

# *HIGH LEVEL SEMINAR ON SELECTED LEGAL ISSUES OF THE RESOLUTION FRAMEWORK IN POLAND*

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**MINISTRY OF FINANCE, POLAND  
(OCTOBER 2, 2013)**

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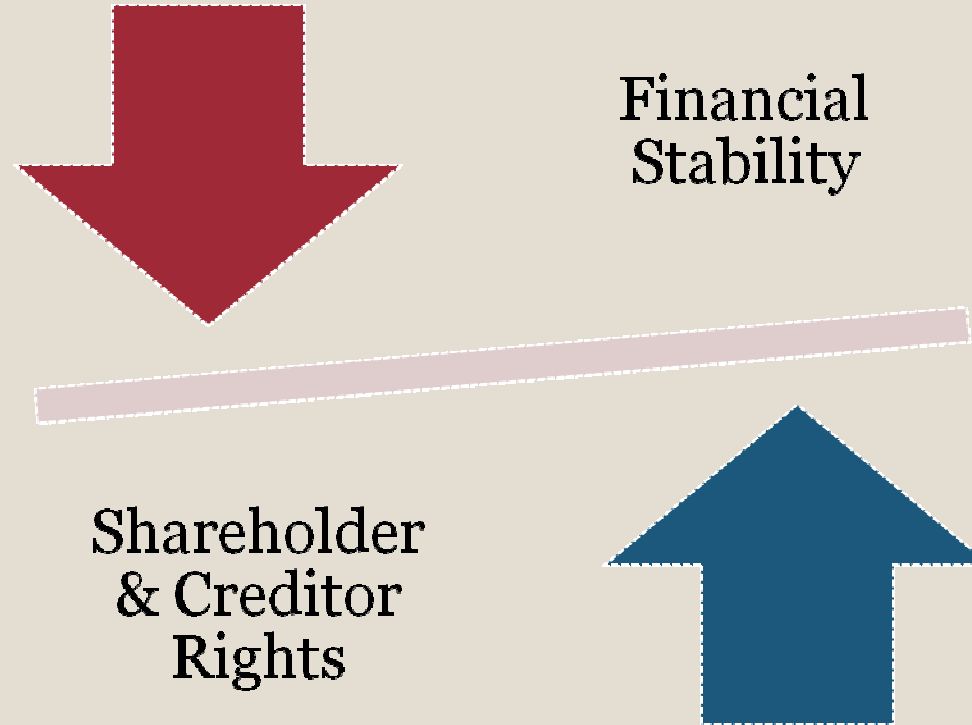
# OUTLINE

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- Shareholder and Creditor Rights
  - ✦ Hierarchy, types and rationale for override
- Determination of Compensation
- Ex-post Judicial Review
- Legal Protection
- IMF and its Members
  - ✦ Country examples
- Conclusions

