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Guidance for the Establishment of a Legal Protection Scheme for Deposit Insurance Systems

Guidance Paper

Prepared by the Research and Guidance Committee

International Association of Deposit Insurers

C/O BANK FOR INTERNATIONAL SETTLEMENTS
CENTRALBAHNPLATZ 2, CH-4002 BASEL, SWITZERLAND
TEL: +41 0 61 280 9933 FAX: + 41 61 280 9554
WWW.IADI.ORG

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I. Executive Summary

The mission of the International Association of Deposit Insurers ("IADI") is to contribute to the enhancement of deposit insurance effectiveness by promoting guidance and international cooperation. Its vision is to share its deposit insurance expertise with the world. As part of its work, IADI undertakes research projects to provide guidance on deposit insurance matters.

In this respect, IADI endorse the guidance set forth in the "Guide for the Establishment of Effective Deposit Insurance Systems" issued by the Financial Stability Forum in September of 2001, which, on its section on Structure and Design Features states: "The importance of statutory indemnification should be recognised and employees should receive legal protection against lawsuits for their actions taken in good faith. The lack of legal protection for employees can reduce incentives to be vigilant in carrying out their responsibilities, particularly in cases where mandates emphasise early detection, intervention and closure of troubled banks."[1]

Hence, the Research and Guidance Committee of IADI, based on the recommendations made in its meeting on 16 May 2006, in Basel, Switzerland, created the Subcommittee on Legal Protection and Indemnification Issues (the subcommittee).[2] The subcommittee has the mandate to define, based on international experience and observed practices of IADI members, general guidance deemed convenient to foster the adoption of legal protection regimes.

A. Key concepts

In order to facilitate the reading of this document the following concepts are used:

- **Resolutions[3]:** A disposition plan for a failed or failing bank, which is directed by the responsible safety-net authority, and is generally designed to fully reimburse or protect insured deposits while minimizing costs to the deposit insurer. Typically, resolutions involve costs to the insurer because the insurer's obligation to insured deposits exceeds net recoveries on the institution's assets.

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[1] See International Association of Deposit Insurers: Guide for the Development of Effective Deposit Insurance Systems, page 19.

[2] The Subcommittee on Legal Protection and Indemnification Issues is made up of members from 6 countries: Argentina, Colombia, Mexico (Chair), Nicaragua, Turkey and Uruguay.

[3] See International Association of Deposit Insurers: General Guidance for the Resolution of Bank Failures, page 8.

- **Legal Protection**[4]**:** The set of lawful mechanisms by means of which persons participating in bank resolution processes, including the deposit insurer, current and former employees, directors, officers and lawfully delegated agents, are covered from the effects of claims and procedures initiated against them for alleged acts and omissions executed in good faith, that occur within the scope of such persons' mandates. Legal protection can include the provision of statutory immunity, legal counsel and defense, and of indemnification policies.

- **Liability or responsibility:** The obligation to compensate and satisfy, by means of oneself or another, any loss or damage caused to a third party.[5]

- **Accountability:** The acts and procedures by means of which the deposit insurer, its employees, officers and members of its governing board, and/or certain individuals who take part in bank resolution, inform, prove and justify the exercise of the powers and attributions conferred upon them, during or once said processes are concluded, in the terms and within the scope of each country's applicable legal framework.

B. Suggested IADI Guidance

The following guidance points summarize the main conclusions of this paper and set out proposed IADI Core Principles and Supporting Guidance for the establishment of a legal protection scheme for deposit insurance systems. The guidance is reflective of, and adaptable to, a broad range of settings, circumstances and structures.

Core Principle[6]: Legal Protection

The deposit insurer and individuals working for the deposit insurer should be protected against lawsuits for their decisions and actions taken in "good faith" while discharging their mandates. However, individuals must be required to follow appropriate conflict-of-interest rules and codes of conduct to ensure they remain accountable. Legal protection should be defined in legislation and administrative procedures, and under appropriate circumstances, cover legal costs for those indemnified.

[4] The terms legal protection and legal defense are used interchangeably.

[5] The terms liability and responsibility are also used interchangeably.

[6] See Annex for the definition of "core principle" and "supporting guidance points".

Supporting Guidance Points

Legal Protection

1. Legal protection should be set forth in laws and bylaws.

2. To reach their goals and objectives, it is essential that deposit insurance systems specify who the beneficiaries of legal protection are.

3. The provision of legal protection should be limited to alleged acts or omissions of any nature (civil, administrative and criminal) executed in good faith, taken while in execution of the powers conferred by law, based on available expertise, and taking into consideration the information existing at the time when decisions are made.

4. Legal protection provided to government officials and employees to defend against claims initiated by oversight or auditing authorities should consider the principles and legal traditions that are prevalent in the environment where the deposit insurance agency operates.

5. Legal defense should not be limited to officers or employees of a senior hierarchical standing, but instead, should extend to all the persons, including the deposit insurer, current and former employees, directors, officers and delegated agents who are subject to legal claims and procedures because of their alleged acts and omissions in resolution processes.

6. While legal protection for non-public entities should also be stated in law, the specific terms and conditions of such protection can be negotiated as part of the contractual agreement between the entity in charge of the resolution and the contractor or vendor providing the services. This can provide greater flexibility to both parties.

7. The language used in laws conferring legal protection authority should be broad enough to allow for periodic revisions to the specifics of legal protection at the policy statement or directive level, obviating the need for constant statutory modifications.

8. Legal protection should include, at least, the payment of lawyer and other expert personnel fees, defense expenses, as well as surety bonds and other guarantees, with a provision for the establishment of reasonable limits.

9. Legal defense should be extended to the beneficiary automatically, without further requisites, which does not mean that if, as a result of the respective legal proceeding, it is found that the beneficiary acted against the law or in bad faith, such person is exempt from reimbursing to the sponsoring entity any sum of costs and expenses incurred in his or her defense.

Responsibility

1. Any system of responsibilities should have as its main objective to dissuade from engaging in conduct that is contrary to applicable norms.

2. The provision of legal protection does not exempt its beneficiary from abiding to act within the sphere of its legal responsibilities.

3. The authority should have the power to sanction persons that do not comply with the obligations or assignments that correspond to their employment.

Accountability

1. Legal protection should coexist in an environment where there is clear accountability applicable to all persons and entities involved in resolutions, in order that all this persons inform, justify and demonstrate their decisions before competent oversight bodies and society.

2. Persons involved in resolutions should be required to follow appropriate oaths of office, conflict of interest rules, and codes of conduct to ensure they remain accountable. And, it is important that the safety net organization itself should remain accountable for its conduct.

Provisions regarding secrecy and confidentiality regarding all documents, information and records pertaining to matters dealt with by the deposit insurance entity also need to be in place.

3. It is advisable that monitoring and oversight of resolution processes take place in order to facilitate the search of facts and evidence, favorable or unfavorable, in relation to the acts and decisions related to such processes.

