

Research on Cross-border Insolvency within Multinational Banking Corporations

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Abstract

Bank resolution proceedings generally have special purposes, such as depositors protection and maintenance of confidence in financial systems. Therefore, many jurisdictions, including Japan, USA and EU, have customized resolution proceedings special for banking corporations, which are led by administrative institutions/deposit insurance corporations. These procedures have legal aspect of exercise of governmental authority/power.

Japan enacted the Law on Recognition of and Assistance in Foreign Insolvency Proceedings ("the Law") in 2001, on which the UNCITRAL Model Law had an important influence. In regard to the Law, one of legal matters is whether bank resolution proceedings could be recognised as "foreign insolvency proceedings" defined in Article2 of the Law. My answer to this question is No, because bank resolution proceedings have non-civil character, and therefore should not be given the objectivity of recognition in the Law.

On the other hand, even when foreign bank resolution proceedings have non-civil legal aspect, their effect could be partially recognised through a legal framework for the recognition of foreign judgments, provided with Article118 of the Civil Procedure Law. That is, only when legal actions based on the bank resolution proceeding had be already done in the foreign country, the effect of alteration of private rights, caused by the actions, could be recognised in Japan.

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