



University of
Zurich^{UZH}

Institute of Law

Bank Deposit Guarantee Schemes and Bank Resolution:

International Financial Law

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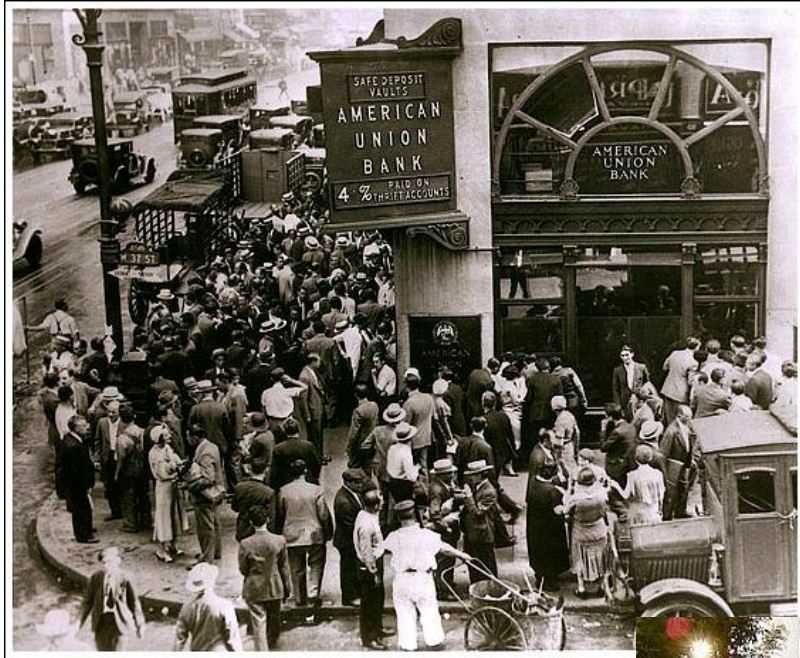
19 March 2026

Lecture session 5



Voluntary Extra Credit Presentation

- Students have the opportunity to give a voluntary extra credit presentation in class. Participation is optional, but a well-prepared presentation may positively influence the final course grade.
- On 23 March 2026, an online sign-up tool will be available on the course website where students can view the topics and register directly.
- Topic selection follows a first-come, first-served principle.
- The tool will remain available until 12 April 2026. After this date, it will be taken offline, and registrations will close.





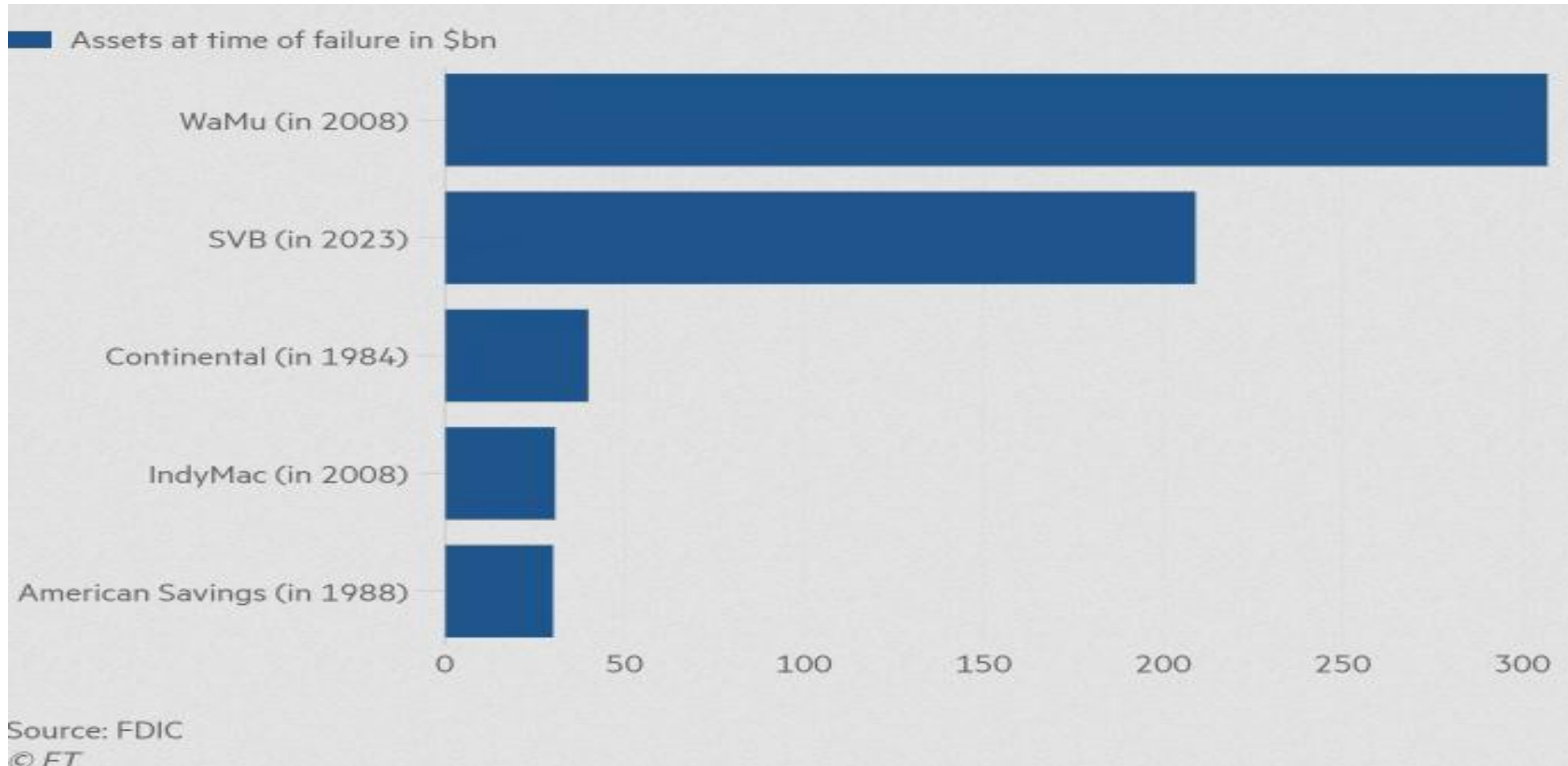
Deposit Insurance

“After all there is an element in the readjustment of our financial system more important than currency, more important than gold, and that is the confidence of the people”