II. Introduction

Given the scope of action of deposit insurers, the decisions related to banking resolution processes are especially important due to their potential to affect a country's macroeconomic environment, as well as the legal and economic spheres of various persons such as depositors and other creditors, and shareholders.

Moreover, the nature and importance of the powers conferred upon decision makers including members of governing bodies, officers and employees, as well as specialized third parties who participate in resolution processes, exposes these persons to possible claims related to the decisions, actions and omissions while performing their roles.

The aforesaid circumstances could jeopardize the objectivity and impartiality of the decisions to be adopted by each party within the scope of its respective mandates, while weakening the achievement of institutional objectives and the accomplishment of mandates, eroding the credibility, independence, transparency and integrity of the deposit insurance system.

Due to the aforementioned, it is necessary to have a system of legal protection that provides certainty to the decision making process and to the exercise of conferred powers in order to execute banking resolution processes without affecting the government officials or the personnel involved in such processes, as long as their acts take place within the applicable legal framework.

A. Background

In September of 2004, the "APEC Policy Dialogue on Deposit Insurance" issued the following key policy conclusions related to legal protection, which IADI formally adopted in June 2005, and took up, as Principle 14, in its recently published "Core Principles for Effective Deposit Insurance Systems":

- *"Situations exist in a number of economies where individuals (e.g. current and former employees, directors, officers and agents) working for deposit insurers and other organizations involved in the financial system safety net are held personally liable for their decisions, actions or omissions taken in good faith in the normal discharge of their legal responsibilities.*

- *While this lack of legal protection may have been established to help improve accountability, it reduces incentives for these individuals to be diligent in the carrying out of their mandates. This can result in costly delays when dealing with troubled banks and resolving failed banks. Ultimately, the lack of legal protection can result in a serious erosion of credibility, independence and integrity of the deposit insurer and other safety net participants.*

- *Thus, individuals working for deposit insurers and other safety net participants should be protected against civil and criminal liability, except in cases of misconduct, for their decisions, actions or omissions taken in good faith while discharging their mandates. Legal protection should be codified in legislation and administrative procedures, and under appropriate circumstances, cover legal costs for those indemnified.*

- *However, legal protection must coexist in an environment where there is clear accountability. This means that while individuals should be legally protected, they must be required to follow appropriate oaths of office, conflict of interest rules and codes of conduct to ensure they remain accountable. And, it is important that the safety net organization itself should remain accountable for its conduct. Provisions regarding secrecy and confidentiality concerning all documents, information and records pertaining to matters dealt with by the deposit insurance entity also need to be in place."*[7]

Moreover, the document "Financial Sector Assessment: A Handbook", published jointly by the World Bank and the International Monetary Fund, highlights three modalities of legal protection in favor of employees exposed to civil and criminal liability:

> *"(a) by granting express statutory immunity from liability for actions and omissions that the persons concerned have taken in discharge of their legal responsibilities, (b) by making their agency vicariously liable for their faults, (c) by including appropriate indemnification provisions in their contracts of employment, or, perhaps, (d) by a combination of the three mechanisms, depending on the specific legal position of the officials concerned."*[8]

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[7] See International Association of Deposit Insurers: IADI to Adopt the Key Conclusions of the APEC Policy Dialogue on Deposit Insurance as Official IADI Guidance, page 2, and: Core Principles for Effective Deposit Insurance Systems, page 5. Principle 14 is a synthesis of APEC's policy conclusions:

"Individuals working for deposit insurers and other financial system safety-net participants should be protected against lawsuits for their decisions and actions taken in good faith while discharging their mandates. However, legal protection must coexist in an environment where there is clear accountability. This means that while individuals should be legally protected, they must be required to follow appropriate oaths of office, conflict-of-interest rules and codes of conduct to ensure they remain accountable. Legal protection should be codified in legislation and administrative procedures, and under appropriate circumstances, cover legal costs for those indemnified."

[8] See International Monetary Fund and World Bank: Financial Sector Assessment: A Handbook, page 152. Core Principle 1 "Objectives, independence, powers, transparency and cooperation" considers legal protection as part of a suitable normative framework for banking supervision. See Basel Committee on Banking Supervision: Core Principles of Effective Banking Supervision, page 2.

The recent literature available in the web site portals of international financial institutions such as the World Bank, the International Monetary Fund and the Bank for International Settlements addresses the topic of legal protection indirectly as part of the larger issues of banking regulation and supervision, governance and accountability. Moreover, the literature builds on the first of the "Basel Core Principles on Effective Banking Supervision" of the Basel Committee on Effective Banking Supervision, and agrees on the convenience of legal protection; the presumed existence of good faith in the actions or omissions of the beneficiaries of legal protection, as well as on the importance of accompanying the legal protection with adequate accountability mechanisms[9]. It is also important to note that in 1999, the World Bank carried out a survey on legal protection among supervisory agencies. The survey appears to be the first to have documented legal protection practices in 20 countries[10].

As mentioned, the Subcommittee on Legal Protection and Indemnification Issues was created in May 2006. With the distribution of the corresponding Business Plan to IADI members in March 2007, the subcommittee began to work on the bibliographical research and analysis of legal protection practices among IADI members.

The mandate of the Subcommittee on Legal Protection and Indemnification Issues is the following:

> *"To develop comprehensive and detailed guidance on the convenience for the Deposit Insurance System to have available a legal protection scheme in favor of the Deposit Insurer, its employees, officials and board members, and of certain individuals who participate in "Bank Resolution" processes."* [11]

III. Scope and Methodology

This document is based on the experiences described in the responses to the questionnaire distributed on 9 March 2007 (the questionnaire), to 47 deposit insurance systems that are members of IADI as well as on the research on the subject literature. The conclusions were at times complemented with responses to previous IADI questionnaires, as well as with information on official Internet websites.

The survey consists of 17 questions divided in the following categories:

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[9] See Arnone et al, Hüpkes et al, and Quintyn et al, various pages.

[10] See World Bank: Statutory Protection of Banking Supervisors.

[11] See International Association of Deposit Insurers: Research Plan for Guidance for the Establishment of a Legal Protection Scheme for Deposit Insurance Systems, page 1.

a. Legal Protection
b. Resolutions
c. Liability or Responsibility
d. Accountability

As of 31 December 2007, questionnaire responses from deposit insurance systems in the following countries were received:

1. Albania
2. Argentina
3. Bahamas
4. Brazil
5. Bulgaria
6. Canada and Quebec
7. Colombia
8. Czech Republic
9. El Salvador
10. Hungary
11. India
12. Jamaica
13. Japan
14. Jordan
15. Kazakhstan
16. Korea
17. Malaysia
18. Morocco
19. Mexico
20. Nicaragua
21. Nigeria
22. Peru
23. Philippines
24. Romania
25. Russian Federation
26. Singapore
27. Sweden
28. Taiwan
29. Tanzania
30. Trinidad and Tobago
31. Turkey
32. Ukraine
33. United States
34. Uruguay
35. Venezuela

IV. Core Principles and Supporting Guidance Points of Legal Protection among Deposit Insurance Systems in Banking Resolution Processes

The object of this document is to:

(1) Identify the different legal protection arrangements utilized by deposit insurance agencies members of IADI.

