ARTICLES

The Regulation and Supervision of International Lending: Part II†

Editor's Note: This is the second of a two part series by Connie Friesen on the Regulation and Supervision of International Lending. This part analyzes and compares the policies in the creditor countries of France, Belgium, The Netherlands and Switzerland. Author Friesen also assesses the role of international supervision and offers some policy suggestions.

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I. Bank Regulation and Supervision in France

A. Generally

Bank regulation and supervision in France reflect strains relating to the recent completion of the nationalization of the banking industry and a strong focus on the development of a banking industry that will serve the needs of French industrial policy and French exporters. The French supervisory system has its basis in a comprehensive statute and extensive written regulations, but it is not as rule-based as the United States system. Nor does it possess the consultative features of the United Kingdom system. The Banque de France and the Commission Bancaire exert powerful authority over the larger French banks. The close association between supervisors and major banks that some observers see as a distinguishing characteristic of the bank regulatory and supervisory system in the Federal Republic of Germany is noticeably lacking in France.

Beginning in late 1985, an extensive reform package was adopted in France. The reforms included such measures as allowing the introduction of certificates of deposit, permitting the issuance of stock options, easing the rules for bond issuance and allowing banks to offer long-term mortgages. These reforms were intended to keep French capital markets competitive with those elsewhere in Western Europe.¹

1. The French Banking Act

The Banking Law of January 24, 1984 (the French Banking Act), which represents the first major change in bank supervision since 1945, brought most French banking and credit institutions under a single supervisory structure. That structure, however, is fairly complex, because supervision is exercised through four separate entities: the Commission Bancaire, the Comite de la Reglementation Bancaire, the Comite des Etablissements de Credit and the Conseil National du Credit. The French Banking Act also had the unstated objective of increasing the government's intervention in regulation of banks by increasing the supervisory responsibilities and functions of the Ministry of Economy, Finance and Budget. As a result of the nationalizations of 1945 and 1982, the French government now owns all large commercial banks that are not foreign controlled.

2. The Banque de France and the Commission Bancaire

The Banque de France has traditionally enjoyed very significant authority over commercial banks and its authority has been strengthened by the French Banking Act. It has general authority to supervise the French banking system and is charged with carrying out the economic and financial policies of the government. In practice, much of the authority of the

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Prior to effectiveness of the French Banking Act, banks were divided into deposit banks (banques de depot), investment banks (banques d'affaires) and medium- and long-term credit banks. In addition to the French Banking Act, the following are among the more important statutes governing commercial banks in France: (a) Law No. 2532 of June 13, 1941, 1941 J.O., setting forth basic regulations for banks generally; (b) Law No. 45-015 of Dec. 2, 1945, 1945 J.O., relating to the nationalization of the Banque de France; (c) Decree No. 46-1247 of May 17, 1946, 1946 J.O., setting forth basic rules for functioning of private sector banks; (d) Law No. 73-7 of Jan. 3, 1973, 1973 J.O., relating to the Banque de France; (e) Decree of Nov. 13, 1978, 1978 J.O., establishing minimum capital requirements for banks; and (f) Decree No. 79-561 of July 5, 1979, 1979 J.O., introducing rules for covering and spreading lending risks. For a complete listing of pre-1981 statutes and regulations, see THE REGULATION OF BANKS IN THE MEMBER STATES OF THE EEC at 60 (Welch, J. ed. 1980) [hereinafter cited as WELCH].


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Banque de France is exercised indirectly, particularly through its preeminent position on the Banking Commission (Commission Bancaire). The Banque de France appoints the Secretary-General of the Commission Bancaire and serves as its secretariat. Moreover, it is through the Banque de France that the Commission Bancaire acts to verify the accounting records and legal compliance of all French banking institutions.

The Commission Bancaire replaces the former Commission de Controle des Banques (the CCB) and has greater powers. Its members include the Governor of the Banque de France, the director of the Treasury Department, a judge from each of the Conseil d'Etat and the Cour de Cassation, and two banking experts appointed by the Minister of Economy, Finance and Budget. Pursuant to the French Banking Act, the Commission Bancaire is charged with insuring that banking institutions adhere to applicable rules and regulations.

