties and use of its resources.







Clarity of Roles:

Institutional arrangements;
operationally independent
/autonomy; coordination &
information sharing; free from
political and industry interference in
decision-making.

Competencies:

Powers; requisite expertise and other resources; operational capacity to implement resolution strategies.

Public Policy Objectives:

Clearly and formally specified; maintain financial system stability; protect depositors; seek to minimize the overall cost of resolution.

International Standards:

Key Elements of an

Effective

Governance Framework

for Resolution

Legal Protection:

Protected by law against liability for actions taken and omissions made in good faith while discharging their duties.

Accountability:

Rigorous evaluation and accountability mechanisms.

Transparency:

Transparent processes; sound governance arrangements; adequate resources to assess the effectiveness of any resolution measure.







PRINCIPLES OF EFFECTIVE GOVERNANCE



1. PUBLIC POLICY OBJECTIVES

GUIDANCE: IADI CORE PRINCIPLES and FSB KEY ATTRIBUTES

- **CP 1.** The principal public policy objectives for deposit insurance systems are to protect depositors and contribute to financial stability. These objectives should be formally specified and publicly disclosed.
- **FSB 2.3.** As part of its statutory objectives and functions, and where appropriate in coordination with other authorities, the resolution authority should:
- (i) pursue financial stability and ensure continuity of systemically important financial services;
- (ii) Protect such depositors, insurance policyholders and investors;
- (iii) minimize the overall costs of resolution; and
- (iv) Consider cross border impact.







PRINCIPLES OF EFFECTIVE GOVERNANCE



2. CLARITY OF ROLES AND RESPONSIBILITIES



3. COMPETENCIES

GUIDANCE: IADI CORE PRINCIPLES and FSB KEY ATTRIBUTES

CP 14 E.C.3. Where there are multiple safety-net participants responsible for resolution, the legal framework provides for a clear allocation of objectives, mandates, and powers of those participants, with no material gaps, overlaps or inconsistencies.

FSB 2.1. Each jurisdiction should have a designated administrative authority or authorities responsible for exercising the resolution powers. **FSB 2.5.** The resolution authority should have operational independence.

CP14 EC1. The DI has sufficient powers and resources to exercise its role in resolution.

FSB 2.4. The RA should have the authority to enter into agreements with resolution authorities of other jurisdictions.

FSB 2.7. The RA should have unimpeded access to firms for the purposes of resolution.

FSB 3.2. RA should have at their disposal a broad range of resolution powers.







PRINCIPLES OF EFFECTIVE GOVERNANCE



4. TRANSPARENCY



5. ACCOUNTABILITY

GUIDANCE: IADI CORE PRINCIPLES and FSB KEY ATTRIBUTES

- **CP 3.** The deposit insurer should be operationally independent, well-governed, transparent, accountable, and insulated from external interference.
- **CP.** Shareholders and creditors should have due process and an opportunity for judicial review.
- **FSB 3.1.** Resolution should be initiated when a firm is no longer viable or likely to be no longer viable. There should be clear standards or suitable indicators of non-viability to help guide decisions.
- **FSB** An effective resolution regime should provide for speed and transparency and as much predictability as possible through legal and procedural clarity and advanced planning for orderly resolution.
- **CP3 EC2.** The governing body of the DI is held accountable to a higher authority.
- **FSB 2.5.** The resolution authority should be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures.







PRINCIPLES OF EFFECTIVE GOVERNANCE



6. LEGAL PROTECTION

GUIDANCE: IADI CORE PRINCIPLES and FSB KEY ATTRIBUTES

CP 11. The DI and individuals working both currently and formerly for the deposit insurer in the discharge of its mandate must be protected from liability arising from actions, claims, lawsuits or other proceedings for their decisions, actions or omissions taken in good faith in the normal course of their duties. Legal protection should be defined in legislation.

FSB 5.3. Directors and officers of the firm under resolution should be protected in law (for example, from law suits by shareholders or creditors) for actions taken when complying with decisions of the resolution authority.

