

Legal Risks and Good Governance for Central Banks

4-day intensive residential programme
18 – 21 September 2012

Christ's College, Cambridge

Course Chairman:
Professor Dr René Smits
Professor of the Law of Economic and
Monetary Union, University of Amsterdam

Series adviser:
Charles Goodhart, CBE
Professor Emeritus
London School of Economics
Financial Markets Group



Dear Delegate,

Central banks have been the front line in government response to the financial crisis.

They have more powers, more responsibilities, more assets and more liabilities than perhaps ever before.

As a result, legislatures are considering responses to the worst financial crisis in a generation. New powers, new measures and new risks are being created as authorities look to learn the lessons from the financial crisis, and shape a framework to prevent the next one.

It is already clear that this will have profound implications for the governance of the global financial system, with reforms to international, supranational and standard setting bodies, notably the IMF, high on the agenda. It is also clear that the crisis will have profound implications for the governance of central banks as monetary policy makers and supervisors.

At this time of flux, it is imperative that central bank legal officers be at the forefront of discussions around the distribution of responsibilities and authority between central banks, governments and the private sector.

This seminar equips legal specialists from central banks with the tools to tackle the emerging legal risks they face.

Key speakers:

- **Rhoda Weeks-Brown**, Deputy General Counsel of the Legal Department, IMF
- **Rosa Lastra**, Professor of Law, Queen Mary University of London
- **Thomas C. Baxter Jr**, General Counsel and Executive Vice President of the Legal Group, Federal Reserve Bank of New York
- **Ruben Lee**, Founder and Managing Director, Oxford Finance Group

Case study sessions will distil the lessons of the crisis and look at how these are shaping not only the legal regime in which financial markets function, but also the legal framework within which central banks themselves must operate.

Each topic allows participating supervisors and central bankers an opportunity to “benchmark” their work against leading thinking and best practice internationally and to exchange views with their peers in an informal setting.

This format, as more than 3,500 central bankers and regulators can attest, encourages delegates to quiz panellists, raise issues and discuss solutions to the specific challenges they face.

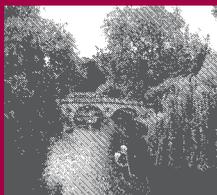
For more information about this exciting programme, please take a few moments to look at the detailed course contents presented on the pages which follow.

I look forward to welcoming you to Cambridge in September.

Yours sincerely,



Robert Pringle
Chairman
Central Banking Publications



“It is precious time for me to participate in the central banking seminar. I will remember this seminar for a long time in my life”

Youngseoul Kim, Bank of Korea

Tuesday 18 September

The crisis and its impact

The changing legal environment

René Smits, Professor of Law of Economics and Monetary Union, University of Amsterdam

The global financial crisis has shaken the established model of independent, technocratic central banking. It has also led many jurisdictions to begin an overhaul of their regulatory regime and the legal framework. With new mandates and new roles come new expectations and new risks. In this session, the chairman will give a broad overview of the legal and governance challenges he sees for central banks. He will invite the group to consider how different statutes and legal frameworks can affect the governance of central banks and help them meet emerging challenges. Group discussion will address the broad legal lessons of the crisis and the new risks which central banks face.

What can central bank lawyers learn from the crisis?

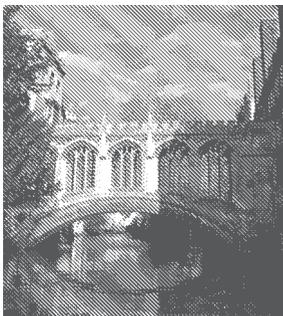
Thomas C. Baxter, Jr., General Counsel and Executive Vice President of the Legal Group, Federal Reserve Bank of New York

As markets buckled under the crisis, central banks were forced to adopt highly unusual policy responses – most notably emergency liquidity extensions to troubled financial institutions and the creation of new credit facilities. Typically, these initiatives had to be implemented within an extremely narrow timeframe to boost market confidence and restore a degree of functioning. In many cases, central banks have pushed to the limit their institutional mandate and the scope of the legal powers. In this session, Thomas Baxter, the general counsel of the Federal Reserve Bank of New York, will discuss the Fed's response to a series of market disruptions, in particular the Eurozone crisis, and longer term reforms to both markets and the central bank itself. Group discussion will identify the lessons that other central banks can take from this experience.

How the crisis and new policy responsibilities have changed supervisory liability

Charles Proctor, Partner, Edwards Wildman Palmer (invited)

With the policy response to the crisis demanding extraordinary interventions affecting both markets and individual institutions, central banks are likely to find themselves in uncharted waters with respect to the law. Moreover, as transparent and accountable institutions, central banks must be prepared to defend their actions in a judicial setting. The speaker will examine recent cases involving central banks' liability for their actions and omissions, and identify the potential legal tensions that arise of the policy response to the crisis.