The Commission Bancaire is responsible for auditing the accounts of banking institutions. The Commission Bancaire's inspections, carried out by representatives of the Banque de France, are followed by reports that are presented to a bank's board and its statutory auditors. The Commission Bancaire also has the power to control branches and subsidiaries of French banks operating abroad, a power which eluded the CCB. The Commission Bancaire is charged with official responsibility for insuring the general safety and soundness of banking institutions in France.

The work of the Commission Bancaire is supplemented by the Committee on Bank Regulation (Comite de la Reglementation Bancaire). It consists of the Minister of Economy, Finance and Budget, his four appointees and the Governor of the Banque de France, as well as one representative chosen by the Association Francaise des Etablissements de Credit (an organization representing all credit institutions), a trade union representative and two financial experts chosen without regard to professional affiliation. The Comite de la Reglementation Bancaire is charged with developing specific regulations applicable to banking institutions. Development of uniform accounting standards and a standardized format for commercial bank finan-

9. Id., at arts. 37-49.
10. Id., at art. 38.
11. Id., at arts. 37, 39.
12. Id., at arts. 39, 46.
13. C. Johnson, France, in International Bank Accounting, supra note 2, at 87.
16. French Banking Act, supra note 2, at art. 30(2).
cial statements are among its responsibilities. It also establishes prudential regulations and ratios and determines which activities are permissible banking activities under the French Banking Act.17

Yet another official supervisory body is the Comité des Etablissements de Credit.18 It provides authorization for the commencement of banking activities and is responsible for the technical application of various banking regulations to individual commercial banks.19 Its members are the Governor of the Banque de France, the director of the Treasury Department and four members appointed by the Minister of Economy, Finance and Budget.20 The enlarged role of the Comité des Etablissements de Credit indicates that the real power of decision on credit matters has shifted from the Banque de France to the Ministry of Economy, Finance and Budget.21 The Conseil National du Credit is a consultative group comprised of the Minister of Economy, Finance and Budget, the Governor of the Banque de France and representatives of certain consumer, employer and employee organizations.22 Pursuant to art. 24(2) of the French Banking Act, it is charged with advising the Ministry of Economy, Finance and Budget on matters relating to the general functioning of the banking and financial systems as well as on monetary and credit policy.23 The present consultative role of the Conseil National du Credit represents a significant reduction of its pre-1984 authority.24

Several other governmental entities are also influential in the supervision of banking activities. The Treasury Department is a powerful central financial institution and exerts a strong influence on the conduct of the banking business in France. Since the Treasury Department issues guarantees in favor of private enterprises and may make loans to such enterprises if their work is deemed to be in the national interest, it functions in these respects as a bank.25

3. Commercial Banks and the Supervisory Process

French banks are among the largest banks in the world, but are generally not among the most adequately capitalized or profitable.26 Especially in the

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17. Bank Supervision in the Group of Ten, supra note 7, at 26; French Banking Act, supra note 2 at art. 33.
18. Bank Supervision in the Group of Ten, supra note 7, at 27.
19. Id.; French Banking Act, supra note 2, at art. 15.
20. French Banking Act, supra note 2, at art. 31(2).
22. French Banking Act, supra note 2, at art. 25.
23. Id., at art. 24(2).
26. The largest French banks include Banque Nationale de Paris, Credit Agricole, Credit Lyonnais, Societe Generale, Banque Paribas, Banque Indosuez, Credit Industrial et Commer-
wake of the relatively complete nationalization of commercial banks undertaken in 1982, French banks have had to come to terms with a complex supervisory structure. Post-nationalization supervision has not significantly improved either capital structure or profitability.

A number of common themes emerged from discussions with officials of French banks. First, there is the frequently expressed view that relations between the Banque de France and commercial banks are very different from relations between the Bank of England or the Federal Reserve Board and United Kingdom or United States commercial banks. While interference from the Banque de France in the day-to-day operations of banks is said to be minimal, banks view relationships with supervisors with a certain amount of skepticism and note their sometimes adversarial nature.