# SHAREHOLDER AND CREDITOR RIGHTS

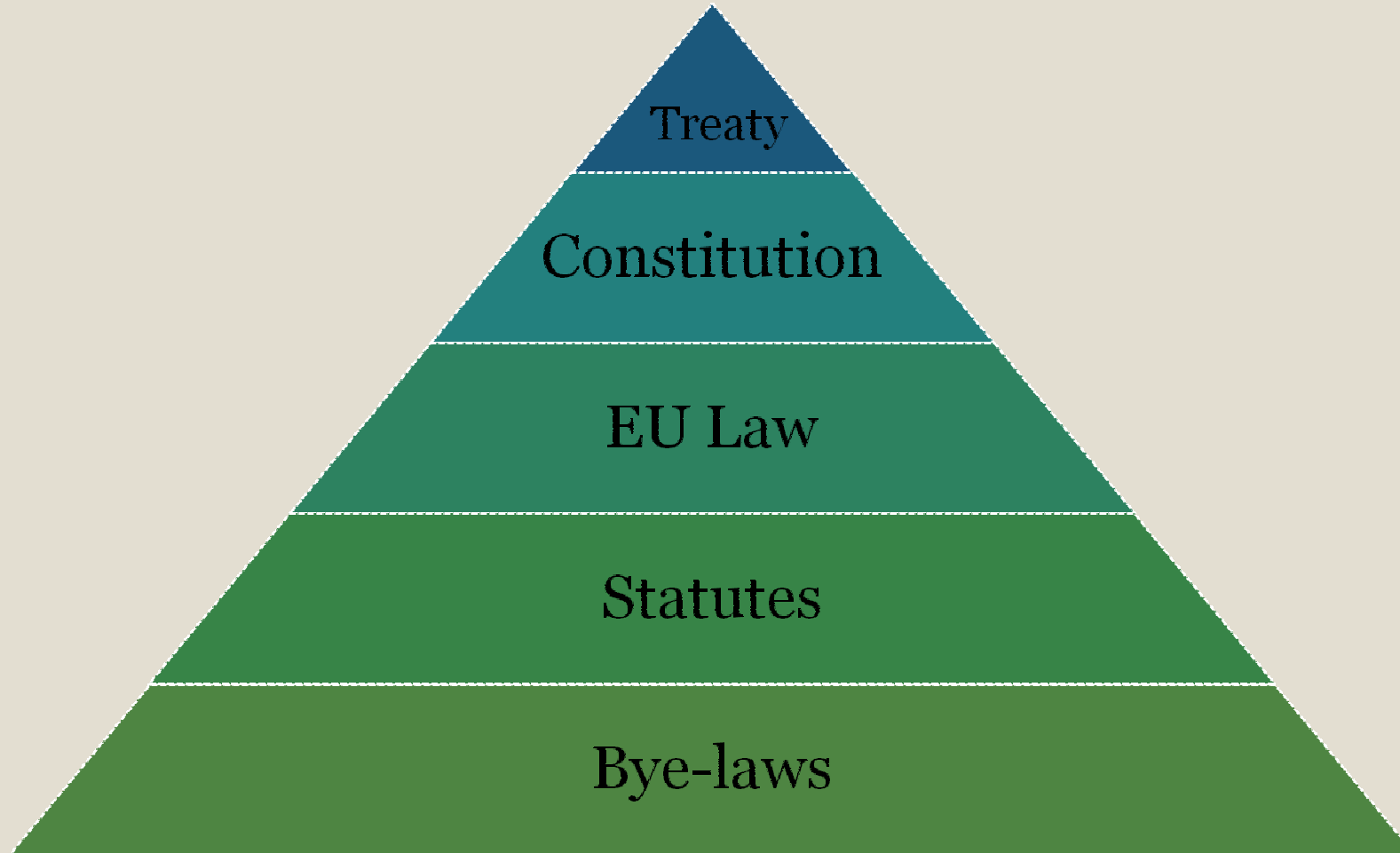
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- LEGAL CERTAINTY - When a balance among different and conflicting rights and powers is to be struck, a legal approach is essential

# “HIERARCHY” OF RIGHTS

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# TYPES OF SHAREHOLDERS' RIGHTS

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## Governance

- Right to elect office holders
- Right to approve major transactions e.g. capital increase, M&A, major dispositions of property
- Right to participate in the influence of corporate affairs, strategic matters

## Economic

- Right to receive dividends
- Right to sell one's shares
- Right to portion of residual value of the institution upon liquidation
- Pre-emptive rights

- *Degree of interference with these rights vary depending on the restructuring tool used*

# RATIONALE FOR OVERRIDE

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## Shareholders

Maintain financial stability, authorities need to act quickly

Bank on brink of insolvency, shareholder not worst off

Fundamental safeguards – ex post judicial review and compensation

## Creditors

Little, if any net worth

Restructuring may extract some going concern value & maximize amounts to pay creditor's claims

