

INTERNATIONAL BANKING AND FINANCE LAW SERIES

Bail-In and Total Loss-Absorbing Capacity (TLAC)

Legal and Economic Perspectives on Bank
Resolution with Functional Comparisons of
Swiss and EU Law

Yves Mauchle



Wolters Kluwer

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VOLUME 32

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Remarks

Laws and regulations are cited with the article number, then the paragraph number and subsection numbers in parentheses, followed by the abbreviation of the title of the law or regulation, e.g. Article 9(2)(a)(2.) BankA or Article 46(1)(b)(ii) BRRD. Abbreviations of laws and regulations are listed in the section 'Laws and Regulations' starting on p. 439 *infra*.

Rulings of the Swiss Federal Supreme Court (SFSC) published in the official collection of decisions are cited with the abbreviation FCD followed by a number representing the volume, the section, and the initial page number of the ruling. This is followed by the number of the consideration and the page number cited, e.g. FCD 137 II 431 consid. 4.3.1 p. 447. The first volume of the FCD was published in 1874 (thus, volume 137 contains decisions published in 2011). Other rulings of the SFSC and rulings by other Swiss courts are cited with the English abbreviation of the respective court, the reference number, and date, followed by consideration cited and, if applicable, page number cited, e.g. SFAC A-5581/2012 of 11 November 2013 consid. 3 p. 11.

Swiss statutory law is defined by the wordings in the German, French and Italian languages, which stand on equal footing. English translations of certain laws and ordinances by the Swiss Confederation are available at www.admin.ch > *Federal Law* > *Classified compilation*. These translations have no legal force. In this book, Swiss statutory sources and legal cases are generally quoted in the English language. If the source of the respective translation is not indicated in the corresponding footnote, the text was translated by the author.

Literature and legal sources have been considered until 28 February 2017.

List of Abbreviations

Abbreviations of laws and regulations are listed in the section 'Laws and Regulations' starting on p. 439 *infra*.

A.C.	Appeals Cases (England)
ABS	Asset-Backed Security
AFME	Association for Financial Markets in Europe
AG or A.-G.	<i>Aktiengesellschaft</i> (limited liability corporation)
AIG	American International Group
AMV	Asset Management Vehicle
Art.	Article(s)
AT1	Additional Tier 1
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
CAREFIN	Center for Applied Research in Finance (<i>Università Bocconi</i>)
CBRG	Cross-Border Bank Resolution Group
CBSG	Cross-Border Stability Groups
CC	Classified Compilation of Swiss Federal Law (<i>Systematische Rechtssammlung/Recueil systématique/Raccolta sistematica</i>)
CCB	Countercyclical Capital Buffer
CDO	Collateralised Debt Obligation
CDS	Credit Default Swap
CEPS	Center for European Policy Studies (Brussels)
CET1	Common Equity Tier 1
CFO	Chief Financial Officer

ch.	Chapter(s)
CHF	Swiss francs
Circ.	Circular
cit.	cited as
CLLS	The City of London Law Society
CMG	Crisis Management Group
COAG	Cross Border Cooperation Agreement
CoCo(s)	Contingent Convertible(s)
consid.	consideration(s) (in Swiss court decisions)
DCF	Discounted Cash Flow
Diss.	Dissertation
DoJ	Department of Justice
DPA	Deferred Prosecution Agreement
D-SIB	Domestic Systemically Important Bank
D-SIFI	Domestic Systemically Important Financial Institution
e.g.	<i>exempli gratia</i>
EAD	Exposure at Default
EAI	Exposure at Intervention
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
ECJ	European Court of Justice
ECtHR	European Court on Human Rights
ed(s).	editor(s) or edition(s)
EEC	European Economic Community
ELA	Emergency Liquidity Assistance
et al.	<i>et alii</i>
et seq(q).	<i>et sequentia</i>
EU	European Union
EUR	Euro
FASB	Financial Accounting Standards Board
FBC	Swiss Federal Banking Commission (predecessor of Finma)
FCD	Federal Court Decisions (<i>Amtliche Sammlung der Entscheidungen des Schweizerischen Bundesgerichts/Recueil officiel des arrêts du Tribunal fédéral suisse/Raccolta ufficiale delle decisioni del Tribunale federale svizzero</i>)