Another common theme of bank executives is approval of foreign lending which supports French export goals. Most banks report that export-related loans guaranteed by the French government constitute significant percentages of their total foreign loans. Finally, leading bankers express concern that French banks lack the necessary capital to underwrite greater exposure in foreign lending that is not supported by government guarantees.27

French banks are encouraged to express their opinions on matters such as foreign lending through the Association Francaise des Banques (AFB). The AFB was established in 1941 and assumed its present name in 1976. It enjoys quasi-official status and banks are required to become members. The AFB is, in fact, a part of the supervisory structure and often serves to inform banks of various government policies. In cases where a bank is party to a suit or where the general interests of the banking profession are otherwise at stake, the AFB is entitled to intervene in judicial actions.28 As one observer notes, "the AFB thus has a formal place in the supervisory framework of the banking industry, both as regards access to the profession and as regards the disciplining of those in the profession."29

4. Accounting and Disclosure Requirements

The French Banking Act has tightened up certain accounting requirements. Under the terms of the French Banking Act, accountants are required to report specified matters to the Ministry of Justice after discussing

28. Welch, France, supra note 2, at 81–82.
29. Id. at 82; interview, senior official of the AFB, Paris, Feb. 7, 1984 (notes on file with author).
them with bank management. The French Banking Act grants greater enforcement powers to the Commission Bancaire than were enjoyed by the CCB. Commission Bancaire officials also predicted that EEC directives on bank accounting practices would result in stricter accounting controls for French banks.\textsuperscript{30}

Each French bank is required to send a periodic statement of its assets and liabilities to the Commission Bancaire.\textsuperscript{31} French banks must submit interim reports at the end of every six-month period and balance sheets, profit and loss accounts and certain additional information at the end of every accounting year. Banks are also required to prepare certain monthly and quarterly reports.\textsuperscript{32}

Banks must present their financial statements on a consolidated basis.\textsuperscript{33} Annual financial statements are to be completed in accordance with a format developed by the Comité de la Reglementation Bancaire. While regular returns to the Commission Bancaire are not routinely made available to the public, the Commission Bancaire has the right to disclose any information which is considered to be in the public interest.\textsuperscript{34}

Auditors have a special position within the bank supervisory process.\textsuperscript{35} Auditors are appointed from a special list and have a duty to certify that financial statements fairly portray the condition of the banking institution and are prepared in accordance with accounting standards set by the Comité de la Reglementation Bancaire. The number of auditors to be selected depends on the size of the bank. The selected auditors are required to countersign the annual accounts of a bank before they are submitted to the Commission Bancaire.\textsuperscript{36}

\textbf{B. Regulations and Ratios}

1. \textit{Loans to Single Borrowers}

A first basic rule is that loans to a single borrower may not exceed 75 percent of a bank's capital.\textsuperscript{37} However, this rule does not apply when such

\begin{footnotesize}
\textsuperscript{30} Interview, senior officials of the Commission Bancaire and the CCB, Paris, Feb. 8, 1984 (notes on file with author).
\textsuperscript{31} \textit{Welch, France, supra} note 2, at 63.
\textsuperscript{32} \textit{Id.}
\textsuperscript{33} Bank Supervision in the Group of Ten, \textit{supra} note 7, at 34.
\textsuperscript{34} \textit{Id.}
\textsuperscript{36} \textit{Welch, France, supra} note 2, at 63; Bank Supervision in the Group of Ten, \textit{supra} note 7, at 33.
\textsuperscript{37} The rules on loan concentration are set forth in Decree No. 70-561 of July 5, 1979 and in General Decision No. 79-07 of the Conseil National du Credit, July 6, 1979; \textit{R. Dale, The WINTER 1986
\end{footnotesize}
loans constitute 5 percent or less of the bank's total loans and represent 50 percent or less of the borrower's total bank debts. A second basic rule is that the sum of all large loans which amount to over 25 percent of a bank's capital cannot be more than ten times the amount of capital. 38 Loans that are guaranteed by other financial intermediaries, the central government or certain public and semi-public bodies are deducted from the total in compliance calculations. 39

Supervision of loans to single borrowers extends beyond the ratios described above. A Central Risks Service, which collects and distributes information on banking risks and credits for use by individual banks, is operated by the Banque de France. Loans to a single borrower in excess of specified amounts must be reported to the Central Risks Service. 40