– Franklin Delano Roosevelt



SVB is second-biggest US failure in history





We will do “whatever is needed” to save the US banking system

– Joe Biden, 13 March 2023



Deposit Insurance

General Characteristics

- Deposit insurance has two main purposes:
 - Depositor protection
 - Financial stability
- Primarily funded through contributions by participating banks
- Coverage is in most cases limited to a certain amount and/or certain types of bank accounts
- The designs and features of national deposit insurance schemes vary considerably
 - However, there are international standards for deposit insurance



Deposit Insurance

Depositor Protection

- Difficulty of assessing a bank's soundness and risk profile
- A bank failure has a potentially calamitous impact on households and SMEs
 - Households and SMEs often only have accounts at one bank
- Without deposit insurance, depositors have to await the end of the insolvency proceedings in order to get their savings back
 - Usually, they will only receive a small fraction thereof – at best



Deposit Insurance

Financial Stability

- A bank run could possibly cause further runs on other – sound – banks, resulting in liquidity problems for that bank
 - Risk of a domino-effect
- Deposit insurance bolsters confidence in the banking sector
 - Confidence is one of the most vital goods in the financial sector



Deposit Insurance

IADI Core Principles for Effective Deposit Insurance Systems

- International Association of Deposit Insurers (IADI)
 - Established 2002 to enhance the effectiveness of deposit insurance systems by promoting guidance and international co-operation
 - Currently representing 87 deposit insurers
 - Domiciled at the BIS in Basel
- Core principles issued in 2009 (in co-operation with the BCBS)
 - Revised in November 2014
- Included in the FSB's list of key standards



Deposit Insurance

IADI Core Principles

Principle 1 – Public Policy Objectives

Principle 2 – Mandate and Powers

Principle 3 – Governance

Principle 4 – Participation with other Safety-net Participants

Principle 5 – Cross-border Issues

Principle 6 – Deposit Insurer's Role in Contingency Planning and Crisis Management

Principle 7 – Membership

Principle 8 – Coverage

Principle 9 – Sources and Uses of Funds

Principle 10 – Public Awareness

Principle 11 – Legal Protection

Principle 12 – Dealing with Parties at Fault in a Bank Failure

Principle 13 – Early Detection and Timely Intervention

Principle 14 – Failure Resolution

Principle 15 – Reimbursing Depositors

Principle 16 – Recoveries



Deposit Insurance

Mandate and Powers (Principle 2)

Paybox	Paybox Plus	Loss Minimiser	Risk Minimiser
Switzerland	United Kingdom	Canada	United States
Reimbursement of insured deposits in the event of a bank failure	Reimbursement and additional tasks, i.e. certain specific functions during bank resolution	Deposit insurer also takes part in selecting a resolution strategy (i.e. the most cost-efficient method)	Deposit insurer has both resolution and supervisory powers

Scope of the mandate



Deposit Insurance

Coverage (Principle 8)

- Examples (per depositor/bank):
 - Switzerland: CHF 100,000 (But only up to CHF 6bn system-wide)
 - United States: USD 250,000
 - EU: EUR 100,000 (or the equivalent thereof)
 - UK: GBP 85,000



Deposit Insurance

Membership (Principle 7)

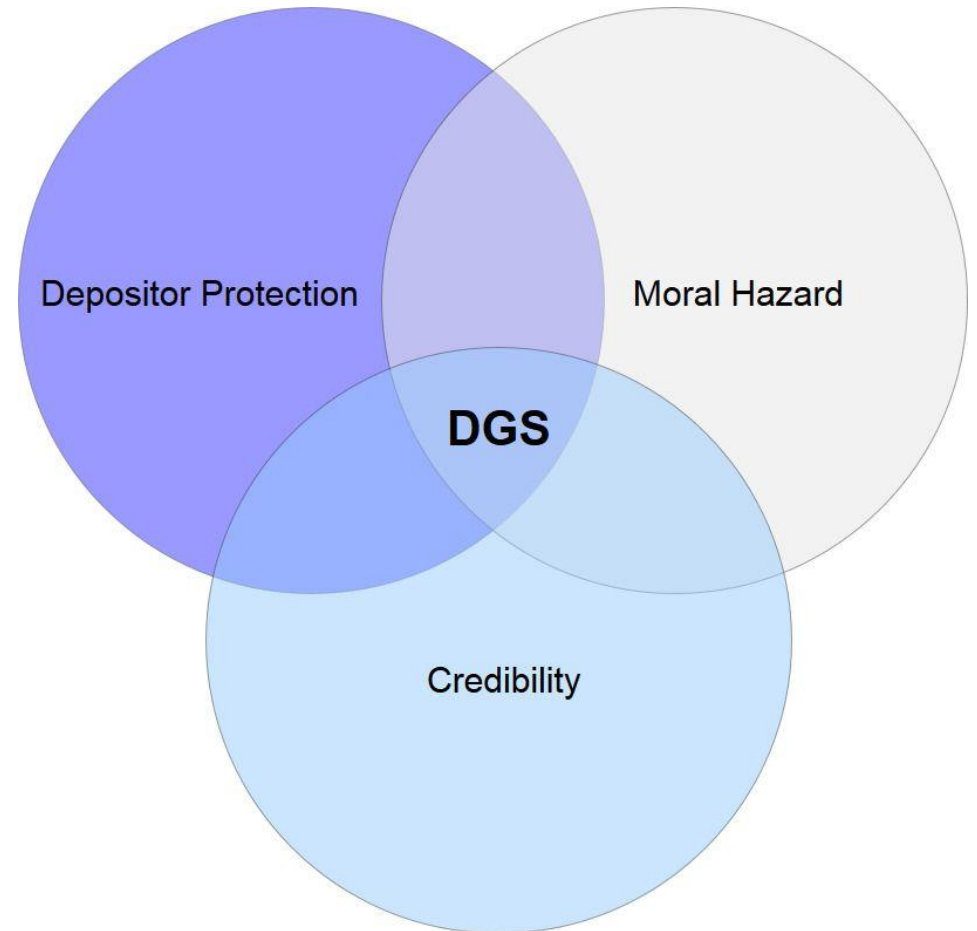
- Membership compulsory for all banks
 - This includes both private-sector and state-owned banks
- Level playing field; no market distortions
- Even after the revocation of a bank's license, membership continues for a certain time