(2) Analyze relevant and coincident characteristics of legal protection regimes operating under various legal systems.

(3) Identify the beneficiaries of legal protection; the scope of applicability and the associated requisites; the modalities of operation; the nature of claims which it encompasses; the entities in charge of paying outlays and expenses; the persons in charge of providing legal protection; the protection against claims initiated by oversight entities and by the deposit insurer; and, the reimbursement of outlays and expenses when the beneficiary is found responsible of the acts or omissions involved.

(4) Based on the above, issue certain core principles and supporting guidance related to the existence of a legal defense regime in favor of the persons who collaborate in deposit insurance systems in

A. Legal protection

The object of legal protection is that agencies and current and former government officials and employees of certain safety net entities, public or private, not be affected by claims and other legal proceedings initiated against them for acts and omissions occurred while exercising their legally conferred functions and responsibilities.

The regime is applied with the purpose that its beneficiaries may carry on their powers and responsibilities with certainty and adopt adequate decisions without burden that claims or complaints filed by third parties against them could adversely affect their person or estate, as long as their acts are executed within the legal framework.

Based on the information provided in the questionnaire responses, 71 percent of the deposit insurance systems reported having some type of legal protection regime, though there is no general characteristic regarding how it is applied.

The lack of adequate legal protection can lead to:

- Reduction of incentives to act in a diligent and timely manner in the exercise of the functions inherent to a resolution.

- Non-compliance with the objectives common to all types of banking resolutions, this is, that actions are not taken in protection of the interests of depositors, and of the payments and financial systems, leading to a larger cost for the State.

- Erosion of the authority, independence and integrity of the deposit insurer and of other safety net participants.

1. Legal provision

Approximately 61 percent of deposit insurance systems with legal protection indicated that it is stated only in law (either in a special law regulating the deposit insurer or in a general law). Eighteen percent of deposit insurance systems mentioned that their legal protection regime is stated only in bylaws or other administrative document. Lastly, 21 percent of respondents said that legal protection is expressed both in law and in bylaws.

It is deemed important that the legal protection regime is set forth in legislation, either in the legislation that creates or regulates the deposit insurer, or in laws that regulate banking activity, and not only in bylaws or other administrative regulations. This is because laws in most countries are

created through a procedure that must follow certain formalities by means of their legislative branch, which confers greater legal certainty. On the other hand, the language used in laws conferring legal protection authority should be broad enough to allow for periodic revisions to the specifics of legal protection at the policy statement or directive level.

2. Beneficiaries

Of the deposit insurance systems that provided information regarding the beneficiaries of legal defense, 82 percent reported that the regime includes, all or nearly all the employees of the deposit insurer (including the members of the governing bodies, delegated bank managers and other officers and delegated agents). However, in 11 percent of respondents the legal protection only applies to high-ranking officers. Lastly, 7 percent of respondents noted that it was the agency, and not the persons, who is the subject of possible legal claims and proceedings.

Though it was observed that in the majority of systems legal protection is inclusive, it is desirable that legal protection extends to all the persons, including former employees, who take part in acts or decisions related to resolutions who may be subject of a possible complaint or claim. The aforementioned includes persons that without being part of a public entity, central bank, deposit insurer or any other government body, participate directly or indirectly in a banking resolution. Coverage for current and former employees enhances certainty and independence for the persons involved in resolution processes. The organization should also benefit from legal protection. If the organization does not enjoy legal protection while its employees do, the latter could be concerned that while they enjoy legal protection, the organization could still be pursued by third parties, and so they in turn could be pursued or sanctioned by the organization as a secondary result. Regarding non-public entities, while protection for them should be foreseen in law, its specific terms and conditions can be negotiated as part of the contractual agreement between the entity in charge of the resolution and the contractor or vendor providing the services. This can provide greater flexibility to all parties.

It is also advisable to have a mechanism in place for informing the beneficiaries of legal protection in order to let them know with certainty that they are covered.

3. Scope of applicability and requisites

In the majority of surveyed systems (68%) that have a legal defense regime, the regime is applicable to any act or omission related to resolution processes, as long as “good faith” prevails. However, some systems noted the existence of negligence and gross negligence exclusions to the applicability of legal protection.

This means that in general, the legal protection is applicable in favor of persons who participate in resolution processes as long as their acts and decisions are taken in compliance with the corresponding procedures, in terms of the prevailing laws and regulations.

Moreover, there are deposit insurance systems in which the legal defense regime proceeds when the person that requests the protection fulfills basic procedural or other types of requirements. Examples noted were the need to obtain authorization from internal instances, or considerations regarding the monetary amount that the legal claim or proceeding may entail, among others.

It is advisable that legal defense proceeds in favor of the beneficiary automatically; this is, without any additional requisites of an administrative nature that might hinder or even deny legal protection to someone who intervened in banking resolution processes. Moreover, requiring the absence of negligence for legal protection to proceed could be self-defeating to the extent that persons continue to fear being subject to catastrophic liabilities that may arise from honest and inadvertent mistakes that could be subsequently determined as negligence.

Automatic legal defense fosters greater security for the beneficiaries of legal protection. For legal protection to proceed, it is only necessary that the persons requesting it act within the scope of their legal authority, basing their decisions on their knowledge and on information available to them at the time.

Some systems limit legal protection to banking supervisory activities. In this respect, if the entities in charge of supervision are part of the resolution process, they should be afforded legal defense, independently of whether they are also responsible for deposit insurance functions.

The object behind the automatic provision of legal defense is that the beneficiary can obtain such protection on a timely basis, but this does not mean that if as a result of the procedure it is determined that the person acted illegally or in bad faith, the person is exempt from reimbursing to the sponsoring agency the associated costs and expenses.

4. Coverage

By subject matter

Of the systems that reported having legal protection and that provided information related to coverage regarding administrative, civil and criminal claims, it was noticed that in general, legal defense extends to all types of claims. One system mentioned that coverage extends only to civil and criminal claims, another that only administrative or civil claims are covered.

Different jurisdictions take different approaches to the kinds of conduct that is criminalized as opposed to being a matter of civil redress. For the same reason that it is considered that persons should not be protected from civil redress if they act in bad faith, legislators could regard as unsuitable the extension of legal protection to criminal responsibility.

By amount

In the majority of systems, legal protection covers legal fees as well as the costs and expenses incurred as a consequence of the legal claim or complaint.