2. Capital Adequacy

Although the capital adequacy of French banks has received considerable regulatory attention over the past few years, French banks remain undercapitalized by international standards. Art. 51 of the French Banking Act now provides a statutory basis for the establishment of required ratios on capital adequacy and liquidity by the Comité de la Reglementation Bancaire. 41 Even before the enactment of the French Banking Act, regulations issued in July 1979 required French banks to improve capital to risk asset ratios with the objective of achieving minimum capital ratios of 5 percent. 42 Capital is defined to include paid-up capital, certain reserves, retained earnings and subordinated debt less the sum of accumulated earnings and intangible assets. 43

For purposes of computing adherence to required solvency ratios, assets are accorded different weightings depending on their perceived riskiness. Advances representing ordinary risks are accorded a weighting of 100 percent. Less risky advances, such as interbank loans, receive a weighting of 5 percent and advances with no perceived risk, including loans to or guaran-
ted by the French government are given a zero weighting. If French supervisory authorities determine that solvency is adequately regulated in a foreign bank's home country, branches of foreign banks will not be required to meet French solvency requirements as long as the parent bank guarantees their obligations.\textsuperscript{44}

In October of 1984, the French government announced a new system that will allow banks to increase loans in accordance with improvements in their capital positions. The new system was introduced as part of the government's general plan to encourage French banks to improve their capital ratios.\textsuperscript{45} The Bank of France tightened capital adequacy rules in the summer of 1985 and required banks to strive for minimum capital ratios of five percent.\textsuperscript{46}

Bank supervisory authorities have also accepted a number of new capital raising methods. In 1984, Societe Generale issued the first non-voting preference shares (certificats d'investissement). Subsequently, Societe Generale was also given permission to issue permanent subordinated debt.\textsuperscript{47}

3. Liquidity

Two separate ratios govern the liquidity positions of banks. The so-called "liquidity ratio" (rapport de liquidite) relates liquid assets to very short-term liabilities. As defined by decree, liquid assets comprise such items as immediately marketable assets, claims on other financial intermediaries maturing within three months, credits to customers eligible for rediscounting by the Banque de France, and certain readily marketable securities. Liabilities at sight or due within three months are the short-term liabilities against which liquid assets must be held. The required ratio states that banks must at all times hold liquid and realizable assets equal to at least 60 percent of short-term liabilities.\textsuperscript{48}

A separate required ratio, a coefficient of medium to long-term opera-
tions (coefficient d'opération a moyen et long terme), applies to all commercial banks and limits their medium and long-term liabilities to less than three times the bank's savings deposits and capital.\textsuperscript{49} If this standard cannot be met, then an alternative liquidity standard is applicable. It specifies that 80 percent of medium and long-term loans must be covered by capital plus savings accounts and interbank borrowings having at least two years remaining to maturity.\textsuperscript{50}

4. Foreign Exchange Exposure

The Banque de France attempts to exercise strict control over foreign currency exposure of French banks. Only banks which are authorized to do so by the Banque de France may engage in foreign exchange activities and banks generally are prohibited from increasing net foreign currency exposure beyond levels they maintained in 1968.\textsuperscript{51} While French banks are prohibited from taking open positions against the French franc, they are permitted to take positions in one foreign currency against another.\textsuperscript{52} However, such exposure would still be monitored closely by the Banque de France which may intervene if it considers the exchange risks taken by a particular bank to be excessive.

C. Supervision of International Lending

1. Country Risk and Provisions for Loan Losses

Traditionally, country risk analysis has been the responsibility of each individual bank. Recently, the Banque de France has instituted consolidated reporting requirements for foreign lending.\textsuperscript{53} The Banque de France has agreed to provide certain data on foreign lending derived from such consolidated reports to the BIS.\textsuperscript{54} Each quarter, banks are required to report to the Commission Bancaire their total country risk exposure based on consolidated operations. No specific country limits are imposed, but the reports are monitored to reveal trends and any exposures considered large in relation to the bank's capital base would be the subject of comment.\textsuperscript{55}

Major French banks have adopted sophisticated systems for country risk analysis. One major bank reviews its self-imposed limits on loans to particu-

\textsuperscript{49} Bank Supervision in the Group of Ten, \textit{supra} note 7, at 31. The ratio for medium-term operations is set out in the CCB's Instruction No. 77-03-A of Dec. 16, 1977.

