SPECIAL ANALYSIS OF THE LEGAL FRAMEWORK FOR BANKING REGULATION

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The article points out that state regulation of banking activities is intended mainly to promote material stability, protect consumers, manage risks and serve the broader public interest in the functioning of the financial system.

Keywords: Bank, law, financial institutions, licensing, government.

1. Introduction. The bank sector and law mechanisms are closely intertwined, as banks are subject to various legal regulations and frameworks that govern their operations. These laws are designed to ensure the stability, integrity, and transparency of the banking system, as well as protect the interests of customers and other stakeholders. Let's explore of the key law mechanisms that impact the bank sector.

Banks are regulated by government agencies and central banks in most countries. These regulations govern various aspects of banking operations, such as licensing, capital adequacy, risk management, consumer protection, anti-money laundering (AML) and counter-terrorism financing (CTF) laws, and more. These regulations are in place to maintain the stability and soundness of the banking system and to protect depositors and investors. Banking regulations by the government are laws and rules that are put in place to govern the operations of banks and financial institutions. These regulations are typically implemented and enforced by government agencies and central banks to ensure the stability, integrity, and transparency of the banking system, as well as to protect the interests of customers and other stakeholders. Some common areas of banking regulations by the government include:

1. Licensing and Registration: Banks are required to obtain licenses or registrations from the relevant government agencies or central banks before they can operate. These licenses or registrations typically come with specific requirements, such as minimum capital levels, fit and proper criteria for bank executives and directors, and ongoing reporting and compliance obligations. Licensing and registration are important components of banking regulations by the government. Banks are typically required to obtain licenses or registrations from the relevant government agencies or central banks before they can commence operations. These licenses or registrations are granted based on specific criteria and requirements that banks must meet to ensure their fitness and suitability to operate in the banking industry. Here are some key aspects of licensing and registration in banking regulations:

2. Licensing Process: Banks are required to go through a licensing process with the relevant government agency or central bank to obtain a license to operate as a bank. This process typically involves submitting an application that includes detailed information about the bank's ownership structure, management team, business plan, financial projections, risk management frameworks, and other relevant information. The licensing process may also include assessments of the bank's capital adequacy, risk management practices,

governance structure, and compliance with applicable laws and regulations.

Minimum Capital Requirements: Banks are typically required to meet minimum capital requirements as part of the licensing process. These requirements are designed to ensure that banks have a sufficient amount of capital to absorb potential losses and maintain financial stability. The minimum capital requirements may vary depending on the size, complexity, and risk profile of the bank, and are typically specified in regulations issued by the government agency or central bank.

Fit and Proper Criteria: Banks are required to meet fit and proper criteria for their executives and directors as part of the licensing process. These criteria are designed to ensure that the individuals responsible for managing the bank have the necessary skills, experience, and integrity to carry out their roles effectively. Fit and proper criteria may include assessments of the individuals' qualifications, experience, reputation, and integrity, and may be subject to ongoing review and scrutiny.

Ongoing Reporting and Compliance Obligations: Banks are typically required to maintain ongoing reporting and compliance obligations as part of their licensing and registration requirements. These obligations may include regular reporting of financial and operational information, compliance with prudential regulations, risk management requirements, anti-money laundering and counter-terrorism financing obligations, and other regulatory requirements. Banks may also be subject to regular inspections, audits, and assessments by the relevant government agency or central bank to ensure their ongoing compliance with licensing and registration requirements.

Renewal and Revocation of Licenses: Banks' licenses or registrations may be subject to renewal or revocation by the relevant government agency or central bank. Renewal requirements may include assessments of the bank's financial performance, risk management practices, compliance with regulations, and other relevant factors. Failure to meet renewal requirements may result in the revocation of the bank's license or registration, which can have serious consequences for the bank's ability to operate.

Licensing and registration requirements are important mechanisms in banking regulations that help ensure that banks meet certain standards of financial soundness, risk management, governance, and compliance. These requirements are aimed at protecting the interests of depositors, customers, and other stakeholders, and maintaining the stability and integrity of the banking system. Banks need to carefully comply with these requirements to obtain and maintain their licenses or registrations, and operate in a responsible and compliant manner within the regulatory framework established by the government.