About the course chairman

Professor Dr René Smits is professor of the law of economic and monetary union at the University of Amsterdam and chief legal counsel of the Netherlands Competition Authority in The Hague. He was formerly director of the authority's legal department and held several positions at the Dutch central bank. From 1989, he was general counsel, responsible for legal advice on in-house corporate affairs as well as special central bank related subjects, with a focus on European banking directives, the International Monetary Fund and economic and monetary union.

Wednesday 19 September

Preparing for new powers, measures and risks

The impact of changing mandates on central bank governance

Grace Koshie, Chief General Manager and Secretary to the Board, Reserve Bank of India (invited)

The past two decades have seen enormous changes in central banks and their practices. How should central banks deal with gaining new responsibilities? How can they fight the loss of powers or independence? At a time of great change in central banks and the business of central banking, the speaker will look at the governance lessons that can be drawn from the crisis and consider the future roles of central bank boards in light of this experience. While arrangements must be robust, they must also have the capacity and flexibility to respond to new challenges. The speaker will draw on the Reserve Bank of India's experience in dealing with the crisis to identify lessons for the sector broadly. In particular, the session will consider challenges such as conflict of goals, information availability, information flow between various departments, and the increasing technical demands central banks have to face.

Central bank law and governance: a comparative analysis

Atilla Arda, Senior Counsel, International Monetary Fund (invited)

In this session a series of case studies will explore and compare the Federal Reserve System, the Eurosystem and other central banks' governance systems, including the various acts that expanded their powers. Cross-sectorial analysis will highlight trends and divergences in practice. The speaker, a senior counsel from the International Monetary Fund and former senior counsel from the Dutch central bank, will use this framework to consider the various policy debates about the role and power of the central banks during the financial crisis and its aftermath.

Changed balance sheets: governance and legal implications

Ian Ingram, Former Director Internal Finance, European Central Bank (invited)

As central banks responded to the financial crisis, they engaged in new and unusual transactions with a far wider range of counterparties than ever before. They did so on a scale that is virtually without precedent. As a result, the composition and size of balance sheets have changed dramatically, and they have assumed significant financial and reputational risks. Now as they face the challenge of rebuilding economies, central banks must understand the new risks they face in the changed market and policy environment in which they operate. Legal offices must understand the risks these changes have created and how these affect the central bank's governance and statutory framework. Particular attention will be devoted to questions of capital, profits and relations with stakeholders.

Bank resolution regimes and "living wills": new challenges

James Polson, Director, Deloitte

The crisis highlighted the risks a bank that is near to collapse can pose for the financial system. Faced with increasing uncertainty, market participants withdrew liquidity, exacerbating the situation at the bank. More troublingly, interconnections and globalisation meant that the problem soon spread through the system. In light of this experience, supervisors are increasingly looking to new forms of resolution regimes and so called "living wills", also called Resolution and Recovery Plans. However, the implementation of "living wills" is faces numerous challenges as most of the leading banks are a long way from completing their "living wills" before the June deadline. This session looks at the specific legal issues around implementing such mechanisms and draws on the work of the Financial Services Authority in instructing banks to draft such provisions.

Managing the growing challenges of market interventions

Ruben Lee, Founder and Managing Director, Oxford Finance Group

When central banks intervene in markets, such as the recent long-term refinancing operations from the European Central Bank, they do so with immense resources, privileged information and objectives that differs from private-sector market participants. When doing so, they must fully understand the legal issues surrounding their actions, and ensure that they do not abuse their position. The speaker, author of the book *What is an Exchange?* and member on the Advisory Panel of Financial Services Experts, will discuss this subject with relation to the challenges of market interventions taken by central banks in the current crisis.

Thursday 20 September

Emerging challenges for the global financial system

Supranational supervision structure – the case of Europe

Rosa Lastra, Professor of Law, Queen Mary University of London

Regulatory and supervisory arrangements are in a state of flux. Among the key questions that need to be resolved include issues such as what should be the governance structures for financial supervision? Current proposals in the United Kingdom and Europe offer valuable lessons for other jurisdictions. How, for instance, can matters of accountability be tackled under the current and proposed arrangements? How does current international law help ensure international monetary and financial stability? How can legal and governance arrangement be improved? In this session, the speaker will discuss case studies from Europe and discussion will focus on the strengths and weaknesses of proposed supervisory approaches.

Reform of the international financial architecture

Rhoda Weeks-Brown, Deputy General Counsel of the Legal Department, IMF

The crisis has seen the IMF return to play a leading role in the governance of the global financial system and the management of crises. Yet, the need for fundamental reforms in its own governance structures remains and have become more urgent. Central banks will be affected by the outcome of any reform at the Fund. What are the legal implications of on-going reform within the IMF? What will reform mean for the Articles of Agreement and instruments adopted pursuant to it and what will be the consequences for central banks? This session considers the relations of central banks with the IMF, debt rescheduling, the issue of representation within the Fund of monetary unions, the financing of the Fund and the role of the IMF in a new international financial architecture.