\textsuperscript{50} DALE, \textit{INTERNATIONAL BANKING}, \textit{supra} note 37, at 106.

\textsuperscript{51} Bank Supervision in the Group of Ten, \textit{supra} note 7, at 32.

\textsuperscript{52} R. DALE, \textit{BANK SUPERVISION AROUND THE WORLD}, 27-28 (Group of Thirty, 1982) [hereinafter cited as \textit{DALE, BANK SUPERVISION}].

\textsuperscript{53} Interview, senior officials of AFB, Paris, Feb. 7, 1984 (notes on file with author).

\textsuperscript{54} \textit{Id}.

\textsuperscript{55} Bank Supervision in the Group of Ten, \textit{supra} note 7, at 32.
lar countries about three times a year, with a focus on about thirty countries at each review period. Another major bank has in place a "continuous" rating system encompassing evaluation of the economic and political risk attached to lending in some seventy-five foreign countries.

The French Banking Act does not impose specific limits on international lending by particular commercial banks. However, bank regulators have other means available for limiting country risk exposure of French banks. The supervisory authorities may require that reserves be allocated against specific country reserve assets as part of their general authority to require reserves against risk assets. Actual provisions for potential loan losses, whether arising from a bank's domestic or international portfolio, are left to the discretion of bank management. Typically, management will review the loan portfolio at the end of each accounting period and make specific provisions against any loss or doubtful items.

2. Lender of Last Resort

The Banque de France is clearly reluctant to accept responsibility for acting as lender of last resort in the event of a solvency or liquidity crisis. Especially with respect to branches and subsidiaries of French banks operating abroad, it has been hesitant to state its position on lender of last resort matters precisely. French commercial banks view the support of such branches and subsidiaries as the responsibility of each individual bank. Of course, because the French system of monetary control dictates that banks have automatic and unlimited access to official credit through the sale of eligible commercial paper to the Banque de France, the lender of last resort function and the normal functioning of the credit markets are sometimes difficult to distinguish.

Among major French banks, the prevailing view is that the Banque de France would act as a lender of last resort only in a national crisis evidenced by major economic or political difficulties. Under most foreseeable circumstances, art. 52 of the French Banking Act provides the applicable

56. Interview, senior official of major French bank, Paris, Feb. 9, 1984 (notes on file with author).
57. Id.
58. Bank Supervision in the Group of Ten, supra note 7, at 32.
59. C. Johnson, France, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 92.
63. DALE, INTERNATIONAL BANKING, supra note 37, at 146.
guidelines. Art. 52 enables the Governor of the Banque de France to call on shareholders to provide additional financial backing or to call on industry-wide contributions to preserve the French banking system and the interests of depositors.65

The AFB's deposit insurance scheme would also become operative in the event of a true solvency or liquidity crisis. The AFB's plan is operative only within the geographic limits of France. Therefore, it includes branches and subsidiaries of foreign banks operating in France and excludes foreign branches of French banks. Because there is no fund, direct contributions from AFB members would be required in the event of an actual crisis.66

3. Treatment of Branches and Subsidiaries of French Banks Operating Abroad

French banks have always been quite centralized and most decisions with respect to international lending are made at the respective head offices in Paris. Large commercial banks are required by the Comite de la Reglementation Bancaire to prepare consolidated financial statements.67 The inclusion of subsidiaries in the calculation of solvency ratios is a further indication of banks' responsibilities for their global operations.68

Reporting requirements underscore the fact that branches and subsidiaries abroad are the responsibility of the Paris headquarters or parent, as the case may be.69 Each year, every French bank is required to provide the Commission Bancaire with a full list of all its branches and subsidiaries, both inside and outside France. An approved bank with its head office in France does not require the usual prior authorization of the Conseil National du Credit before it can establish a branch abroad. Such branches would, however, be subject to any exchange control restrictions under which authorization is required for investments abroad by French citizens.70