2.2. Capital Adequacy: Banks are required to maintain a certain level of capital adequacy to ensure that they have a sufficient buffer to absorb losses and maintain financial stability. Capital adequacy regulations typically specify the minimum amount and quality of capital that banks must maintain based on their risk profile, to protect depositors and other stakeholders. Capital adequacy is a key concept in banking regulation that refers to the amount and quality of capital that banks are required to maintain to absorb potential losses and ensure their financial stability. Capital adequacy regulations are designed to ensure that banks have a sufficient buffer of capital to protect against risks arising from their lending, investment, and other activities. This type of regulations are typically set by the relevant government agencies or central banks and are based on internationally recognized standards such as the Basel Accords, which are a set of banking regulations developed by the Basel Committee on Banking Supervision. The Basel Accords provide a framework for banks to calculate and maintain minimum capital requirements based on the risks they are exposed to in their operations.The capital adequacy regulations typically specify minimum capital requirements that banks must meet, expressed as a percentage of their risk-weighted assets. Risk-weighted assets are calculated by assigning weights to different categories of assets based on their perceived riskiness. Higher-risk assets, such as loans to borrowers with poor credit ratings, have higher weights, while lower-risk assets, such as loans to governments, have lower weights.

Banks are required to maintain capital adequacy ratios that meet or exceed the minimum requirements set by the regulatory authorities. These ratios are calculated by dividing a bank's total capital by its risk-weighted assets. The specific capital adequacy ratios may vary depending on the jurisdiction and the size, complexity, and risk profile of the bank.

The purpose of capital adequacy regulations is to ensure that banks have sufficient capital to absorb potential losses, maintain financial stability, and protect depositors, customers, and other stakeholders. Capital adequacy regulations play a crucial role in mitigating the risks associated with banking operations and promoting the safety and soundness of the banking system. Banks must carefully manage their capital levels to comply with these regulations and maintain a strong and stable financial position.

2.3. Risk Management: Banks are required to have robust risk management frameworks in place to identify, measure, manage, and mitigate various types of risks, such as credit risk, market risk, operational risk, and liquidity risk. These regulations may include requirements for risk assessment, risk mitigation strategies, and risk reporting. Risk management is an essential aspect of banking regulation, and governments often impose laws and regulations to ensure that banks have robust risk management practices in place to mitigate risks associated with their operations. These regulations aim to promote the safety and soundness of the banking system, protect depositors and customers, and prevent financial crises.Risk management laws in bank regulation by the government typically require banks to implement comprehensive risk management frameworks that cover various types of risks, including credit risk, market risk, operational risk, liquidity risk, and others. These laws may mandate specific risk management practices, processes, and procedures that banks must follow to identify, measure, monitor, control, and report on their risks. Some common risk management laws and regulations in bank regulation by the government include:

Risk Governance: These laws may require banks to establish a clear and robust risk governance framework that includes defined roles and responsibilities for the board of directors, senior management, and risk management function. This includes requirements for risk oversight, risk appetite, risk reporting, and risk management policies and procedures.

Risk Assessment and Measurement have to conduct thorough risk assessments to identify and measure the various types of risks they are exposed to. This may include requirements for regular assessments of credit risk, market risk, operational risk, and other types of risks, using appropriate risk measurement techniques and models.

The specific risk management laws and regulations may vary depending on the jurisdiction and the size, complexity, and risk profile of the banks. Banks are required to comply with these risk management laws and regulations to ensure that they effectively identify, measure, monitor, and mitigate risks associated with their operations, thus promoting the stability and resilience of the banking system. Non-compliance with risk management laws and regulations can result in penalties, fines, and other regulatory actions against banks. Also banks are required to comply with consumer protection laws to ensure that customers are treated fairly and transparently. These regulations may cover areas such as disclosure of terms and conditions, transparency in pricing, fair lending practices, and handling of customer complaints and disputes. Consumer protection is a crucial aspect of bank regulation by the government, as it aims to safeguard the interests and rights of consumers who use banking services. Governments typically impose laws and regulations to ensure that banks operate in a fair, transparent, and responsible manner when dealing with their customers, and that consumers are provided with adequate protection against abusive or unfair practices. Consumer protection laws in bank regulation are intended to promote transparency, fairness, and accountability in banks' dealings with consumers and to ensure that consumers are treated fairly in their interactions with banks.

1. Bank regulation by the government

Banks can to provide clear and transparent disclosures to consumers regarding the terms, conditions, fees, charges, and risks associated with their products and services. This may

include requirements for standardized disclosure formats, plain language explanations, and prominent display of key information to enable consumers to make informed decisions. To follow fair lending practices, which prohibit discrimination against consumers on the basis of race, color, religion, national origin, sex, marital status, age, or other protected characteristics. Fair lending laws may require banks to provide equal access to credit and other banking services, and prohibit predatory lending practices. Prohibition of Unfair, Deceptive, or Abusive Acts or Practices (UDAAP): Banks may be prohibited from engaging in unfair, deceptive, or abusive acts or practices that can harm consumers. UDAAP laws may cover various aspects of banks' operations, such as marketing, sales, customer service, billing, collections, and dispute resolution.Banks regulating take care to establish effective mechanisms for handling consumer complaints and disputes in a timely and fair manner. This may include requirements for internal complaint resolution procedures, consumer dispute resolution mechanisms, and reporting of complaints and resolutions to regulatory authorities.