Depositor preference rights, unsecured creditors not worst off

# DETERMINATION OF COMPENSATION

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## Resolution tool

- Official administration
- Forced recapitalization
- Bail-in
- M&A/ transfers of shares
- P&A/ Bridge-bank
- Asset Management Company

## Is there a loss?

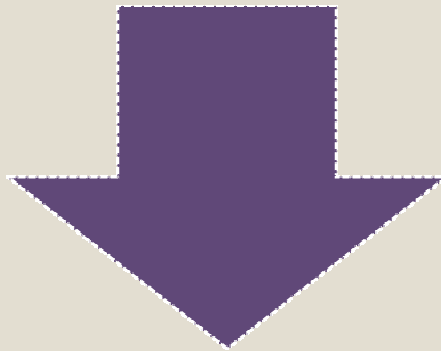
- Mere suspension of rights/ interests?
- Actual loss suffered?

## What is appropriate compensation?

- No creditor worst off test
- Liquidation scenario

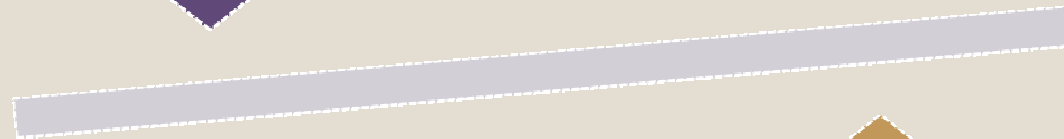
# EX-POST JUDICIAL REVIEW

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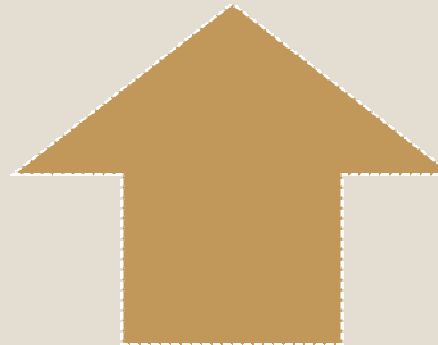
## **Expediency**

- Balance financial stability needs
- Efficient and quick framework



## **Accountability**

- Administrative Power
- “Checks & Balances”