FDF	Federal Department of Finance (Switzerland)
FDIC	Federal Deposit Insurance Corporation
Finma	Swiss Financial Market Supervisory Authority FINMA
FMI	Financial Market Infrastructure
fn.	footnote(s)
FOMC	Federal Open Market Committee (US Federal Reserve System)
FRB	Federal Reserve Board
FSA	Financial Services Authority (former U.K. financial supervisory authority)
FSAP	Financial Services Action Plan
FSB	Financial Stability Board
FSF	Financial Stability Forum (predecessor body of the Financial Stability Board)
G-10	Group of Ten
G-20	Group of Twenty
GDP	Gross Domestic Product
G-SIB	Global Systemically Important Bank
G-SIFI	Global Systemically Important Financial Institution
HighCt ZH	High Court of the Canton of Zurich
HQLA	High-Quality Liquid Assets
HT1	Hybrid Tier 1
i.e.	<i>id est</i>
IASB	International Accounting Standards Board
ICB	Independent Commission on Banking (U.K.)
ICJ	International Court of Justice (UN)
id.	<i>idem</i>
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
Inc.	Incorporated
ISDA	International Swaps and Derivatives Association
IT	Information Technology
Jr.	Junior
Key Attributes	Key Attributes of Effective Resolution Regimes for Financial Institutions (FSB)
LCFI	large and complex financial institution
LCR	Liquidity Coverage Ratio

List of Abbreviations

LGD	Loss Given Default
LGI	Loss Given Intervention
LMA	Loan Market Association
LRE	Leverage Ratio Exposure
MoU	Memorandum of Understanding
MPoE	Multiple Point of Entry
MREL	Minimum Required Eligible Liabilities
n.	note(s) (i.e. reference number(s) at the margin of the respective paragraph of text)
NBER	National Bureau of Economic Research
NCWOL	No Creditor Worse Off than in Liquidation
No.	Number
NSFR	Net Stable Funding Ratio
OC	Official Compilation of Swiss federal legislation (<i>Amtliche Sammlung/Recueil officiel/Raccolta ufficiale</i>)
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal of the European Union
OLA	Orderly Liquidation Authority
p(p).	page(s)
par.	paragraph(s)
PD	Probability of Default
PI	Probability of Intervention
plc	Public Limited Company
PoNV	Point of Non-Viability
Prel. Rem.	Preliminary Remarks (in legal commentaries)
RC	Revised Compilation of Swiss Federal Acts and Ordinances for the Years 1848–1947 (<i>Bereinigte Sammlung der Bundesgesetze und Verordnungen 1848–1947/Recueil systématique des lois et ordonnances de 1948 à 1947/Collezione sistematica delle leggi e ordinanze dal 1848 al 1947</i>)
ref.	reference(s)
RRP	Recovery and Resolution Plan(ning)
RTS	Regulatory Technical Standard
RWA	Risk-Weighted Assets
S&P	Standard & Poor's

s.n.	<i>sine nomine</i>
sec.	section(s)
SFG	Swiss Federal Gazette (<i>Bundesblatt/Feuille fédérale/Foglio federale</i>)
SFSC	Swiss Federal Supreme Court
SIB(s)	Systemically Important Bank(s)
SIFI(s)	Systemically Important Financial Institution(s)
SMEs	Small and Medium-Sized Enterprises
SNB	Swiss National Bank
SPoE	Single Point of Entry
SPV	Special Purpose Vehicle
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
subs.	subsection(s)
SSB	Standard-Setting Body
SSM	Single Supervisory Mechanism
StabFund	Stabilization Fund of the Swiss National Bank
Swiss GAAP FER	<i>Fachempfehlungen zur Rechnungslegung</i> (Swiss financial reporting standard issued by the <i>Stiftung für Fachempfehlungen zur Rechnungslegung</i>)
T1	Tier 1
T2	Tier 2
TARP	Troubled Asset Relief Program
TBTF	Too Big To Fail
TIS	Team Intensive Supervision (Finma)
TITF	Too important/Interconnected to Fail
TLAC	Total Loss-Absorbing Capacity
US	United States
UCITS	Undertakings for Collective Investments in Transferable Securities
UN	United Nations
US GAAP	United States Generally Accepted Accounting Principles
USA	United States of America
USD	United States dollars
v	versus
VaR	Value at Risk
VAT	Value Added Tax
vol.	volume(s)

List of Abbreviations

WB	World Bank
WTO	World Trade Organization
ZBl	<i>Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht</i>

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Zurich,
in May 2017

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