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Recognition of foreign bank resolution actions

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Propositions relating to the dissertation

Recognition of Foreign Bank Resolution Actions

by Shuai Guo

1. The global financial crisis of 2007/2008 demonstrated the need for a harmonised, special regime for the orderly resolution of financial institutions, and, since then, many jurisdictions have adopted new bank resolution laws. However, the cross-border issue is still a problem.

2. A legal framework for the recognition of foreign bank resolution actions should prescribe the conditions, procedures and effects of recognition, including recognition of a foreign resolution proceeding with ongoing effects and recognition of a foreign resolution measure with immediate effects. (§6.4.3 and §6.4.4)

3. Reciprocity should not be a pre-condition for recognition of foreign bank resolution actions. (§6.4.1)

4. Determination of jurisdiction should be on the basis of a home/host distinction. (§6.4.2)

5. Financial stability should be a reason to refuse to recognise foreign bank resolution actions and is categorised as one of the public policy exceptions, among others such as local critical functions and adverse impact on national fiscal policies. However, invoking public policy exceptions should follow a narrow interpretation. (§7.4)

6. Discrimination against creditors should be a reason to refuse to recognise foreign resolution actions. However, the mere difference in substantive laws should not be a reason to refuse to recognise foreign resolution actions. Governing law provisions that do not choose the domestic law should not be a reason to refuse to recognise foreign resolution actions. (§8.4)

7. Apart from the domestic law instrument – recognition, international law instruments, such as international agreements, model law (soft law), and customary international law, can also be taken to facilitate cross-border resolution and recognition of foreign resolution actions. (§9.2)

8. A legal researcher should have the ability to look beyond his or her area of expertise, to bridge the gaps of private and public laws, domestic and international laws, substantive and procedural laws, and to combine different knowledge and methodologies of other disciplines like economy, social science, and politics.

9. Increasing expansion of banks' global businesses is incompatible with the rising trends of nationalism, populism and anti-globalism. A lawyer's working approach requires a delicate balance of different values.

10. Banks are global in life, and they also need to be global in death.

11. The best way to conduct comparative studies is to live in different countries and to observe, feel and interact with different people, cultures and traditions.

12. Rainy days are perfect days to stay inside to do research.