4. Treatment of Foreign Banks in France

It is generally true that there is no distinction made between the supervision of foreign-owned and domestic banks.71 Upon approval of an application by the Comite des Etablissements de Credit, a foreign bank may open either a subsidiary or a branch in France.72 Pursuant to the French Banking

65. DALE, INTERNATIONAL BANKING, supra note 37, at 146.
66. DALE, INTERNATIONAL BANKING, supra note 37, at 146; Mecanisme de solidarite de la profession; regles adoptees par l'Association Francaise des Banques, AFB, 1981.
67. C. Johnson, France, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 91.
68. Interview, senior officials of AFB, Feb. 7, 1984 (notes on file with author).
69. Interview, senior official of major French bank, Feb. 10, 1984 (notes on file with author).
70. WELCH, France, supra note 2, at 68.
71. Bank Supervision in the Group of Ten, supra note 7, at 25.
72. C. Johnson, France, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 87.
Act, branches of foreign banks are expected to maintain capital equal to at least the minimum required of a similar banking institution organized under French law. Branches of foreign banks are required to have independent accounting systems and must independently satisfy the preconditions for qualification and registration as banking institutions in France.

While there is no general official distinction between foreign-owned and domestic banks, it is sometimes acknowledged that foreign-owned banks have faced additional requirements that they participate in the bailout of failing French companies. Once the 1985 financial reform package had been adopted, however, there seemed to be greater practical application of the long-stated official position that foreign-owned and domestic banks were to receive equal treatment.

Reporting requirements imposed on domestic banks are generally applicable to foreign banks, with appropriate modifications. For example, foreign banks are required to maintain in one of their offices in France a complete record of all transactions carried out on French territory. Moreover, under the requirements for publication of balance sheets, a foreign bank’s branch must arrange for the publication both of the balance sheet of its own operations in France and of the balance sheet of the banking institution and consolidated subsidiaries as a whole (in the currency of its country of origin). Pursuant to art. 49 of the French Banking Law, reciprocity agreements may form the basis of transfer of information about branches and subsidiaries of foreign banks operating in France to foreign supervisory authorities.

5. Attitudes towards International Cooperation

Yves Laulan, formerly group economic adviser for Societe Generale, has published his proposal for a new approach towards cooperation on international indebtedness. Laulan argues that enhanced roles for the IMF and World Bank and somewhat greater cooperation between domestic supervisory authorities would be desirable and could be used to encourage continued lending by French banks.

In Laulan’s view, servicing existing debt is not the main problem, which is rather finding ways to maintain the flow of capital to developing nations. To encourage banks to continue lending, the IMF and World Bank should

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73. Id. at 88; French Banking Act, supra note 2, at art. 16(3).
74. Id.
75. Wallace, supra note 1.
76. WELCH, France, supra note 2, at 79.
77. French Banking Act, supra note 2, at art. 49; Riggs, supra note 3, at 27.
undertake some additional functions. Banks should provide systematic information about their plans to make loans to LDCs to the IMF with respect to general loans and to the World Bank with respect to project financing. In return for this prior information, loans extended by a bank would be given some kind of guarantee. Laulan argues that banks must have more confidence if they are to continue to engage in an adequate amount of international lending. They must be certain that part of the risk of additional LDC lending will be borne by an international insurance or guarantee system, comprised, perhaps, of a network of international institutions.\textsuperscript{79}

While they generally share Laulan's view that continued foreign lending by French banks should be encouraged, French commercial bankers often emphasize that lending must be focused so as to support French exports. Many French commercial bankers condition their support for greater international cooperation through the World Bank and the IMF on an allowance for the development of independent national programs to support trade and export goals. While they expressed reservations about some aspects of the Baker debt proposal (the Baker Plan) (see page 210), French commercial banks issued a generally favorable reply to the proposal to increase commercial lending to LDCs by $20 billion over three years. Specifically, French commercial bankers stated that United States commercial banks should accept a larger share of the new lending burden than contemplated by the Baker Plan.\textsuperscript{80}

II. Bank Regulation and Supervision in Belgium

A. Generally

The extensive potential powers of the Commission Bancaire [hereinafter referred to as the Belgian Commission Bancaire to distinguish it from the French bank regulatory entity having the same name], tempered in practice by its cautious supervisory approach, are hallmarks of the Belgian bank regulatory and supervisory structure. There are only a few specific rules on matters such as capital adequacy and loans to single borrowers which must be precisely followed by Belgian commercial banks. Belgian banks conduct their business in an environment relatively free from strict rules and guidelines. Commercial banks in Belgium form a small, cohesive group and they take pride in the strong consultative elements of their bank regulatory system. Belgian banks are only moderately involved in lending to LDCs and this has facilitated a consensus on such matters as appropriate levels of country risk for individual banks.