If the coverage of legal fees, expenses and costs were limited, the acts and decisions of the persons participating in bank resolutions could be inhibited to the extent that they consider that claims or proceedings could eventually affect their economic well being.

Notwithstanding the above, the existence of internal control procedures that allow for periodic review of the amount of legal fees and/or expenses incurred by lawyers is recommendable in order to prevent potential abuses on their part or on the part of beneficiaries.

The object of legal protection is that its beneficiaries not be burdened by claims and other proceedings against them arising from alleged acts and omissions that take place while exercising their responsibilities.

It is thus advisable that legal defense is granted to protect against claims, complaints or other legal procedure for alleged acts or omissions of any nature against the beneficiary and that legal protection encompasses lawyer fees and costs as well as any other outlay such as surety bonds or any other kind of guarantee that may derive from the respective processes.

Nonetheless, the recommendations mentioned above should not obstruct the operation of control mechanisms that allow for the oversight and accountability of all legal protection requests and outlays, as well as an obligation on the part of the beneficiary to reimburse costs and expenses to the extent that the assumptions of legality and good faith are proven incorrect.

5. Entity or organization responsible for paying costs and outlays

The analysis of survey responses found that in the large majority (90%) of the deposit insurance systems that provided detailed information, the costs and expenses related to legal protection are paid by the deposit insurer, which in some countries is a part of the organic structure of the central bank or bank regulator. However, one deposit insurance system reported that coverage of legal protection expenses is in charge of the entity in liquidation.

In another case, the government itself, through an entity different from the deposit insurer, central bank, or supervisor, is responsible for the payment of such outlays. In this case, the deposit insurer can nonetheless extend advance payments to the beneficiary, and the latter can designate or agree that the deposit insurer be in charge of making the payments in place of said government entity.

When the payment of legal defense outlays is in charge of a banking institution in liquidation, the existence of a backstop entity capable of providing resources to the bank is advisable, as it is probable that the bank will not have the necessary resources to pay for the legal protection costs incurred. Nonetheless, the provision of legal defense in charge of the entity in liquidation could also generate a conflict because on one side, the bank would be paying for legal protection to those who intervened in the resolution process, while on the other, the shareholders of the bank in question may be the plaintiffs in the legal proceedings.

Likewise, every deposit insurance system should set reasonable limits to the costs generated by legal defense as well its main characteristics and scope of applicability.

6. Modalities of extension

In relation to the actual implementation of legal protection, various modalities of application were found. One modality consists in granting such protection via the staff of the deposit insurer or of another state entity. Under another modality, specialized third parties, who can be proposed by the deposit insurer or by the beneficiary, are hired. A third form consists in granting legal protection by means of the subscription of a specialized insurance policy.

In some cases, the three modalities mentioned above are applicable, and the determination of which one prevails is subject to the type of act carried out or to the beneficiaries' hierarchical level.

While some cases foresee the possibility of legal protection in charge of an external counsel, the legal department of the respective agency provides legal protection initially, and secondarily, when internal staff is insufficient or does not have the required expertise in the subject matter, legal counsel is assigned to external providers hired by the agency.

It is advisable to consider that legal protection dispensed by agency personnel, besides generating extraordinary work that may distract staff from their core activities, may also face human resource constraints, lack adequate expertise for a case at hand, or face insufficient or restrictive budgetary resources.

Though the provision of legal protection depends on the nature and characteristics of each deposit insurance system, independently of who provides it, legal protection should be dispensed in an effective and expedite way, by means of specialized personnel able to respond to any kind of claim or legal proceeding brought forth.

7. Protection against claims from oversight authorities

Of the international experiences analyzed, no prevalent trend was identified in relation to the extension of legal defense to protect against claims initiated by oversight authorities.

Nonetheless, it is advisable that in principle, legal protection include actions initiated by oversight authorities. The reasoning behind is that the spirit of legal protection is to not inhibit the decision-making process when the interests of depositors or the stability of the payments and financial system are at stake. This last belief applies without prejudice to the eventual reimbursement of legal protection costs and expenses by the beneficiary when a finding of responsibility on his or her part has been made, as well as to the existence of a sound regime of accountability.

8. Protection against claims from the deposit insurer

Approximately two thirds of the deposit insurance systems that provided information on this matter noted that they do not provide legal defense in cases where the deposit insurers themselves initiate the claims.

In cases where it is deemed appropriate that legal protection includes coverage against claims from the deposit insurer, it is advisable to assess the terms of such coverage in the context of the principles and traditions of the jurisdiction where the corresponding deposit insurance system operates.

9. Reimbursement by beneficiaries of associated costs and outlays

Of the eighteen systems that provided information on the reimbursement by the beneficiary of the costs and expenses associated to legal protection, 61% noted that when there exists a definitive finding of responsibility against the beneficiary related to his or her acts or omissions in banking resolution processes, he or she is obligated to make reimbursement. One third of the systems mentioned that there is no obligation to reimburse, and one country noted that the courts make the decision of reimbursement.

It is advisable that legal defense is provided automatically and is based on the principles of legality and good faith. Nonetheless, in cases where there is a definitive finding that the beneficiary did not act in accordance with such principles, he or she must reimburse the costs and expenses associated to the provision of legal protection.

B. Resolutions

When a banking institution shows evidence of financial problems that may affect its solvency or stability, competent authorities should adopt measures aimed at operating the bank's exit from the market in order to protect the interests of depositors, as well as the payments and financial systems, in a less costly way. These measures may affect the legal and economic sphere of different persons such as shareholders, the managers of the concerned intermediary, its depositors and its other clients.

Deposit insurers in different countries, depending on the type of legal and financial systems under which they operate, can participate, to a smaller or larger degree, in the decisions regarding the banking resolution processes. There are countries where the deposit insurer leads the resolution process and there are others where, in addition to the deposit insurer, other authorities also participate.

In the majority of systems surveyed, the acts and decisions related to resolutions correspond to public entities – central banks, deposit insurers and other government bodies – while in other jurisdictions, resolutions are handled by private bodies. Moreover, deposit insurance systems also contemplate the participation in resolution processes of specialized third parties other than the corresponding safety members in charge.

C. Responsibility

In relation to the issue of liability or responsibility, information was obtained in relation to two aspects. More than half (54%) of the questionnaire respondents reported the existence of some type of conditional immunity that limits or exempts from responsibility the persons who participate in banking resolution processes. Moreover, some respondents noted the types of responsibilities that are regulated in their legal frameworks as well as the ways in which responsibility is regulated depending on the government agency involved. Some deposit insurance systems noted that in their countries, responsibility falls on the deposit insurance entities and not on individuals.

While legal protection supplied by the State allows government officials to execute their mandates detached from undue compromises and external interests and pressures, this privilege does not mean that the State leaves behind the disciplinary power that it has received from society. Oversight authorities should be vested with powers that enable them to impose disciplinary sanctions on persons that do not comply with the obligations or the duties inherent to the positions that they have been assigned.