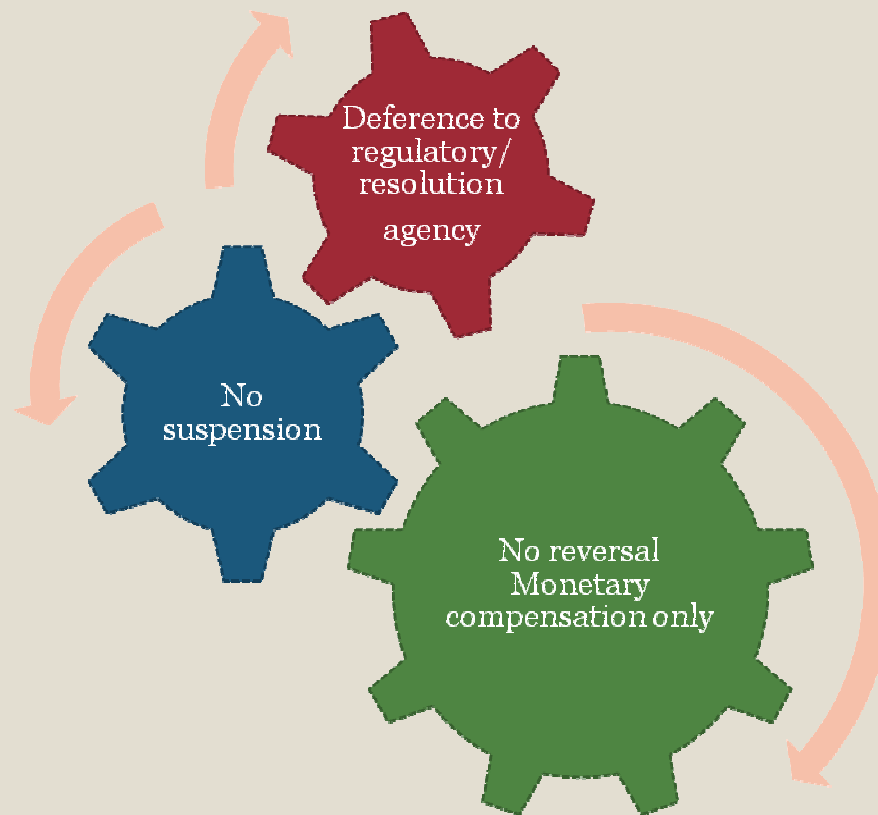




# SCOPE, NATURE & EXTENT

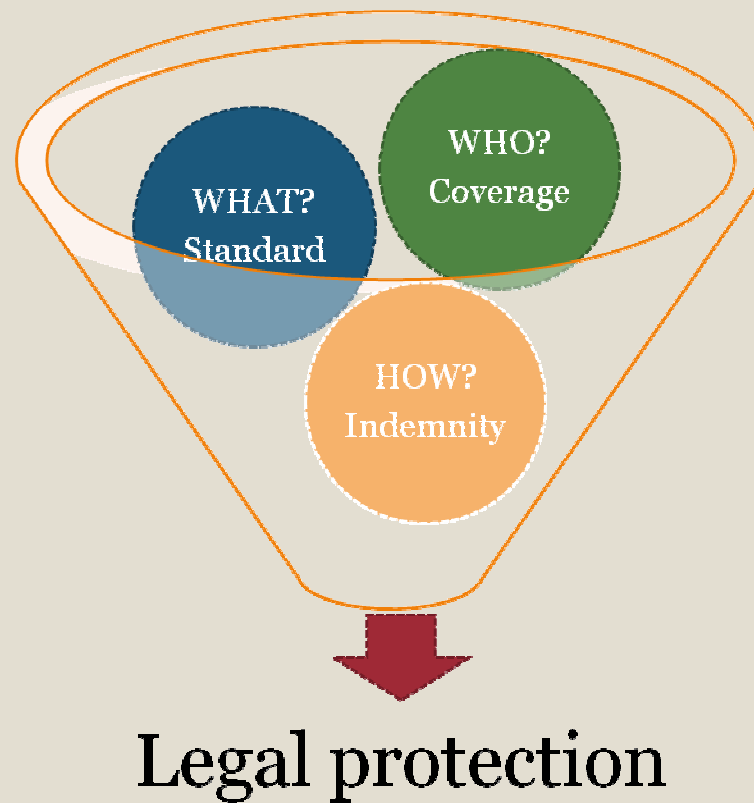
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- Three components may limit the scope, nature and extent of judicial review in a bank resolution framework