FSB 5.6. In order to preserve market confidence, jurisdictions should provide for flexibility to allow temporary exemptions from disclosure requirements.







Institutional Arrangements for an Effective Resolution Regime



Resolution Authority(ies)



Resolution Administrator (Receivers, Trustees, Conservators, Liquidators)



Court



Regulator/Supervisor of Banks



Deposit Insurer



Government/Ministry of Finance







Role of the Supervisor as distinct from the Resolution Authority

The supervisory and resolution functions should be **separate** to:

- ❖ Allow for clear and operational independent mandates.
- ❖ Allow for better alignment of decisions and actions of the authorities.
- ❖ Reduce potential and perceived conflict of interest.

However there should be collaboration in the execution of the functions.

ROLE OF THE REGULATOR/SUPERVISOR

- Granting of licence
- Monitoring prudential requirements, capital, reserve and liquidity thresholds
- Monitoring risk
- Reviewing recovery plans
- Enforcing prompt corrective actions
- ❖ Determining that the trigger point for non-viability have been met and/or the regulatory rules have been breached

ROLE OF THE RESOLUTION AUTHORITY

- Satisfying itself that the triggers for entry into resolution have been met
- Determining systemic impact of the non-viable financial institution
- Determining the most appropriate resolution strategy and tools
- Planning the resolution strategy
- Reviewing recovery plans
- Preparing resolution plans







RESOLUTION AUTHORITY Decision Making



RESOLUTION ADMINISTRATOR

Implementation and Execution

- Acting as administrator through receivership, trusteeship, liquidation and judicial management
- ❖ Paying out of depositors and other compensation scheme beneficiaries
- Providing liquidity support, making loans and/ or issuing guarantees to support restructuring
- Securing contingency resolution funding
- Establishing Asset Management Vehicle (AMV)
- Holding and dealing with the shares of FIs and other companies
- * Reviewing resolution plans









Case Study Northern Rock 2008 (UK): Bank Resolution Governance Issues

Institutional Arrangements and Clarity of Roles and Responsibilities

- Clarity of roles among the tripartite authorities, Treasury, the BoE and the FSA were unclear.
- There was no lead agency with the ultimate responsibility in charge of the crisis.
- The Treasury Committee noted that the failure of NR was a failure of the FSA as a regulator as well as the company's board.
- Prior to 2008 the UK did not have a comprehensive statutory regime that could effectively manage failing banks.





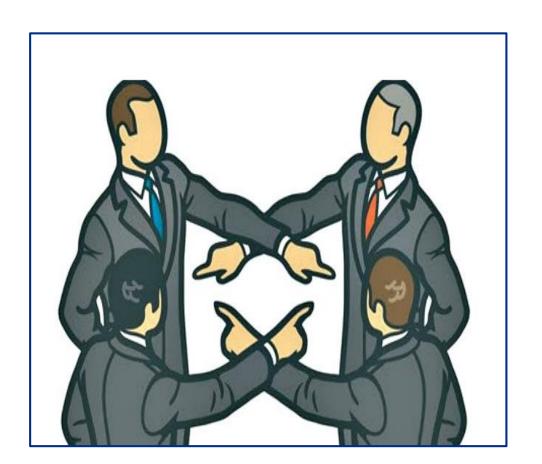




Case Study Northern Rock 2008 (UK): Bank Resolution Governance Issues

Transparency and Accountability

- BoE disclosed to the public the liquidity support to NR which led to the first run on the bank.
- Questions as to whether the deal should be kept secret to prevent panic. The disclosure was a statutory requirement.
- Criticisms were made that the Treasury should have delayed the sale of the NR assets until market conditions had improved so that taxpayers could get a better return. Authorities indicated that a sale at the earliest opportunity was the best option to minimize losses on the public funds invested in NR.









Case Study CLICO 2009 (T&T): Bank Resolution Governance Issues

Backstory

The corporate collapse of CLICO in January 2009 and subsequent restructuring plan announced by the Government in its 2010/11 budget statement. A more timely intervention was needed for the containment of the risk exposure of the T&T economy and the spillover effects in the wider Caribbean.



