and interests of dominant States, as well as the current tensions which are pulling at the threads of this principle. Beyond this, further evidence, analysis and (most of all) time is likely to be necessary before it can be determined whether the contemporary framework will endure, and whether it will prove up to the task of effectively balancing sovereignty and freedom in the continuing struggle to govern the world's oceans. Perhaps, like Poseidon himself, the freedom of the seas will ultimately turn out to be a 'capricious and inconstant guardian of the oceans' (4).

Camille Goodman*

Creditor Priority in European Bank Insolvency Law: Financial Stability and the Hierarchy of Claims by Sjur Swensen Ellingsæter [Hart Publishing, London, 2023, 280pp, ISBN: 9781509953653, £85.00 (h/bk)]

In 2023 the financial world witnessed a new round of failing banks that caught international attention, starting with Silicon Valley Bank (SVB), then Signature Bank, Credit Suisse in March and First Republic Bank in May. These new signs of turmoil led to the question of how the world should prepare for and react to financial crises. This timely book *Creditor Priority in European Bank Insolvency Law*, authored by Dr Sjur Swensen Ellingsæter, discusses bank insolvency law from the perspectives of creditor priority, with a comparative analysis of English, German and Norwegian Law.

The book raises three questions: first, to what extent is there a difference between European Union (EU) bank insolvency law and general bank insolvency law in terms of creditor priority? Secondly, what are the rationales that best explain the existence of creditor priority rules specific to bank failures? Thirdly, has the approach to creditor priority in bank insolvency law changed over time and, if so, how does this development fit with broader trends in banking regulation?

The first question is a positive one and is analysed by comparing the EU law requirements for creditor priority in bank insolvency and resolution with creditor priority under English, German and Norwegian general insolvency law, focusing on security interests as well as priority rules for unsecured creditors.

In respect of creditor priority, traditional English, German and Norwegian corporate insolvency law provide priority rules for secured creditors but not for unsecured creditors, with no special rules for banks. At the European level, the first attempts to harmonise creditor priority date back to the Settlement Finality Directive (SFD) and the Financial Collateral Directive

*Senior Lecturer, Australian National Centre for Ocean Resources and Security, University of Wollongong, Wollongong, New South Wales, Australia, cgoodman@uow.edu.au.

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(FCD), both of which prescribed preferential treatment for secured creditors beyond that of general insolvency law in relation to certain financial market transactions or payment and securities settlements.

In the post-global financial crisis (GFC) era, the EU introduced the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR), harmonising bank resolution laws across EU Member States. Accordingly, public resolution authorities may exercise administrative powers directly to intervene in the operations of banks that are failing or likely to fail and which might generate public interest concerns in the absence of alternative solutions. Institutions which do not fall under the scope of the EU regime are still subject to national insolvency proceedings. When deciding the loss-absorption sequence, resolution authorities may deviate from the generally applicable creditor hierarchy and decide on an ad hoc basis for the purpose of maintaining financial stability. In addition, the EU introduced the minimum requirements for eligible liabilities and own funds (MREL), which requires banks to hold sufficient equity and subordinated debts that are amongst the lowest ranking of creditors in bank failures.

Given these legal provisions, the second question further investigates the rationale(s) behind such priority rules. The underlying function of the banking industry is first identified, that is, maturity transformation from short-term liabilities (deposits) to long-term assets (loans), which makes banks vulnerable to liquidity risks. This requires the special treatment of banks' creditors, in order to avoid contagion risks. Therefore, creditors in bank insolvency need special priority rules. On the one hand, traditional creditor priority theories enshrined in corporate insolvency law still apply, such as the protection of secured creditors for the purpose of attracting financing for debtors. On the other hand, the special features of banks and the objectives of banking regulation are also taken into account, especially considerations of financial stability. Both the pre-GFC SFD and FCD and the post-GFC BRRD and SRMR attempt to achieve such a goal by avoiding losses to banks' counterparties and special short-term creditors (depositors, for instance). The former seeks to avoid direct contagion among other counterpart financial institutions, while the latter aims to avoid indirect contagion affecting the whole/broader financial market.

The third question further explores the evolving European banking regulatory regime, with a paradigm shift from meta-regulation to technocratic fine-tuning, where the approach to banking regulation is characterised by three attributes. First, the regulatory output is complex; secondly, it is increasingly determined through case-by-case decisions; and, thirdly, legal constraints are only vaguely prescribed, as regulatory authorities enjoy discretion in determining creditor priority, subject to national judicial review procedures. Correspondingly, tailor-made

individual requirements have now been put in place that may vary across different types of banks, given their differences in assets, size and interconnectedness. This book therefore provides justification for different creditor priority regimes in the post-GFC era.