Deposit Insurance

Coverage (Principle 8)

- “Limited, credible and cover the large majority of depositors but leave a substantial amount of deposits exposed to market discipline”
- No co-insurance as this may undermine the effect of a DGS (e.g. UK until October 2007)





Deposit Insurance

Sources and Uses of Funds (Principle 9)

- Funding through premia collected from the DGS' member institutions
- The premia have to incorporate the risk-taking of each member institution
- Funding should be on ex ante-basis
 - Ensures that the DGS possesses its resources at the time of a triggering event
 - Ex ante funding is anti-cyclical
 - Opposed to ex post-funding (e.g. in Switzerland)
 - However, the DGS may also foresee ex post-funding (mainly if the fund is depleted) and emergency funding arrangements (government, CB and/or market borrowing)



Deposit Insurance

Reimbursement of Depositors (Principle 15)

- Reimbursement of most insured depositors within 7 working days
 - Switzerland: Law states 20 days; Insurer guarantees 5 working days
 - EU: 7 working days
 - UK: 7 working days
 - US: no absolute limit, but (see next slide)
- Mitigate the impact of bank failure on the most vulnerable depositors
 - Households, SMEs using only one bank
- Severely restricted/insufficient liquidity may be detrimental to households and the economy at large



US Federal Deposit Insurance Corporation (FDIC) – Case study

US federal law does not stipulate an absolute timeframe for when depositors must be repaid. It only requires that the FDIC reimburse depositors "as soon as possible".

Example: In practice, the FDIC will be informed by the depository institution's primary federal regulator 90 days before the institution is closed.

- Hence, the FDIC starts to determine the least-cost resolution method and to assess the structure and amount of insured deposits.
- Thus, the FDIC usually has sufficient time to prepare so that depositors will have access to their deposits the next business day, i.e. Monday since the authorities often close the bank (put it into resolution) on Friday afternoon.
- Repaying depositors is coordinated with bank resolution methods, such as purchase & assumptions, DINBs, or bridge institutions. However, a direct pay-off (by cheque) might not always be feasible
- Makes deposit insurance funds available to finance resolution measures on a least-cost basis



New Zealand: The Reserve Bank of New Zealand Act (amended 1996)

Traditional reliance on **strict public disclosure** by banks and **bank executive accountability regime**. Reserve Bank of New Zealand Act (amended 1996)

During the 2007-08 crisis, however, New Zealand set up a temporary scheme to protect depositors - the **Crown Retail Deposit Guarantee Scheme**. But was **terminated by end-2011**; and since then, New Zealand no longer operates a deposit guarantee scheme. Depositors may even be bailed-in as part of the **Open Bank Resolution (OBR)** framework.

This led to IMF criticism in its **2017 FSAP of New Zealand**. The IMF has advocated creation of an explicit deposit guarantee scheme - or at least the implementation of a de minimis-exception for deposits in the OBR framework.

At present, New Zealand is in the process of **overhauling the Reserve Bank of New Zealand Act**, the **establishment of an explicit deposit guarantee scheme** as well as **strengthening the executive accountability regime** (based upon the experience in Australia).

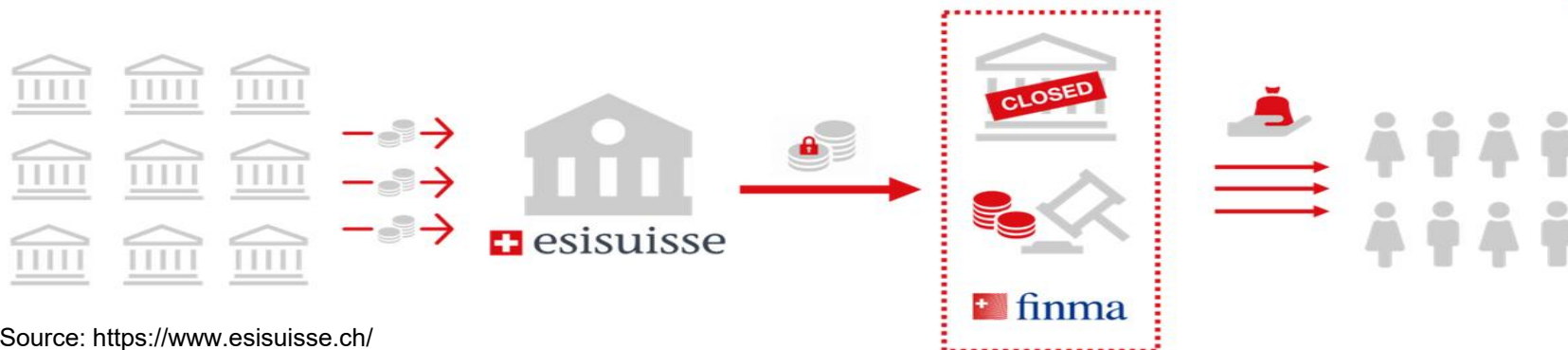
See statement by the NZ Minister of Finance summarising the proposal:

<https://www.beehive.govt.nz/release/keeping-banks-safe-and-holding-executives-accountable>



Deposit Insurance Scheme in Switzerland: Key Elements

- **CHF 100,000** per depositor and bank (Art. 37a BankA)
- All **banks must hold collateral** equivalent to 125% of the protected and preferential client deposits.
- Protected deposits have **preferential status in the event of bankruptcy**.
- The bank's liquidator appointed by FINMA uses the bank's available liquidity **to pay out the protected deposits**.
- The Swiss Banking Association levies funding on all Swiss banks: **banks are jointly and severally liable** up to the amount of their payment obligation.
- **esisuisse funds the payment for the protected deposits if the bank has insufficient liquidity** available. For this, the banks provide esisuisse with a maximum of 1.6% of all protected deposits in Switzerland (approx. CHF 8 billion).
- Half of these approx. CHF 8 billion must be secured for esisuisse by bank's collateral (securities or money)





Deposit Insurance

“A deposit insurance system is like a nuclear power plant.
If you build it without safety precautions,
you know it’s going to blow you off the face of the earth.
And even if you do, you can’t be sure it won’t.”
– L. William Seidman, Former FDIC Chairman

Too big to fail





Too big to fail and financial stability

- Bail-out and moral hazard problem: the image of subsidising bank failure
- Banking crisis and systemic risk relevance: avoiding spillover, bank runs, and addressing wider economy
- Regulatory consequences:
 - enhancing deposit guarantee schemes (compensating depositors' disadvantage of information)
 - putting special resolution regimes in place
 - shift from bail-out to the possibility of a market-based solution (preferably restructuring and/or resolving “from within”)



Introduction

– Crisis prevention

Supervisory authority in charge of ensuring adherence to regulatory requirements, if necessary with

- enforcement measures
- early intervention measures

– Crisis
management/resolution

Resolution authority in charge of resolving or winding down a failing bank without adverse effects on financial stability

Regulation: interventions at both stages are rules-based



Bank collapses: winding up by insolvency law and proceedings?

- Inadequacy of insolvency procedures
 - conducted by judicial authority
 - may result in limiting banks' continuity of essential intermediary function
 - the going concern value
 - unlikely cross-border cooperation on internationally acting banks
 - ring-fencing



FSB Key Attributes

- In the past, authorities were faced with the alternatives of letting a bank go into potentially disorderly insolvency (Lehman) or bailing it out with taxpayer money
- Inadequate resolution frameworks, often relying on court-led general bankruptcy proceedings
- TBTF and resolution as key post-crisis policy objectives
 - FSB framework for reducing the moral hazard of SIFIs (the SIFI Framework), endorsed by the G-20 at the Seoul Summit in 2010
 - FSB Key Attributes of Effective Resolution Regimes for Financial Institutions adopted in October 2011, endorsed by the G-20 at the Cannes Summit in 2011



Bank resolution regimes: addressing moral hazard and banks' intermediary function

- Core objectives:
 - protection of financial stability
 - addressing global systemically important banks
 - continuity of banks' intermediary function
 - limited use of public funds
 - balance between investor rights and regulatory objectives vital to the wider economy



Bank Resolution Tools

- > Sale of business tool
- > Asset separation tool
- > Bridge institution tool
- > Bail-in tool



General strategy of FSB recommended principles

Resolution planning

1. Understanding the bank
2. Preferred resolution strategy
3. Financial and operational continuity in resolution
4. Information and communication plan
5. Resolvability assessment

Resolution scheme

1. Determination of resolution conditions
2. Adoption of resolution scheme
 - Which resolution tools?
 - How to finance resolution action?

preparation for





FSB Key Attributes

KA 1 – Scope

KA 2 – Resolution authority

KA 3 – Resolution powers

KA 4 – Set-off, netting, collateralisation,
segregation of client assets

KA 5 – Safeguards

KA 6 – Funding of firms in resolution

**KA 7 – Legal framework conditions for
cross-border cooperation**

KA 8 – Crisis management groups

KA 9 – Institution-specific cross-border
cooperation agreements

KA 10 – Resolvability assessment

KA 11 – Recovery and resolution planning

KA 12 – Access to information and information
sharing

Main characteristics of recommended
principles and tools:

- Pro-active approach to resolving/restructuring
- Resolution planning to “understand the bank”
- Resolvability assessments



FSB Key Attributes

Scope (KA 1)

- All financial institutions that could be systemically significant or critical
- Including holding companies, non-regulated entities of a group/conglomerate, branches of foreign firms

Resolution authority (KA 2)

- *Administrative* authority/authorities to exercise resolution powers
- Objectives: (1) safeguard financial stability and continuity of critical functions; (2) protect depositor/insurance policy holder/investor; (3) avoid unnecessary destruction of value and seek minimization of resolution costs; (4) consider impact on financial stability in other jurisdictions
- Operational independence, transparent processes, sound governance, adequate resources, accountability mechanisms, expertise and resources



FSB Key Attributes

Resolution powers (KA 3)

- Entry into resolution: firm is (likely) no longer viable and no reasonable prospect of becoming so, but not yet insolvent
- General resolution powers: remove/replace management/directors, appoint administrator, restructure/wind down firm's operations, override shareholders' rights...
- Resolution tools: (1) transfer assets and liabilities; (2) establish bridge institution; (3) bail-in within resolution; (4) establish separate asset management vehicle

Safeguards (KA 5)

- Respect creditor hierarchy (with exceptions) and “no creditors worse off than in liquidation”
- Legal remedies and judicial action vs. speed and flexibility required in resolution; only ex post compensation (no reversal)



FSB Key Attributes

Funding of firms in resolution (KA 6)

- Availability of temporary sources of funding to maintain essential functions: DGS, resolution fund or other funding mechanism
- Strict conditions to minimize the risk of moral hazard: last resort, strictly necessary to achieve resolution objectives, allocation of losses to equity holders
- Recovery of any losses from uninsured creditors and, if necessary, from the industry