\textsuperscript{79} Id. at 28.

\textsuperscript{80} Banks in France Respond Positively to Debt Initiative, Fin. Times, Dec. 17, 1985, at 4.
1. *The Belgian Banking Act*

The governing statute for commercial banking activity in Belgium is the Banking Law (Royal Decree No. 185 of 1935) which was extensively revised in 1975 pursuant to the so-called "Mammouth Act" (la Loi Mammouth) and amended again in 1980 (as so amended, the Belgian Banking Act). 81

2. *The Belgian Commission Bancaire and the Banque Nationale de Belgique*

The Belgian Commission Bancaire is the primary bank supervisory authority in Belgium and is charged generally with supervising and regulating the banking system. 82 The Belgian Commission Bancaire is comprised of seven members, including a president appointed by the King. Two of the members must be chosen from a list submitted by the Belgian Bankers' Association and the Association of Private Savings Banks, and two must be selected from a list submitted by the Banque Nationale de Belgique and the Institute of Rediscount and Guarantee (Institut de Reescompte et de Garantie) (the IRG), another monetary institution. 83

In contrast to the strong government influence on the French Commission Bancaire, the Belgian Commission Bancaire enjoys great autonomy. As one Belgian legal scholar has observed,

The Commission's autonomy from the Belgian government is in reality close to independence. This independence was sought by the authors of Royal Decree No. 185 in 1935, a time when regulatory bodies in the financial field were just being created and were therefore regarded suspiciously. It was a way to establish an agency that in theory would not be influenced by political trends and governments, would have a technical approach and would be outside the power of the Ministry of the Treasury. 84

Moreover, "except for a limited number of cases specified by law, the [Belgian Commission Bancaire] acts and decides independently, and bears

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82. Belgian Banking Act, supra note 81, at art. 35.

83. Belgian Banking Act, supra note 81, at art. 37.

full responsibility for its actions and decisions." The autonomy of the Belgian Commission Bancaire is often cited to explain its efficiency and prestige. While its regulations and decisions may be reviewed by appeal to the Belgian Ministry of the Treasury or to the Council of State, such appeals have been extremely rare.

Regular discussions between the Belgian Commission Bancaire and the senior officers of individual banks form the basis of the Belgian supervisory approach. Meetings between the Belgian Commission Bancaire and management of a commercial bank typically focus on the bank’s financial performance, its mix of assets and liabilities and areas of particular concern, including such matters as capital adequacy, country risk evaluation systems and items set forth in a bank’s consolidated returns. Guidelines promulgated by the Belgian Commission Bancaire are developed in close cooperation with the Belgian Bankers’ Association and commercial banks. By statutory requirement, the members of the Belgian Commission Bancaire and its staff are bound to high standards of professional confidentiality and secrecy with respect to information concerning the general affairs or financial condition of the banks they supervise.

Art. 12 of the Belgian Banking Act provides that every bank must submit to the Banque Nationale de Belgique and to the Belgian Commission Bancaire annual and monthly balance sheets, as well as an annual profit and loss account. Pursuant to art. 73 of the Mammouth Act, the annual balance sheet and profit and loss account must be in the form prescribed by Royal Decree No. 64 of November 10, 1967.

In addition to regular informal discussions with the Belgian Commission Bancaire and examination of its financial accounts on a monthly and annual basis, all banks operating in Belgium (including branches of foreign banks) are subject to regular formal inspections by the Belgian Commission Bancaire. Ordinarily, such inspections focus on the organization, basic functions and lending transactions of such banks. At the discretion of the Belgian Commission Bancaire, any information that is needed to verify a bank’s compliance with various banking laws and regulations can also be required.