# LEGAL PROTECTION

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# IMF & ITS MEMBERSHIP

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## Surveillance

- Financial Sector Assessment Program

## Use of Fund Resources

- Program conditionality & TA

## Technical Assistance

- Non-program related TA

## Legal Policy

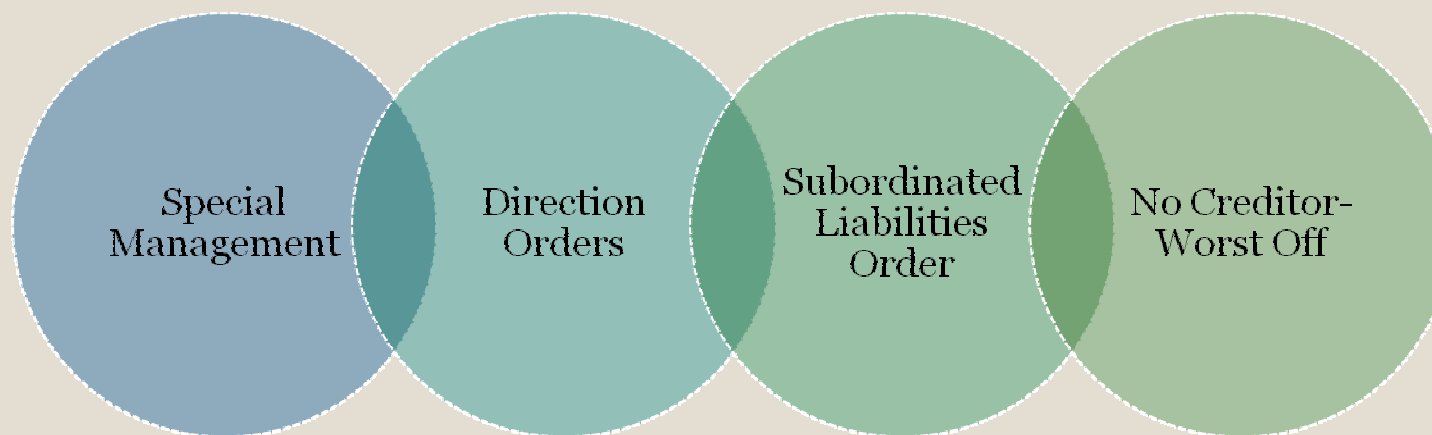
- Design and negotiation of international legal standards

# COUNTRY EXAMPLE - IRELAND

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Credit Institutions Stabilization Act 2010

Central Bank and Credit Institutions (Resolution) Act 2011



# COUNTRY EXAMPLE - PORTUGAL

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## Legal Framework of Credit Institutions and Financial Companies (2011)

Powers to suspend management and appoint interim administration

Measures deemed “urgent” and not subject to prior hearing of interested parties

Guiding principle = shareholders and creditors (according to priority) bear first loss

P&A and Bridge-bank without consent of shareholders or creditors, transfers exclude commitments to shareholders

Power to suspend contractual obligations

# COUNTRY EXAMPLE - CYPRUS

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## Law on the Resolution of Credit and other Institutions 2013

All powers, duties and responsibilities of shareholders, board members, commissioners or managers may be exercised by resolution authority or special manager

Shareholders shall first bear any losses, then creditors in accordance with priority of claims

Tools include forced capital increase, sale of operations, transfer of assets and liabilities, bridge-bank, AMC, bail-in, all exercised without consent of board or shareholders

Force recapitalization disregards pre-emptive rights of shareholders  
Subordinated debt and equity excluded from asset and liabilities transfers  
Bail-in - power to write down or convert debt or obligations

No creditor-worst off test  
Departure from *pari passu* treatment of creditors if in public interests, public benefit or maximize value for benefit of creditors as a whole

# CONCLUSIONS

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The crisis has highlighted the need to grant more pervasive and flexible powers to authorities to deal with failing and failed banks

A rigorous legal analysis is required to ensure that an appropriate balance is struck with conflicting or different rights of shareholders and creditors, whose interests have to be recalibrated and may need to be significantly curtailed.

# IMF REFERENCE MATERIAL

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- An Overview of the Legal, Institutional, and Regulatory Framework for Bank Insolvency, IMF and World Bank, April 2009  
<http://www.imf.org/external/np/pp/eng/2009/041709.pdf>
- The Need for Special Resolution Regimes for Financial Institutions – the Case of the European Union, IMF Working Paper, September 2009  
<http://www.imf.org/external/pubs/cat/longres.cfm?sk=23286.0>
- Resolution of Cross-Border Banks, A Proposed Framework for Enhanced Coordination, IMF Policy Paper, June 2011  
<http://www.imf.org/external/pp/longres.aspx?id=4462>
- From Bail-out to Bail-in: Mandatory Debt Restructuring of Systemic Financial Institutions, IMF Staff Discussion Note, April 2012  
<http://www.imf.org/external/pubs/ft/sdn/2012/sdn1203.pdf>
- The Key Attributes of Effective Resolution Regimes for Financial Institutions – Progress to Date and Next Steps: IMF Policy Paper, August 2012  
<http://www.imf.org/external/np/pp/eng/2012/082712.pdf> -



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