1. Types of responsibilities

The liability or responsibility accrued by individuals who perform acts

contrary to the law can be of various types:

- The first type is an administrative liability, which has to do with the acts of government officials as employees of the State. Sanctions for administrative responsibility range from a routine calling of attention to the barring from public service for a given time period or even to the imposition of pecuniary sanctions.

- A second class is criminal liability, which comes about when the alleged conduct of the person involved infringes upon established normative assumptions of criminal laws, and the commission of such acts is considered a punitive offense. In most cases, the sanction involves the privation of liberty.

- The third class corresponds to civil responsibility, which involves an act or omission that inflicts damage (economic loss) either on private parties or on a public entity, with the consequence that an obligation arises to respond for the aforementioned damages.

2. System of responsibilities

A system of responsibility can be preventive, corrective, ex-ante, ex-post, internal or external. Its primary objective, should dissuade persons from committing acts or getting involved in behavior that runs contrary to established norms and standards of behavior.

For the purposes of the legal protection regime, the existence of an internal control department within the Executive Branch or in any of the governmental branches of which the deposit insurer is a part, has as its main goal to carry out preventive actions as well as to oversee the adequate exercise of the powers conferred within the State's activities.

Such internal control mechanism reflects the rigor with which the public administration executes its mandates, which include the activities of deposit insurers. This mechanism also aims at the realization of the conditions that are necessary for the adequate performance of the persons that take part in public affairs, improving the results of the corresponding agencies.

However, to fully reach those objectives, and for the existence of an internal control body to make sense, public officers and employees subject to such control should conscientiously understand that their participation in the review processes is obligatory.

In order to establish a system of responsibilities for deposit insurers, the minimum parameters would be:

- **Provision of the system within a normative framework.** It is advisable to contemplate the establishment of the legal responsibility

- **Procedure of the system of responsibilities.** In order to provide legal certainty to the public employee, it is advisable to set forth a diligent procedure that lays down the stages and rules that must be satisfied in order to be able to issue a valorative judgment in relation to the actions of the public servant.

- **Application of the procedure for the system of responsibilities.** The review of the information obtained from the answers to the questionnaire sent to IADI Members shows that generally there are two systems to ascertain the responsibility of government officers and employees. In the first one, the oversight entity may initiate the respective procedure on its own or *motu proprio*, with no need for a pre-existing claim from a third party requesting the scrutiny of the acts of the public officials involved. In the second, in order to scrutinize the acts of the officer involved, the existence of a claim by a third party is expressly required.

- **Subject matters of legal protection.** International experience shows that the range of legal subject matters in relation to which government officials can be held liable is broad; nonetheless, in general, three core subject matters can be mentioned, civil, criminal and administrative liability.

- **Effects of the system of responsibility.** In order to produce the desired effects the system needs to consider the possibility of imposing sanctions to government officers and employees that do not comply with their obligations. The range of possible sanctions is broad, though the most prevalent are privation of liberty, pecuniary and administrative sanctions.

It is important to mention that the privilege of legal defense should not exempt its beneficiary from being subjected to a legal responsibility regime.

D. Accountability

The concept of accountability is part of society's ordinary language and reflects a concern for having checks and balances to ensure an adequate exercise of responsibilities entrusted to government officials.

Schendler defines accountability as: *"A is accountable to B when A must inform B on its (A's) (past or future) actions and decisions, to justify them,*

and to suffer a penalty in case of inappropriate conduct"[12]

Hüpkes and other authors analyze the origin, object and functions of accountability and distinguish the nature and challenges of accountability faced by central banks and regulatory and supervisory agencies, proposing mechanisms to foster its effective practice[13].

The analysis performed shows that most (97 percent) of the deposit insurance systems reported practicing accountability. Accountability may include the elaboration and publishing of reports, audited financial statements, or another practice such as undergoing periodic audits as well as strategic planning exercises.

In a primary stage, accountability may request subject actors to inform and prove the basis for their decisions (inquiry of facts); in a subsequent stage, actors can be requested to justify their decisions (inquiry of reasons).

There always exists both a reciprocal right and obligation; the right to receive the requested information depending on the level of the review, as well as the obligation of the obligated party to provide the requested information.

Accountability has to do with a monitoring and oversight role, which involves the search for facts and the generation of favorable or unfavorable evidence. Accountability is an option against power's mute and unilateral controls.

It is relevant to highlight that the activities related to resolution processes generate documents, information and registers which should be subjected to certain confidentiality measures in order to prevent their alteration, loss, transmittal and access by unauthorized third parties who may reveal data or information that may harm the financial, economic or monetary stability of a country. It is thus necessary that each deposit insurance system analyze the information that must be kept confidential. This reasoning is put forth without prejudice of the prevalence of transparency in the exercise of conferred attributions and operations, which, in many countries, is stated in legislation.

The aforementioned accountability has two basic dimensions. The first one deals with the obligation of state actors to inform and prove the basis of their decisions while justifying them before the citizenry; the second dimension contemplates the possibility of imposing sanctions on officers or employees who violate their public duties.

[12] See Schedler (1999). Pages 13 to 28.

[13] See Hüpkes, et al.

In order to comply with its objectives, accountability requires the existence of coercive and punitive elements. This means that the subjects of accountability should be fully aware that their acts are under permanent scrutiny and that behavior that departs from their obligations will be sanctioned. Accountability exercises that limit themselves to exposing inappropriate conduct without the imposition of an accompanying sanction do not contribute to the establishment of solid regimes.

The existence of effective supervisory and sanctioning mechanisms is essential in order to have an “incentives structure” that makes the officer or employee conscious that his or her activity can be reviewed and possibly even sanctioned.

It is important to note that any sanction must implicitly include the principle of “proportionality”. Proportionality demands that the severity of the sanction depend on the graveness of the offense against society.

Lastly, accountability can be seen as a way of controlling the excesses of public power and not as a way to limit such power.

1. Accountability system

Based on the above considerations, minimum parameters for the establishment of a System of Accountability for deposit insurers can be set forth.

- **Determination of the system.** As a starting point, accountability should set forth in the normative framework of each country; the level of determination, either constitutional or in regulation, depends on the tradition and principles of each legal system or on the importance that the subject commands.

- **Establishment of the procedure.** Corresponding legislation should include comprehensive limits to the review procedures to be followed by oversight entities. Other essential elements to be determined include: scope of revisions, this is, whether revisions are of facts or of reasons; acts subject to review; information to be produced; time periods for compliance; as well as the obligation of the reviewing entity to issue a conclusion in relation to the acts subject to review.

- **Nature of the oversight body.** The entity in charge of the oversight can be part of the government branch to which the deposit insurer is attached, which can be the Executive or the Legislative, or be part of another branch of government. There are cases where revisions are performed by various oversight bodies attached to different branches of government.