Resolvability assessments (KA 10)

- Regular evaluation of *feasibility* and *credibility* of resolution strategies
- Group resolvability assessments conducted by home authority in coordination with host authorities
- Measures to reduce complexity and costliness of resolution (as a going concern)



Improved resolution through *ring-fencing (structural regulation)*

- FSB Key Attribute 10.5:

“To improve a firm’s resolvability, supervisory authorities or resolution authorities should have powers to require, where necessary, the adoption of appropriate measures, such as changes to a firm’s business practices, structure or organisation [...] To enable the continued operations of systemically important functions, authorities should evaluate whether to require that these functions be segregated in legally and operationally independent entities that are shielded from group problems.”
- UK Banking Reform Act 2013: ring-fencing of retail deposits/small & medium-sized businesses activity from rest of the group; a backstop power option to enforce full separation of ring-fenced activities from the group
- Switzerland: No structural regulation requirements for bank resolution



FSB Key Attributes

Recovery and resolution planning (KA 11) Board approval

- Recovery plans (responsibility of management and supervisory authority): identifies options to restore financial strength and viability when firm comes under severe stress
- Resolution plans (responsibility of resolution authority): includes a substantive resolution strategy and an operational plan for its implementation
- Regular updates and review: at least annually and if material changes



Contents of Recovery and Resolution Plans (I)

- FSB Annex III, Point 2.1:
 - i. high-level substantive summary of the key recovery and resolution strategies and an operational plan for implementation;
 - ii. strategic analysis that underlies the recovery and resolution strategies;
 - iii. conditions for intervention, describing necessary and sufficient prerequisites for triggering the implementation of recovery or resolution actions;
 - iv. concrete and practical options for recovery and resolution measures;
 - v. preparatory actions to ensure that the measures can be implemented effectively and in a timely manner;
 - vi. details of any potential material impediments to an effective and timely execution of the plan; and
 - vii. responsibilities for executing preparatory actions, triggering the implementation of the plan and the actual measures.



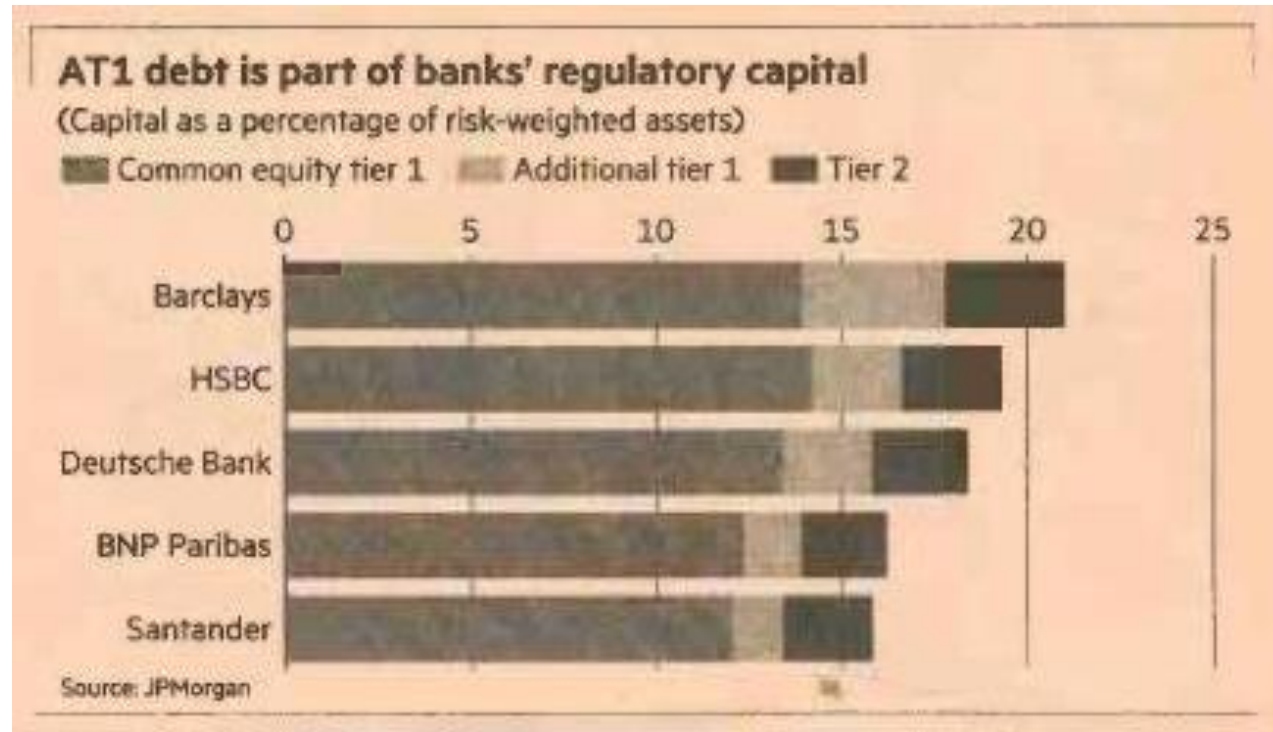
G-SIBs: TLAC – Total Loss-Absorbent Capital – 18% of risk-weighted assets (RWAs)

- G-SIBs must have financial instruments available to absorb losses in resolution and recapitalise “from within”
- Applies to G-SIBs only
- Determination of loss absorption by risk-weighted asset percentage
- Minimum regulatory capital to be met alongside the Basel III framework
- Eligible instruments: can be met with equity, debt capital, other unsecured long-term liabilities, minimum regulatory capital, *subordinated* debt liabilities that meet certain other criteria (contractual, statutory, structural subordination)
- TLAC requirement:
 - 18% of RWAs and 6.75% of leverage exposure measure as of January 2022



Financial Times (March 30th 2023)