Islamic finance and the influence of religion on the law

René Smits

Islamic finance is an area of business which has seen strong development in the recent years. This expansion has included growth in markets with strong 'Western' banking systems. Such a dual arrangement obviously creates tensions challenges for supervisors. This session, led by the chairman, will explain the interplay between religion law and supervision in Islamic finance. In addition, the question of whether Islamic finance products would have mitigated the seriousness of the financial crisis will be discussed.

Past central banking attendees, include:

Bank of Korea, Bank Indonesia, Bank Negara Malaysia, Bank of Algeria, Bank of Canada, Bank of Finland, Bank of Greece, Bank of Italy, Bank of Korea, Bank of Lebanon, Bank of Mexico, Bank of Mozambique, Bank of Portugal, Bank of Sudan, Bank of Tanzania, Bank of Thailand, Bank of Uganda, Bank of Zambia, Banque de France, Cayman Islands Monetary Authority, Central Bank of Bahrain, Central Bank of Barbados, Central Bank of Brazil, Central Bank of Colombia, Central Bank of Egypt, Central Bank of Iceland, Central Bank of Kenya, Central Bank of Kuwait, Central Bank of Lesotho, Central Bank of Malta, Central Bank of Montenegro, Central Bank of Nigeria, Central Bank of Oman, Central Bank of Russia, Central Bank of Seychelles, Central Bank of Swaziland, Central Bank of the Philippines, Central Bank of Trinidad & Tobago, Central Bank of Venezuela, European Central Bank, Federal Reserve Bank of New York, Federal Reserve Bank of St Louis, Federal Reserve Board, Hong Kong Monetary Authority, Maldives Monetary Authority, Monetary Authority of Singapore, National Bank of Angola, National Bank of Austria, National Bank of Hungary, National Bank of Poland, National Bank of Romania, National Bank of Slovakia, Norges Bank, Reserve Bank of India, Reserve Bank of New Zealand, Reserve Bank of Vanuatu, Reserve Bank of Zimbabwe, Saudi Arabian Monetary Agency, South African Reserve Bank, Sveriges Riksbank, Swiss National Bank, The Netherlands Bank

Friday 21 September

New enforcement rules and legal implementation

Financial Action Task Force Recommendations (FATF) and central bank enforcement

Daren Allen, Partner, Berwin Leighton Paisner LLP

A central bank's ability to enforce new recommendations introduced by FATF in March 2012 on anti-money-laundering and fight against terrorist financing depends on the legal powers at their disposal. Yet, the legal framework must be fair and flexible enough to ensure that it can evolve with fast-moving risks and not impose an unnecessarily heavy compliance burden. In this session, a leading expert on legal aspects of money laundering, will consider these recommendations the range of powers available to combat money laundering. Discussion will focus on how central banks and financial supervisors can contribute towards the creation of a robust legal framework to ensure they can act quickly and effectively once risks are identified.

New developments in cross-border enforcement

Alan Bacarese, Special Counsel, Peters & Peters LLP

As globalisation has grown, the amount of cross-border trade and cross-border movements of capital have also increased. Recent events have highlighted the issue of recovery of assets illegally moved abroad by deposed heads of government. Central banks have an interest in the laws established and the procedures adopted for the retrieval of such assets. In this session, a lawyer with significant expertise in AML and anti-corruption legislation and enforcement will discuss recent cases of asset retrieval and the role of central banks in the context of the fight against corruption and illicit capital flight.

Lessons learned and action points

Led by **René Smits**

The course concludes with a discussion led by the chairman drawing together the days' discussions and their applicability to participants' own institutions. Delegates will be asked to discuss what they have learned from the course and, to formulate points on the key themes and issues highlighted throughout the week.

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Course fee: £3,000

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4-Day (3 nights) residential course

Course fee includes: en-suite accommodation, meals, refreshments, course documentation and a complimentary copy of the most recent issue of the Central Banking journal. Substitute delegates can be accepted should the registered delegate be unable to attend; please let us know prior to the event.

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The venue

Christ's College is one of England's oldest university colleges and traces its origins back to 1439 when it was founded by William Byngham as "God's house" and adopted by King Henry VI.

The college is conveniently situated in the heart of Cambridge surrounded by all the historical sites, and is one hour by train from London.

About Central Banking Publications

Central Banking Publications' events division is the leading independent organiser of public policy seminars/training courses for the official sector. Since 1997, CBP has hosted roundtable seminars and training courses for over 3,500 senior policymakers from central banks, ministries of finance and financial regulatory agencies around the world. Senior officials from more than 120 countries have attended these meetings over the past ten years.

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