- **Levels.** Any type of accountability process must contemplate three basic levels: information and demonstration, justification, and sanctioning; the absence of any one of these fosters to a smaller or larger degree an incomplete accountability system.

- **Regulation.** The establishment of a process of accountability must be supported by a carefully constructed structure of rules, which does not suffocate the exercise of power in a regulatory straitjacket that impedes the effective discharge of responsibilities.

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Annex

Details on legal protection practices among IADI Members[14]

1. **Albanian Deposit Insurance Agency:** There are no explicit legal provisions in Albanian legislation regulating legal defense for organisms, officials and/or private individuals who take part in bank resolution actions or decisions. However, there are general provisions in the Civil Code of the Republic of Albania stating that when participants in resolution processes become exposed to claims from third parties, the employing institution becomes the party responsible of providing legal defense to the person, but this defense applies only for cases initiated by a third party. The civil code also makes the employer liable for the actions of an employee found guilty for damages caused to a third party while in the performance of responsibilities. However, when damages are found to have been performed contrary to the duties of the employee, the latter must reimburse the employer for the damages caused and no legal advice is provided to employees in such case.

2. **Banco Central del Uruguay, Superintendencia de Protección del Ahorro Bancario:** There is no legal protection regime in place.

3. **Bank Al-Maghrib, Fonds Collectif de Garantie des Dépôts (Morocco):** The legal defense regime is set forth in the 2006 Banking Act. The legal protection regime is automatic and covers employees of the Bank, there is no limit on terms of coverage.

4. **Bulgarian Deposit Insurance Fund:** There is no legal protection regime in place for banking resolution processes.

5. **Canada Deposit Insurance Corporation:** The directors and officers of CDIC are entitled to be indemnified by the Canadian government, via the Treasury Board, under section 119 of the Financial Administration Act, so long as they act honestly and in good faith with a view to the best interests of CDIC. Provisions supplementary to this are contained in Part VI of the CDIC Corporate By-law. The indemnity covers the costs of defending civil, administrative or criminal proceedings brought against them in their capacity as directors or officers and any resulting civil liabilities (i.e., pecuniary damages) or administrative or criminal monetary penalties. A director or officer must request payment from the Treasury Board and there is no stipulated procedure for doing so. The employees of CDIC have a common law right to be indemnified by their employer for an expense incurred on its behalf or a civil liability to a third party incurred in properly carrying out their terms of employment. Also, an employer is liable to a third party for civil liability caused by the negligence of an employee while carrying out his or her job. Employees are not entitled to a common law indemnity for civil liability to their employer, but the usual remedy taken by an employer for an honest error is, at most, dismissal. In addition to the foregoing, CDIC, and its directors, officers and employees as well as its third party agents, are immunized against civil liability by section 45.1 of the CDIC Act for anything done or omitted to be done in good faith when using the powers and carrying out the duties and functions conferred on them by the CDIC Act.

6. **Central Deposit Insurance Corporation:** Applicable provisions of the legal protection regime are included in the Civil Service Protection Act and the Regulations for Legal Assistance for the Civil Service. Coverage extends to claims initiated by the deposit insurer and encompasses actions related to civil and criminal litigation including payment of related expenses, legal fees and damages. Officials participating in bank resolutions need to submit an application requesting legal assistance and defense. According to article 9 of

[14] Unless noted otherwise, the primary source for all information is the responses provided by the corresponding deposit insurance system to the subcommittee questionnaires. Secondary sources include member websites and the responses to the Canada Deposit Insurance Corporation International Deposit Insurance Survey Questionnaire.

the Deposit Insurance Act, the CDIC shall be liable for any damage arising from an intent or negligent act of the persons in charge and employees of the CDIC, while acting within the scope of deposit insurance responsibilities. Should the damage result from an act committed with intent or gross negligence, the CDIC can seek recovery of damages from the persons involved.

7. **Deposit Guarantee Fund (Ukraine):** There are no provisions for legal defense.

8. **Deposit Guarantee Fund in the Banking System (Romania):** There are no provisions for legal protection.

9. **Deposit Insurance Agency (Russian Federation):** Russian legislators believe that a detailed interpretation of procedures in the Bankruptcy Law constitutes sufficient safeguard for making proper decisions by all involved parties. Practice in general confirms this position. The DIA has been successful in defending itself against attempts to appeal its decisions or actions using general legislation. In case it is necessary to provide legal advice to DIA employees, the advice is provided on a case by case basis.

10. **Deposit Insurance and Credit Guarantee Corporation, Reserve Bank of India:** The DICGC Act states that "No suit or other legal proceeding shall lie against the Corporation or the Reserve Bank or any director of the Board or any officer of the Corporation or the Reserve Bank or any other person or agency authorized by the Corporation or the Reserve Bank to discharge any functions under the DICGC Act for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act." Legal protection is automatic and includes the payment of attorney fees, legal expenses and any other outlay incurred to face suits or any kind of proceeding of an administrative nature, or when beneficiaries are called as witnesses or in other capacity in a proceeding, up and through the conclusion of all instances. The legal protection regime does not extend to claims undertaken by supervisory and/or oversight authorities, or to claims initiated by the organism itself against individuals participating in resolution processes.

11. **Deposit Insurance Board of Tanzania:** Though there is no explicit legal defense regime in place, the Bank of Tanzania Act, 2006, provides an immunity clause in favor of board members and employees of the Bank for actions in good faith performed while on official duties. For the provision of legal protection, approval must be sought from the Bank's management, and the Deposit Insurance Board, if applicable, would pay for external legal fees.

12. **Deposit Insurance Corporation (Trinidad and Tobago):** There are no provisions for legal assistance and defense.

13. **Deposit Insurance Corporation of Japan:** There is no legal protection regime in place. No lawsuits or other legal action have ever been brought in courts against decisions and actions made by DICJ personnel.

14. **Deposit Insurance Corporation, Central Bank of The Bahamas:** The applicable legal defense framework is regulated in the Protection of Depositors Act 1999, sections 25 and 21(2), the Companies Act 1992 and the Commissions of Inquiry Act 1911. The statutes apply the broad statement that appointed individuals are not subject to any action, claim or demand by, or any liability to any person, in respect of actions or omissions in good faith without negligence, while in the performance of duties. Under section 21 of the Protection of Depositors Act, the beneficiaries of the legal protection are the Crown, the Minister of Finance, the Corporation, its Directors and Officers and any individuals appointed by the Corporation. Legal protection extends to claims initiated by the deposit insurer and by supervisory and/or oversight authorities. Legal protection is automatically provided by statutes, and costs and expenses are covered by the Deposit Insurance Corporation and/or Central Bank.