In the post-GFC terminology, resolution regimes normally only apply to certain large banks that may incur systemic risks and hence endanger financial stability. There are, however, smaller banks whose failure may still be subject to national insolvency laws that are fragmented across the world. The EU is thinking of providing more harmonised rules for bank insolvency, the latest proposal being to adjust and strengthen further the EU's existing bank crisis management and deposit insurance (CMDI) framework, with a focus on medium-sized and smaller banks. It is proposed to extend the scope of the deposit guarantee schemes to public entities (such as hospitals, schools, municipalities) as well as client money deposited in certain types of client funds (such as investment companies, payment and e-money institutions). This book may serve as a starting point and offer evaluative benchmarks for future reforms of bank insolvencies.

Beyond the EU at the international level, the International Institute for the Unification of Private Law (UNIDROIT) and the Financial Stability Institute (FSI) are in the process of formulating legislative guides for bank insolvency, in particular for liquidation, and also for medium- and small-sized banks. In the draft document, special attention has also been paid to creditor priority, especially deposit preference rules. Also, following the 2023 banking crisis in the United States, the Federal Deposit Insurance Corporation proposed new options for increased deposit insurance coverage, including: increasing the deposit insurance limit (limited coverage); insuring all deposits without limit (unlimited coverage); and different levels of coverage for different types of accounts (targeted coverage).

In practice, recent examples—such as protecting all depositors in the management of the SVB crisis or writing down all additional tier 1 (AT1) bondholders in the sale of Credit Suisse—demonstrated different treatment of creditors in bank insolvency. Depositors are normally better protected for the purpose of maintaining financial stability and avoiding bank runs and cross-institutional or even cross-sector contagion. Meanwhile, subordinated bondholders are in a worse contractual situation, and are supposed to absorb losses first. The overall architecture of creditor hierarchy is more complex than normal insolvency proceedings, given the complexity and interconnectedness of the financial system, and the technocratic fine-tuning approach explained in this book may help the reader to understand the rationale behind such differences and with

considering more suitable and efficient rules for crisis management regimes in the banking sector.

Shuai Guo*

The Law and Practice of Global ICT Standardization by Olia Kanevskaia [CUP, Cambridge, 2023, xxvi + 361pp, ISBN: 978-1-0093-00575, £95.00 (h/bk)]

Information and communication technology (ICT) has revolutionized the world, creating a global village, saving time and bridging distances. However, the role of connectivity as a form of regulation is often overlooked, despite its association with advanced technology and infrastructure. To ensure responsible use, ICT requires regulation through global ICT standardization, which shapes and implements agreed norms, technical specifications and best practices. This fosters interoperability and innovation across industries and sectors while addressing legal and policy considerations, profoundly impacting the development and harmonization of ICT practices worldwide.

This book by Olia Kanveskaia is an ambitious and comprehensive exploration of the mechanics and fundamentals of global ICT standardization from historical, legal and political science perspectives. It is a groundbreaking study that combines legal analysis, empirical evidence and practical insights to provide a holistic and novel understanding of this complex field. The book is divided into four parts and comprises 12 chapters, with each chapter providing an in-depth and systematic approach to the analysis of the legal rules that govern ICT standardization. It also examines governance and institutional features of prominent standards development organizations (SDOs) through a multidisciplinary doctrinal and politico-legal methodology.

Part I delves into the ecosystem of ICT standardization, offering a comprehensive account of the subject. In Chapter 1, the concept is explored as a normative regime, shedding light on how voluntary standards created within committee processes of diverse SDOs can acquire binding force. It sets out the mechanisms through which these standards gain recognition and influence within the industry. In Chapter 2, the focus shifts to a normative account of legitimacy in ICT standardization as a form of private transnational regulation. The chapter introduces a non-exhaustive list of procedural meta-principles, which serve as guiding principles for establishing the legitimacy of private regulatory regimes. These principles encompass aspects such as fairness, inclusivity, transparency and accountability, providing a framework for assessing the standardization process. The author emphasizes the normative aspects and legitimacy of ICT standardization, offering valuable insights. The chapters highlight the transformation of

*Assistant Professor, China University of Political Science and Law, Beijing, People's Republic of China, s.guo@cupl.edu.cn.

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