3.1. Privacy and Data Protection: Privacy and data protection laws to ensure that consumers' personal and financial information is protected from unauthorized access, use, or disclosure are combined in banks regulationship. This may include requirements for data security, consent for data usage, data breach notification, and consumer rights related to their personal data.

Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF): Banks have to comply with AML and CTF laws to prevent money laundering, terrorist financing, and other illicit activities. AML and CTF laws may require banks to implement customer due diligence measures, report suspicious transactions, and maintain records of customer transactions.

Non-compliance with consumer protection laws and regulations can result in penalties, fines, and other regulatory actions against banks. These laws are designed to ensure that consumers are treated fairly and transparently in their dealings with banks, and that their rights and interests are protected. Consumer protection laws are aimed at fostering consumer confidence, trust, and satisfaction in the banking system, and promoting a healthy and sustainable relationship between banks and their customers.

3.2. Prudential Regulations: Prudential regulations are aimed at ensuring the stability and safety of the banking system. These regulations may include requirements related to liquidity management, asset quality, loan classification and provisioning, risk concentration, and stress testing, among others. Prudential regulations in banks, also known as prudential norms or prudential requirements, are regulations imposed by the government or regulatory authorities on banks and other financial institutions to ensure their safety and soundness, and to promote stability in the financial system. Prudential regulations are designed to minimize the risk of bank failures and protect the interests of depositors and other stakeholders in the financial system.Some common prudential regulations in banking by the government may include capital adequacy requirements. Banks are required to maintain a minimum level of capital as a percentage of their risk-weighted assets to absorb losses and ensure their financial resilience. Capital adequacy requirements are intended to ensure that banks have sufficient capital to absorb losses from unexpected events and continue to operate as going concerns.

Asset Quality and Loan Classification: This includes requirements for proper loan underwriting, provisioning for potential credit losses, and regular assessment of the quality of the loan portfolio. Proper asset quality and loan classification practices are aimed at ensuring that banks' assets are of good quality and accurately reflect the risks associated with their loan portfolio.

Liquidity Requirements: Banks are required to maintain sufficient liquidity to meet their short-term obligations and withstand liquidity shocks. Liquidity requirements may include maintaining a minimum level of liquid assets, managing liquidity risk through contingency funding plans, and conducting stress testing to assess the adequacy of liquidity buffers.

Risk Management and Internal Controls: Banks are required to have robust risk management systems and internal controls in place

to identify, measure, monitor, and manage various risks, such as credit risk, market risk, operational risk, and others. This includes establishing risk management policies, processes, and controls, as well as conducting regular risk assessments and reporting to regulatory authorities.

Governance and Management Requirements: Banks are required to have sound corporate governance practices, including an effective board of directors, independent risk management function, and appropriate risk management policies and practices. This includes requirements for board composition, qualifications, and independence, as well as standards for bank management, including fit and proper criteria for key executives. Prudential regulations in banking are aimed at ensuring that banks operate in a safe and sound manner, maintain financial stability, and protect the interests of depositors and other stakeholders. Non-compliance with prudential regulations can result in regulatory actions, such as fines, penalties, restrictions on business activities, or loss of banking licenses.

1. Governance and Transparency: Banks are required to maintain good corporate governance practices, including board of directors' responsibilities, financial reporting, and auditing. These regulations may also cover areas such as related-party transactions, internal controls, and transparency in disclosing financial information to the public and stakeholders. Governance and transparency are important aspects of bank regulation by the government, aimed at promoting accountability, integrity, and sound management practices in the banking sector. Governance refers to the system of rules, practices, and processes by which a bank is directed and controlled, while transparency refers to the availability and accessibility of information related to a bank's operations, financial condition, and risk exposures.Board Composition and Independence may include requirements for board size, composition, qualifications, and diversity, as well as standards for board independence to ensure that board members can exercise independent judgment in decision-making.

Risk Management and Internal Controls: Banks hav to establish and maintain robust risk management systems and internal controls to identify, measure, monitor, and manage various risks, such as credit risk, market risk, operational risk, and others. This may include requirements for risk management policies, processes, and controls, as well as the establishment of independent risk management functions within the bank.

Disclosure of Information: They have to disclose relevant information to the public, regulators, and other stakeholders on their financial condition, risk exposures, corporate governance practices, and other material information. This may include regular financial reporting, public disclosures of material events or developments, and transparency in disclosing the bank's ownership structure, corporate governance practices, and executive compensation.