15. **Deposit Insurance Fund (Czech Republic):** Prior to July 1, 2007, the responsibility of board members involved in resolution processes was unlimited, and the Fund paid an insurance policy for board members. The new amendment in the Banking Law effectively limits the possible liability of a board member to errors, omissions and negligence. In the case of deliberate acts or omissions, liability remains unlimited.

16. **Federal Deposit Insurance Corporation:** There are three main legal protection mechanisms to shield the FDIC and its employees from liability. Under the Federal Tort Claims Act, all federal employees are generally protected from tort liability for legal actions brought against as long as a claim arises from actions taken within the scope of their official duties. Second, in situations involving the disposition of assets, the Federal Deposit Insurance Act provides employees immunity from liability under the Securities Act of 1933 for claims arising out of any act or omission within the scope of employment. This immunity does not extend to criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of employment. Third, in addition to the aforementioned protections, the FDIC Board of Directors has concluded that it is in the corporation's interest to establish a supplemental indemnity policy in favor of present and former employees, officers or directors sued for acts arising from the performance of their official duties. Each type of legal protection requires some degree of evaluation by the employing agency and/or the Department of Justice concerning whether the actions complained of were committed by an employee of the agency acting within the scope of his employment at the time the alleged tort occurred.

17. **Fondo de Garantía de Depósitos de las Instituciones Financieras (Nicaragua):** Nicaraguan law extends civil, administrative and pecuniary protection to all employees, officers and board members while carrying out their duties in any of the stages of a bank's resolution processes. Legal action, if any, should be directed against FOGADE. Only after there is a final resolution against FOGADE, can the plaintiff proceed against individuals. There is no provision in the law for legal defense in favor of individuals should a process reach that stage. The applicable legal framework is contained in laws 551 and 561. Moreover, there is limited civil, administrative and pecuniary responsibility for the restitution and receivership process. Limited criminal responsibility only applies for actions taken during the liquidation process.

18. **Fondo de Garantía de Depósitos y Protección Bancaria (Venezuela):** Legal assistance and defense is provided for employees by the legal staff of the deposit insurer but there are no explicit regulatory provisions governing its application.

19. **Fondo de Garantías de Instituciones Financieras (Colombia):** The legal defense regime is in favor of the authorized agent in charge of banking liquidation processes. Legal protection includes claims made by the deposit insurer and by supervisory and/or oversight authorities. The regime is set forth in the Organic Statute of the Financial System, according to which, if a claim is brought up against the agent for their actions or decisions, a procedure must be followed to defend against such claims. Penalties against the authorized agent will be covered by the entity in resolution, but if the damage arises from a violation of the applicable legal framework, the authorized agent must respond for such damages to stakeholders or creditors of the entity in resolution. Decisions or actions taken by authorized agents in resolution processes can derive in civil, pecuniary, administrative and criminal liability. The liability regime is regulated by the Civil Code, the Criminal Code and by the Organic Statute of the Financial System.

20. **Fondo de Seguro de Depósitos (Peru):** The applicable legislation for legal protection is contained in complementary provision 29 of the General Law of the Financial System, limits the responsibility of banking supervisory agency employees and officers to acts or omissions committed with proven grave negligence or ill intent. The deposit insurance agency is trying to have this provision apply to its employees and officers as well.

21. **Fundo Garantidor de Créditos (Brazil):** Though resolutions processes in Brazil are spearheaded by the Central Bank, and FGD as a paybox in resolution processes, employees receive legal protection from lawsuits involving actions done in good faith[15].

22. **Instituto de Garantía de Depósitos (El Salvador):** For the deposit insurer, the legal defense regime is set forth in the Bank Law legislated on September 1999. Legal protection operates only in favor of members of the deposit insurance board. The deposit insurance agency can also extend legal protection to former members of the board if they were sued for their actions and omissions while serving in their official capacities. Though the banking supervisor does not have a formal legal protection regime, it has extended protection to its officers and employees on an ad-hoc basis.

23. **Instituto para la Protección al Ahorro Bancario (Mexico):** The applicable legal framework is set forth in the Law of Credit Institutions (LIC) and in the guidelines approved by the governing bodies of the public entities involved in the bank resolution processes. In the case of IPAB, the guidelines approved by its governing board set forth the form, terms and conditions in accordance with which IPAB provides legal counsel and defense through an insurance policy as well as through the formation of a dedicated trust, in case that insurance coverage turns out to be insufficient. Legal protection is automatic. The policy excludes coverage for actions against an individual initiated by public oversight authorities or by IPAB. In terms of limits to liability, the LIC states that participating entities, their board members and their officers and employees, as well as designated agents, will not be held liable for the losses suffered by banking institutions arising from their insolvency, bankruptcy, or financial deterioration, when acts or omissions are committed during the lawful discharge of responsibilities. Regarding the actions or omissions of the Financial Stability Committee, which is composed of the heads of the public entities that participate in resolution processes, and whose object is to assess the potential for financial instability posed by a particular financial intermediary in a given situation, its members will not be held liable for damages when, taking into account the information available at the time of their decision, they opted, to the best of their knowledge and ability, for the most appropriate course of action. In cases when legal actions or proceedings are initiated against Committee members, ill intent on their part must be proven.
24. **Jamaica Deposit Insurance Corporation:** The applicable legislation in relation to legal defense is set forth in the Bank of Jamaica Act and the Deposit Insurance Corporation Act. Under the Bank of Jamaica Act, the beneficiaries of the legal protection regime are the authorized officers of the Bank, the Minister of Finance, any person appointed by the Minister to assist in supervisory duties or in the performance of functions and duties or temporary management of a commercial bank or specified financial institution. Under the Deposit Insurance Act, the beneficiaries are the directors, officers and employees of the Corporation, as well as any person acting on its behalf. General expenses, legal fees, damages, or any other expenses incurred as a result of any legal action involving the beneficiaries are covered by the institutions (Bank of Jamaica and the Deposit Insurance Corporation) on whose behalf the beneficiaries are discharging their functions.

25. **Jordan Deposit Insurance Corporation:** Despite the inexistence of a formal legal protection regime, directors and officers of the DIS shall not be held liable unless it is proven that they acted in bad faith or for personal interests that are against those of the Corporation[16].

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[15] Information complemented with response to question 7, Section 4, of the CDIC Canada International Deposit Insurance Survey Questionnaire. Document available at: http://www.iadi.org/IDIS%20Survey%20Completed/FGC%20-%20Brazil%20FullQ1A1.pdf

[16] Information complemented with response to question 3, Section 9, and Section 4, question 7, of the CDIC Canada International Deposit Insurance Survey Questionnaire. Document available at: http://www.iadi.org/IDIS%20Survey%20Completed/DIC%20-%20Jordan%20FullQ1A1.pdf

26. **Kazakhstan Deposit Insurance Fund:** Though there is no special legal and defense regime, a defense or individuals who participate in banking resolutions is carried out under the general regime of defense of individuals' and legal entities' rights and interests in accordance with the legislation of the Republic of Kazakhstan.