„Credit Suisse AT1 wipeout tipped to cost banks dear“



Source: Financial Times, 30th March 2023



G-SIBs

FSB members apply heightened prudential requirements to G-SIBs:

- **Total Loss-Absorbing Capacity (TLAC):** TLAC standard must be met alongside the regulatory capital requirements set out in the Basel III framework, has been phased-in on 1 January 2019
- **Resolvability:** Group-wide resolution planning and regular resolvability assessments, including through FSB Resolvability Assessment Process (RAP)
- Higher **supervisory expectations:** Including for risk management functions, risk data aggregation capabilities, risk governance and internal controls



G-SIBs

Single Point of Entry (SPE) group resolution

- All resolution action applies to a single entity at the top of the banking group (holding company/top level)
- Group's home authority is responsible for executing resolution strategy
- Host authorities are expected to recognise resolution action within their jurisdictions
- Possibility of avoiding resolution for operating subsidiaries

Multiple Point of Entry (MPE) group resolution

- Resolution measures are implemented at various operating entities or subsidiaries
- Group structure is broken along operational and/or jurisdictional lines
- Multiple resolution authorities are in charge of executing resolution
- Risk of subsidiaries suffering losses
- Risk of competitive resolution/insolvency, ring-fencing

SPE preferred by host countries to large global banking groups/G-SIBs (e.g. U.S., U.K. and Swiss authorities); SPE popular in countries that do not host headquarters of large global banking groups



EU Directive on Bank Recovery and Resolution

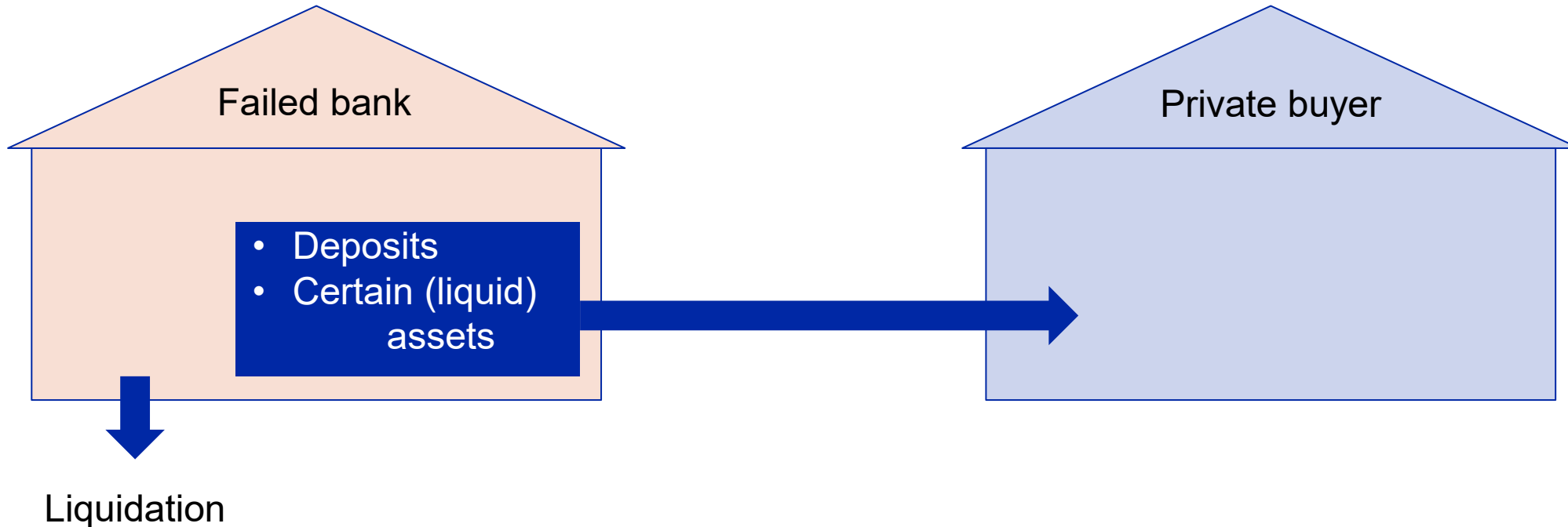
- Scope identical to that of Capital Requirement Directive (= credits institutions, financial groups and conglomerates, certain investment firms)
- Member States must designate a resolution authority with set of “minimum” resolution tools:
 - Sale of business tool
 - Asset separation tool
 - Bridge institution tool
 - Bail-in tool
- However minimum harmonisation Directive: discretion of MS whether to adopt stricter recovery and resolution tools
- Authority has power to veto intra-group financial support agreements, but also power to enforce them once concluded (relation to ring-fencing?)
- Competent authority reviews RRP, can adopt measures to overcome deficiencies or potential impediments to the plan’s feasibility



Resolution tools

- wide range of resolution tools
- resolution authorities' discretion wide
- no clear guidance on their use or readjustment in case of changing circumstances