Regulatory Directives not Enforced

CL Financial Group agreed that it would restructure its business and operations to conform to traditional life insurance business lines in a manner approved by the CBTT including a reconstitution of the Board of Directors, Board Committees and Senior Management.

This was not done.

Inadequate Regulatory Framework of CBTT

A major challenge was that the CBTT in 2009 still did not have the authority to conduct onsite supervision, share information with other regulators, or demand the required changes from CLICO even though, regulatory authority for insurance companies and pension funds had been transferred from the ministry of finance to CBTT in 2004. There was no crisis management plan which would detail how regulators should respond in a systemic crisis.







Case Study CLICO 2009 (T&T): Bank Resolution Governance Issues

Outdated Laws and Regulations

The insurance legislation had remained fundamentally unchanged since its enactment over 28 years ago and the CBTT had only incrementally updated the regulatory framework governing licensed and registered financial institutions to enhance its regulatory oversight.

Lack of Transparency

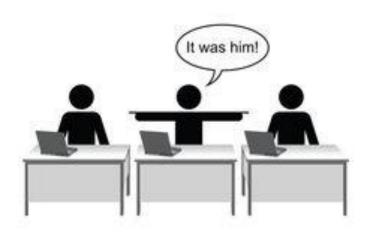
The uncertainty regarding the restructuring of CLICO, the inordinate delay in finding a solution, and the management of government's intervention and subsequent bailout, put the successor governmental administration under tremendous pressure.



Role Clarity, Accountability & Maintaining Trust

The Governor of the Central Bank in 2009 gave an assurance that all policyholders' funds were guaranteed by the government.

Subsequently, there was strong resistance by policyholders to the bailout plan which was viewed as a dramatic change from the assurance given. This formed the basis of a legal challenge.









Case Study FBME 2014 (Cyprus): Bank Resolution Governance Issues

Backstory

Prior to entry into resolution no consultation was made with the Board of Directors and senior managers to determine how the bank should solve its problems. The bank was deemed to be in a very healthy and strong position and had the capacity to repay all its depositors.

Unclear Roles & Responsibilities

The RA was the Governor of the Central Bank; a member of the Board of Directors and the Resolution Committee. The Resolution Committee included two other members, all answerable to no one except each other.

The Lack of Expertise and Experience of the Resolution Committee

The Governor had never worked in either a central bank or a bank. Other members of the Resolution Committee were economists and academics.









Case Study FBME 2014 (Cyprus): Bank Resolution Governance Issues

Conflict of Interest, Undue Influence & Maintaining Trust

The RA appointed an Administrator to solve the banks problems without adequate notification to the bank owners and directors.

The responsibilities assumed by the Administrator appeared to be outside its mandate and not keeping with protecting depositors.



Lack of Transparency and Accountability

The RA refused to communicate its decisions to the public or provide any plans as to the future intentions. RA allowed to mishandle the situation that might have led to the Republic spending hundreds of millions of euros in compensation.







Case Study UT Bank Limited and Capital Bank Limited 2017 (Ghana): Bank Resolution Governance Issues

Backstory

The Law states that revocation of a licence or the appointment of a Receiver cannot be made unless a bank is insolvent. Licence was revoked and receiver appointed due to severe impairment of capital but no insolvency determination was made.

Roles & Responsibilities / Conflict of Interest

The CB acted as complainant, adjudicator and executioner - principles of natural justice breached.

The CB can only exercise its powers if a proper complaint has been made against the bank by a third party.









Case Study UT Bank Limited and Capital Bank Limited 2017 (Ghana): Bank Resolution Governance Issues

The lack of Disclosure & Transparency

The series of events that led to the failure of the banks were unclear.

CB or Receiver failed to release information regarding the exact value of assets and liabilities to date. This lack of disclosure has impacted depositors and creditors making informed business decisions.