27. **Korea Deposit Insurance Corporation:** The regime for legal defense is not set in legislation, but it operates under the KDIC internal bylaws. The beneficiaries of the regime are the KDIC and its staff and coverage extends to all costs and expenses without a set limit. All KDIC-related operations are covered, except acts or omissions caused by ill intent or gross negligence. The legal protection regime includes coverage for claims and/or actions initiated by the Corporation and supervisory and/or oversight authorities; however, if a legal proceeding ends in a decision that is adverse to the beneficiary, he or she is bound to reimburse the Corporation for expenses.

28. **Malaysia Deposit Insurance Corporation:** Banking and deposit insurance legislation provides for statutory immunity. Under the Banking and Financial Institutions Act 1989 ("BAFIA Act"), the Central Bank of Malaysia (CBM) its officers and employees, and any other person lawfully acting on behalf of the Bank, are protected against actions and other proceedings for acts done in good faith. The Islamic Banking Act 1989 has similar provisions in respect to acts done pursuant to that legislation. Under the Malaysia Deposit Insurance Corporation Act, CBM and MDIC officers and employees and any other person acting on their behalf, are protected against actions or and other proceedings for acts done pursuant to the MDIC Act, provided such acts were done in good faith. MDIC has in place detailed internal policy and procedures for officers, employees and agents to seek indemnity or funding from the organization. Legal assistance and defense extends to claims initiated by supervisory and/or oversight authorities but not to claims made by the deposit insurer.

29. **National Deposit Insurance Fund of Hungary:** Claims or litigation initiated by a third party for actions undertaken by the National Deposit Fund of Hungary or the Hungarian Financial Supervisory Authority is not feasible against individuals, but against the organization. Moreover, the 1996 Act on Credit Institutions and Financial Enterprises states that "Any reimbursement of claims against the Fund for damages caused contrary to the law may be enforced only if it can be determined that the Fund's actions or negligence have violated the law and the incurred damages have been caused thereby".

30. **Nigeria Deposit Insurance Corporation:** The applicable provisions in relation to legal defense are set forth in the Banks and Other Financial Institutions Act and the Nigeria Deposit Insurance Corporation Act. Both laws provide for indemnity in respect of all acts and omissions done in good faith by directors, officials and agents, in execution of the functions of both organizations, including bank resolution activities. Legal defense is automatic and includes payment of attorney fees, legal expenses and other outlays incurred to face suits, damages, court charges, etc. Legal protection excludes negligent acts and legal proceedings initiated by the NDIC or the Central Bank of Nigeria.

31. **Philippine Deposit Insurance Corporation:** The legal counsel and defense is set forth in Section 9(f), (g) and (h) of the amended PDIC Charter. Moreover, PDIC's Board of Directors has approved an Operations Manual that provides procedures for the filing and approval of indemnification claims. Legal protection excludes misconduct and negligence, as well as actions initiated by the Corporation against its directors, officers, employees or agents, and extends to their acts or omissions performed in good faith during their tenure or employment with the Corporation, when they resign, retire, are separated or transfer to another agency. In addition, Sections 38 and 39 of the 1987 Administrative Code regulate the civil liability of public officers, noting that superior officers shall not be civilly liable for acts done in the performance of official duties, unless there is a clear showing of bad faith,

malice or gross negligence. Moreover, officers who without just cause, neglect to perform duties, shall be liable for damages, without prejudice to any other legal liabilities that may apply. Moreover, superior officers shall not be held liable for wrongful acts of their subordinates, while the latter shall not be held liable for good faith acts, but become liable for wrongful acts, even if done following orders or instructions. An application for legal indemnification must be approved by the appropriate authority.

32. **Savings Deposit Insurance Fund (Turkey):** The legal defense regime is in favor of the chairmen, board members and staff of the Banking Regulation and Supervision Agency (BRSA) and of the Savings Deposit Insurance Fund (SDIF). The scope of legal protection involves the investigation of acts alleged to have been committed by beneficiaries of the legal protection regime in the performance of their duties, legal actions for compensation of damages and payment of receivables against them due to their decisions, actions and transactions taken and carried out in connection with their duties. Legal protection is automatic and extends to claims initiated by the deposit insurer and by supervisory and/or oversight authorities. In relation to managers, legal protection includes legal actions for compensation of damages for debt and personal liability filed or to be filed against them. Any legal action for compensation of damages against board members or the staff of the agency due to the Board's or Agency's decisions, actions and transactions carried out in connection with their duties, shall be deemed to have been taken against the Agency. In such lawsuits, the Agency shall be set as defendant. Legal fees (not exceeding 15 times the attorney's fee set in the minimum prices announced by the Turkish Association of Bars) derived from investigations and legal proceedings initiated against the SDIF and BRSA chairman and members and the agencies' personnel, due to alleged crimes committed in connection with their duties, shall be financed from the budget of the Agency.

33. **Seguro de Depósitos Sociedad Anónima (Argentina):** There is no regulation providing for legal counsel and defense in relation to bank resolution processes, which are led by the central bank of Argentina.

34. **Singapore Deposit Insurance Corporation:** Section 52 of the Deposit Insurance Act states that no suit or other general proceeding shall lie against the agency, any director, officer, employee or agent of the agency, or any person acting under the direction of the agency. The protection includes anything done (including any statement made) or omitted to be done in good faith in the exercise or purported exercise of powers under the Act, the performance or purported performance of any function or duty under the Act, as well as the execution or purported execution of the Deposit Insurance Act.

35. **Swedish Deposit Guarantee Board:** There is no specific legislation aimed at providing legal protection for the agencies and the individuals involved in bank resolution processes. However, the Swedish Tort Act contains a provision that stipulates that employees are liable for mistakes or neglect, when on duty, only if extraordinary reasons exist with respect to the nature of the act, the position of the employee and other circumstances. This provision protects an employee from damages provided that he or she has not been negligent.

Definitions of Key IADI Guidance Terms

IADI's objects state that the Association will: "…set out guidance to enhance the effectiveness of deposit insurance systems [and] such guidance shall take into account different circumstances, settings and structures"[17]. For the purposes of this paper, we have set out the following definitions for the guidance IADI provides:

- **Core Principles** are fundamental statements applied to a broad policy area. Although principles focus on what is fundamental, they can also be applied broadly and provide a high degree of flexibility in implementation to suit individual country circumstances.

- **Supporting Guidance Points** which help to clarify the principle(s) and can add additional information to help practitioners apply the core principles.

When developing guidance it is important to ensure that it assists countries in developing and enhancing their deposit insurance systems and, as much as possible, that this guidance is adaptable to the overall culture, history, political, economic, legal and institutional environment.

[17] See the Statutes of the International Association of Deposit Insurers, Article 2 (b), Basel, October 2004.