Sale of business

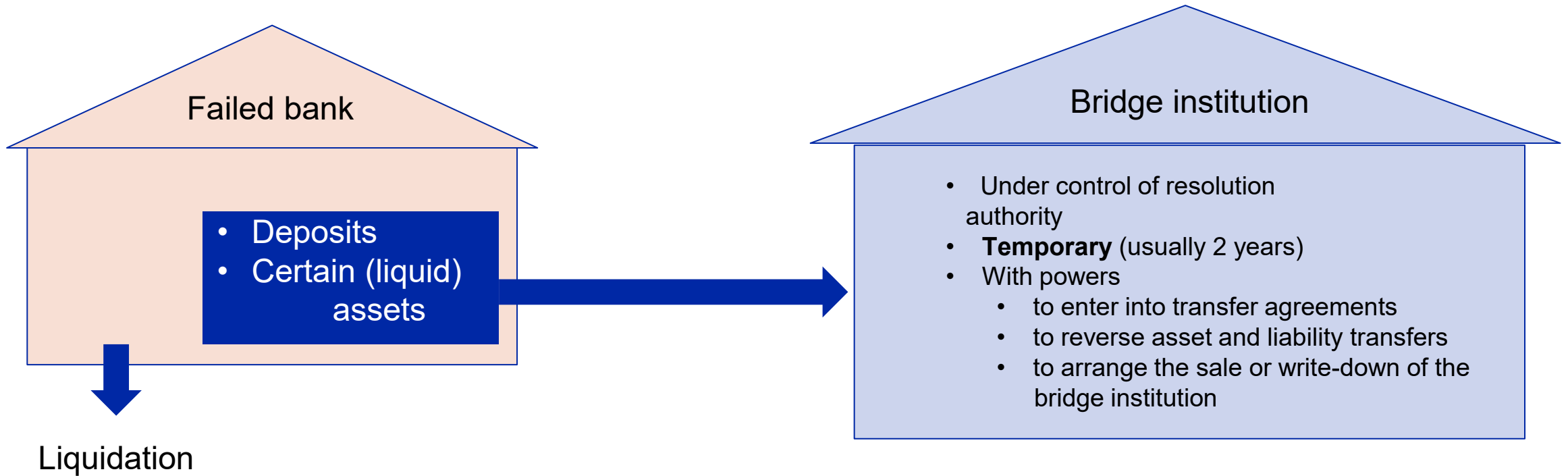


Example: Banco Popular Español bought by Santander (2017) and UK SVB bank bought by HSBC (2023)



Resolution tools

Bridge institution

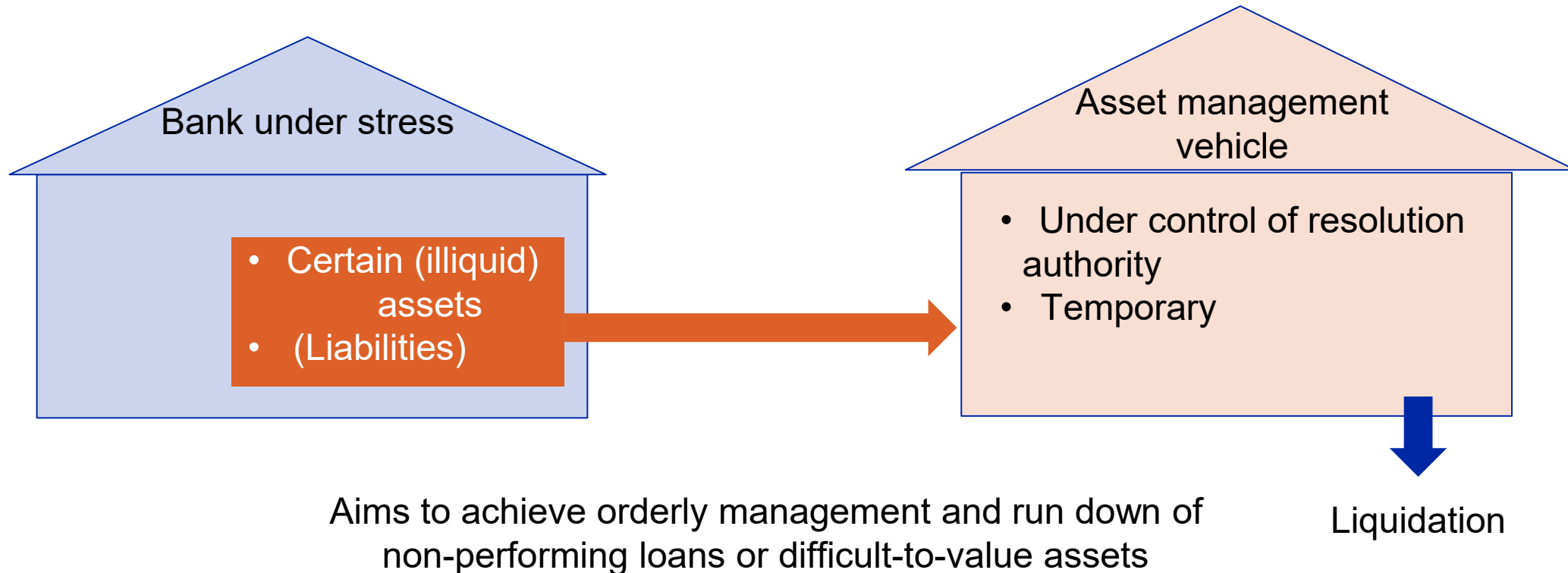


Aims to continue operating certain critical functions and viable operations of a failed firm's transferred business/functions



Resolution tools

Asset separation





Resolution tool: bail-in under the BRRD

Bail-in

Losses borne primarily by bank's shareholders and creditors

- Determination of amount needed to restore bank to viability (meeting regulatory requirements and enjoying market confidence)
- Insolvency ranking applies (in reverse order), pari passu treatment
- DGS may contribute to the extent it would have contributed in an insolvency proceeding

Exemptions

- Deposits up to EUR 100,000
- Interbank loans (maturity up to 7 days)
- Salaries/pension benefits...