Code of Conduct and Ethics: Regulating system required to establish and implement a code of conduct and ethics that guides the behavior of bank employees, directors, and management. This may include requirements for fair and transparent dealings with customers, avoidance of conflicts of interest, and adherence to high ethical standards in all business activities.

Whistleblower Protection: They have to establish mechanisms to protect whistleblowers who report concerns or suspicions of wrongdoing within the bank, such as fraud, misconduct, or violations of laws and regulations. This may include requirements for confidentiality, non-retaliation, and access to appropriate channels for reporting concerns.

External Audit take to undergo regular external audits by independent auditors to ensure the accuracy and reliability of their financial statements and disclosures. This may include requirements for auditors to adhere to professional standards and report any material findings or deficiencies in the bank's internal controls or financial reporting.

Regulatory Oversight and Enforcement: Government regulatory authorities may have the authority to oversee and enforce governance and transparency requirements for banks, including conducting inspections, examinations, and investigations, imposing penalties or sanctions for non-compliance, and tak-

ing regulatory actions, such as fines, restrictions on business activities, or revocation of banking licenses for serious violations.

Governance and transparency requirements in banking regulation are aimed at promoting sound corporate governance practices, integrity, and accountability in the management and operations of banks. Compliance with these requirements can help ensure that banks operate in a transparent and responsible manner, maintain public trust, and contribute to financial stability.

4.2. Resolution and Recovery Planning: Banks may be required to develop resolution and recovery plans to ensure that they have strategies in place to manage financial distress or failure in an orderly manner, without disrupting the stability of the financial system. These regulations may include requirements for developing recovery plans, maintaining adequate resolution tools, and participating in resolution or recovery exercises. Resolution and recovery planning is an important aspect of bank regulation by the government, aimed at ensuring that banks are prepared for financial distress or failure in a way that minimizes risks to the financial system, protects depositors and other stakeholders, and promotes financial stability. Resolution and recovery planning typically involves establishing regulatory frameworks and requirements for banks to develop plans that outline the strategies, mechanisms, and tools that would be used in the event of a financial crisis or potential failure of a bank.

The key elements of resolution and recovery planning in bank regulation by the government may include:

Recovery Plans: They have to develop recovery plans that outline the steps and measures that would be taken to restore the bank's financial strength and viability in the event of financial stress or distress. Recovery plans typically include strategies for addressing various types of risks, such as capital shortfalls, liquidity challenges, and operational disruptions, and may involve actions such as capital raising, asset sales, and cost-cutting measures.

Resolution Plans typically include detailed information on the bank's organizational structure, operations, key financial contracts, and other relevant information, as well as plans for recapitalization, asset sales, and other measures to facilitate the orderly resolution of the bank without disrupting financial markets or causing systemic risks. Regulatory authorities may assess the adequacy and viability of the plans, and may provide feedback and guidance to banks on areas that need improvement. Governments may establish resolution frameworks that include tools, such as bail-in powers, that allow for the orderly recapitalization of a failing bank by converting certain liabilities into equity or writing down or cancelling them, while protecting depositors and other essential functions of the bank. These tools are intended to minimize the need for taxpayer-funded bailouts and promote accountability of bank shareholders and creditors.Banks with cross-border operations may be required to establish cooperation agreements and arrangements with other jurisdictions to facilitate the resolution of their operations in the event of financial distress or failure. These agreements may include coordination mechanisms, information sharing arrangements, and resolution planning requirements to ensure that cross-border financial stability risks are effectively managed.

Resolution and recovery planning in bank regulation is aimed at enhancing the resilience of banks to financial stress or failure, minimizing the risks to the financial system, and protecting depositors and other stakeholders.

5. **Conclusion.** By requiring banks to develop comprehensive recovery and resolution plans, governments aim to ensure that banks are better prepared to weather financial crises and their potential consequences, and that appropriate measures are in place to facilitate the orderly resolution of banks, if needed, without disrupting financial markets or causing systemic risks. These are some examples of the common banking regulations by the government. It's important for banks and financial institutions to comply with these regulations to ensure that they operate in a legal and responsible manner, maintain the confidence of customers and stakeholders, and contribute to the stability and integrity of the overall financial system. Non-compliance with these regulations can result in penalties, fines, sanctions, or even revocation of banking licenses, which can

have serious consequences for banks and their operations.

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СПЕЦИАЛЬНЫЙ АНАЛИЗ ПРАВОВЫХ ОСНОВ РЕГУЛИРОВАНИЯ БАНКОВСКОЙ ДЕЯТЕЛЬНОСТИ

В статье указывается, что государственное регулирование деятельности банков призвано в основном способствовать материальной стабильности, защищать потребителей, управлять рисками и служить более широким общественным интересам в функционировании финансовой системы.

Ключевые слова: банк, право, финансовые институты, лицензирование, правительство.