Unclear Roles and Responsibilities

Unclear how the CB reached a decision in the appointment of a receiver and who was appointed the receiver – Officer of the Firm or the Firm itself. This contributed to issues raised as it relates to the credibility of the CB and created industry uncertainty.







Challenges Faced by Jurisdictions in Establishing Effective Governance Frameworks for Resolution

- Composition of the financial safety net
 - Institutional arrangements Separation of roles supervision and resolution.
 - Excessive concentration of power in the Central Banks and Governors.
 - Conflict of Interest.
- Agencies involved in resolution may have limited staff, expertise and financial resources.
- ❖ Structure and size of banking sector/ financial markets.
- ❖ Trends towards—rise in financial conglomerates, complex financial groups and rapid product innovation using Fintech.
- ❖ Absence of effective crisis preparedness /management and resolution frameworks at the national and regional levels.
- ❖ Inadequate legal and operating framework for sharing of information among cross-border FSSN partners.







Selected Jurisdictions: Reforms to strengthen Resolution Framework

- **BERMUDA:** BANKING (SPECIAL RESOLUTION REGIME) ACT 2016 Provides a special resolution regime to maintain financial stability in Bermuda and to protect depositors in banks; and for connected purposes.
- **❖ HONG KONG: FINANCIAL INSTITUTIONS (RESOLUTION) ORDINANCE, 2016** The resolution regime established under the Ordinance commenced operations on July 07, 2017. The resolution regime applies to a wide range of FIs and include sector specific powers.
- ❖ SINGAPORE: THE MONETARY AUTHORITY OF SINGAPORE (AMENDMENT) ACT 2017 The MAS introduced legislative amendments to strengthen the MAS' powers to resolve all financial institutions including holding companies in an orderly manner. In addition, the Act introduces legislative amendments to address other operational matters.
- ❖ MEXICO: LEY DE INSTITUCIONES DE CRÉDITO, 1990 Provides for the banking supervisory and resolution framework with the latest reform being in January 2014.
- ❖ UNITED KINGDOM: BANKING ACT, 2009 Provides for a special resolution regime for banks to address the situation where all or part of the business of a bank has encountered, or is likely to encounter, financial difficulties.







Recommendations



How a resolution framework is established, directed, controlled, resourced and held to account is dependent on the effectiveness of governance practices. This should include the nature of the relationships between the agencies/authorities i.e. regulatory decision makers, political actors, the legislature, the executive administration, judicial processes and regulated entities within the scope of the framework.

- ❖ Governance is not a one size fits all approach.
- Different political and cultural environments.
- ❖ Sound governance of agencies comprising the safety net.
- Code of conduct for employees of agencies involved in resolution.
- Commission post evaluation of the resolution process and make public as appropriate.







Recommendations

- * Resolution framework with legal certainty.
- The resolution framework requires collaboration and cooperation among the authorities involved in resolution (domestic and cross border) and the legal framework should support this.
- ❖ The build out of competencies should be a priority for all the agencies involved in resolution during noncrisis periods.
- Structurally, separation of conflicting functions is ideal. If this is not possible, attention should be given to the separation of teams with these potentially conflicting roles and their reporting lines and there should be oversight or review of the activities. Potentially conflicting functions needs to be carefully justified publicly.
- . Ideally, the lead authority responsible for making the decision for entry into resolution and determining the resolution strategy should not conduct the day to day administration of resolution activities. This will minimize conflict of interest, allow for transparency and engender greater levels of trust.







Discussion

1.	Which agency should be appointed to act as the Resolution Authority/ies to ensure an effective governance framework for resolution and Why?
	☐ Government / Ministry of Finance
	☐ Central Bank
	☐ Regulator / Supervisor of Banks
	☐ Deposit Insurer
	☐ Stand Alone entity
	☐ Other
2.	What are top three key elements for ensuring effective governance for effective implementation of resolution regimes?

3. Describe effective coordination structures for agencies involved in resolution.

Thank you! Gracias!

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