Discretionary exemptions

In pursuance of resolution objectives
→ “no creditor worse off” principle

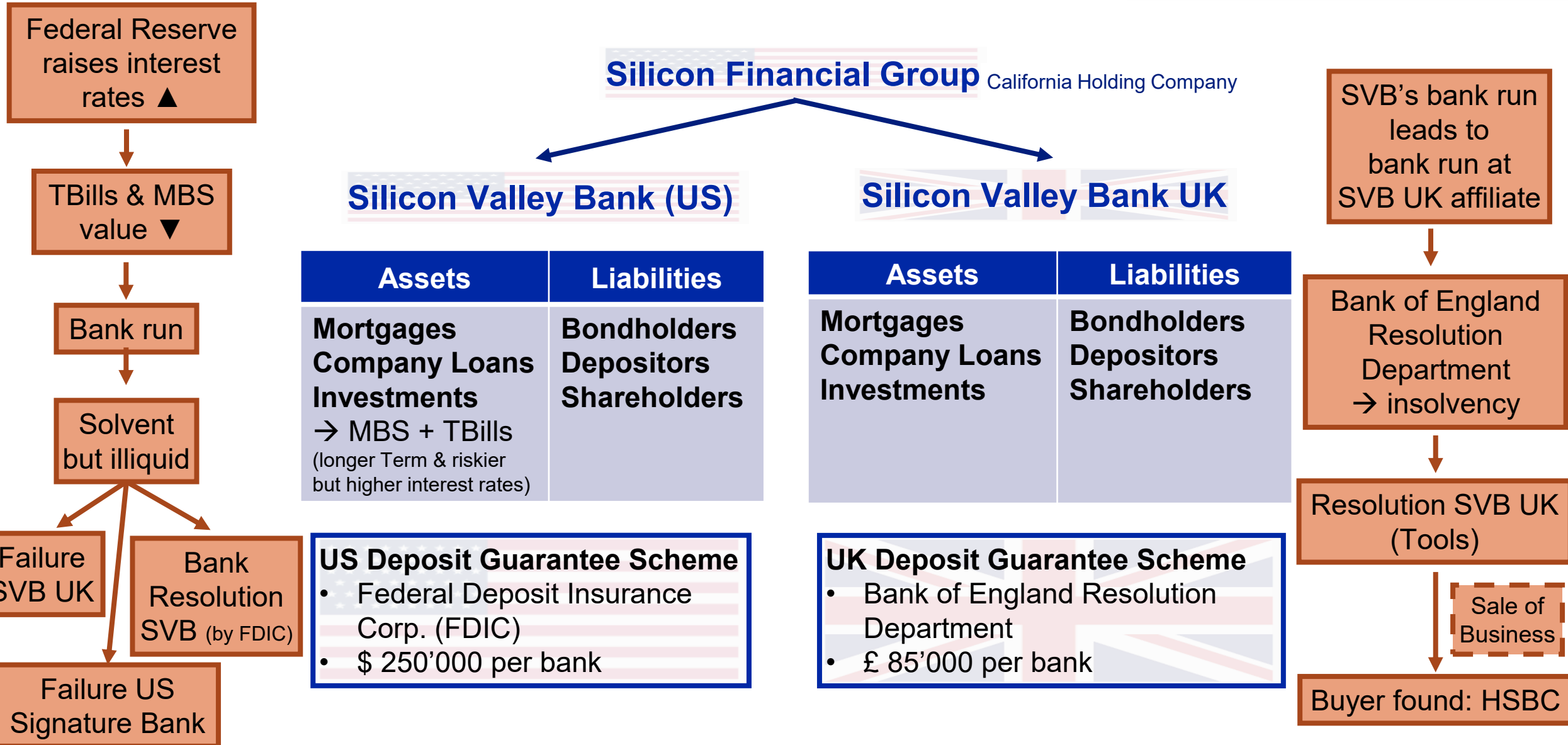


Bail-in: discretion as to its use

- Wide discretion of authorities regarding creditors to be bailed in
- Bail-in can be used in conjunction with other resolution tools
- Lack of guidance as to which resolution tool should be applied in what circumstances
- Institutional and operational handling varies across countries
 - Legal questions coming with it:
 - Risk of infringing on investor rights / shareholder rights
 - Restricting property rights and other fundamental rights constrained by legal principles:
 - ECHR: seeks balance between shareholder interests and state's prerogative to crisis intervention
 - CJEU: applies principle of proportionality



2023 Silicon Valley Bank Collapse





Failure Silicon Valley Bank

Failure Silicon Valley Bank

Failure Signature Bank

Failure SVB UK

Bank resolution by FDIC

Deposit Insurance Fund

- Full protection of all depositors
- Uninsured depositors recovered by special assessment on banks (i.e. amount over \$250,000)
- No losses borne by taxpayer (covered by bank's insurance premia and NEW Bank Term Funding Program BTFP)
- No protection of shareholders and certain unsecured debtholders

NEW Bank Term Funding Program BTFP

- Loans up to 1 year to banks
- Collateral: Pledge of US Treasuries, agency debt, MBS and other qualifying assets
- These assets will be valued at par
- \$25 billion from the Exchange Stabilization Fund as a backstop for BTFP

FDIC Administration: Senior management has been removed

Bank resolution by Bank of England Resolution Department

**Resolution Tool:
Sale of Business**

HSBC buys UK arm of SVB for £1

- Loans of around 5.5 billion pounds
- Deposits of around 6.7 billion
- Total balance sheet size of around 8.8 billion pounds
- Assets and liabilities of the parent company were excluded from the transaction



Banks' recovery and resolution planning in Switzerland (overview)

- Systemically important banks must have financial regulator (FINMA)-approved recovery and emergency plans in place
- FINMA also prepares a resolution plan for these institutions
- These plans lay the groundwork for these financial institutions to be restructured or resolved without the loss of their systemically important functions

Financial & markets regulation

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Rules for winding up big banks do not work, Swiss finance minister warns

Karin Keller-Sutter says following the protocols 'would have triggered an international financial crisis'



Source: <https://www.ft.com/content/2cfaaf47-101c-4695-92e5-b66b6abe777e>



Conclusion – Key take-aways

- Deposit guarantee schemes goal to protect retail depositors but attempts to prevent moral hazard. SVB Bank case an example of bail-out and contributes to moral hazard?
- TBTF and bank resolution as key international policy priorities
- FSB has immediate influence on regulation, supervision and resolution of *individual* global systemically important banks (G-SIBs)
- G-SIBs must meet heightened prudential standards and are subject to more rigorous supervision
- Bail-in a core new resolution tool in Europe, UK and Switzerland to impose losses on creditors (bondholders) and shareholders. Bail-in only used ad hoc manner in US.