Under certain circumstances, the Belgian Commission Bancaire may request that the Banque Nationale de Belgique undertake inspections on its
behalf. In practice, the separate assistance of the Banque Nationale de Belgique is not often requested. Since 1975, the Belgian Commission Bancaire has been empowered to make inspections of banks without the assistance of the Banque Nationale de Belgique and it is anticipated that, over the long-term, the Banque Nationale de Belgique will decrease its assistance in the inspection process.

The Banque Nationale de Belgique is the principal organ for the execution of monetary policy in Belgium. It is empowered to make recommendations on monetary policy to banks and other financial intermediaries. Such recommendations might include the establishment of certain prescribed ratios among balance sheet items as well as recommendations made for monetary reasons.

3. Commercial Banks and the Supervisory Process

Nearly all Belgian banks are members of the Association Belge des Banques (Belgian Bankers' Association). While the Belgian Bankers' Association does not have a direct role in the supervision of banks for prudential purposes, it does have a consultative function with respect to the formulation of banking statutes or guidelines. For example, the Banque Nationale de Belgique can only formulate recommendations on banking ratios, regulations or statutes after consultation with interested financial intermediaries or their representatives in the Belgian Bankers' Association. Pursuant to the Belgian Banking Act, similar consultation requirements apply to regulations made by the Belgian Commission Bancaire on solvency and liquidity ratios and on controls over certain large loans. Moreover, the Belgian Bankers' Association enjoys a rather unique status in the development of interbank agreements. Agreements on various banking practices and standards, which serve as substitutes for more formal regulations, must usually be signed before a bank can be admitted to membership in the Belgian Bankers' Association.

The presence of a large number of foreign banks in Belgium has influenced relations between the Belgian Commission Bancaire and commercial banks generally. In 1983, for example, of a total of eighty-four banks in

92. Belgian Banking Act, supra note 81, at art. 19; WELCH, Belgium, supra note 2, at 7-8.
95. WELCH, Belgium, supra note 2, at 7.
96. Id. at 29.
98. WELCH, Belgium, supra note 2, at 29.
99. Id.
Belgium, twenty-seven were branches of foreign banks and twenty-one others were subsidiaries or affiliates of foreign banks.  

4. Accounting and Disclosure Requirements

Basic requirements for the preparation of annual and interim accounts are set forth in art. 12 of the Belgian Banking Act. Art. 12 requires that banks prepare such reports and authorizes the Belgian Commission Bancaire to prepare specific guidelines for the detailed preparation of these accounts.  

Like the Swiss system of bank regulation (see discussion, infra), the Belgian system gives significant authority to auditors. Approved bank auditors (so-called “reviseurs agrees”) are specially certified by and accountable to the Belgian Commission Bancaire and perform on-site examinations of banks. Pursuant to a law enacted in 1980, the Belgian Commission Bancaire appoints one or more of these approved bank auditors in each bank and determines and pays their fees. Approved bank auditors are appointed for a three-year period, which can be renewed. Because the salaries of the approved bank auditors are paid by the Belgian Commission Bancaire, it is empowered to remove them from office at any time.  

Approved bank auditors verify the annual accounts and returns submitted to the Belgian Commission Bancaire, determine in a preliminary manner a bank’s compliance with regulatory requirements, and develop comprehensive internal audit control systems. They are also charged with a general responsibility for monitoring the solvency, liquidity and profitability of a given bank. Approved bank auditors are usually highly qualified individuals with special professional training and expertise in issues relating to bank accounting practices.  

Each bank established under Belgian law must also appoint one or more internal auditors (commissaires) accountable primarily to shareholders. Internal auditors are required to be members of the Institut des Reviseurs d’Entreprises (Institute of Corporate Accountants).  

Both approved bank auditors and internal auditors would be expected to prepare reports in accordance with various Belgian accounting statutes and guidelines and must adhere to consolidated reporting requirements. In 1982, the Belgian Commission Bancaire issued a circular letter to banks recommending that they draw up and publish annual consolidated accounts.

101. Belgian Banking Act, supra note 81, at art. 12.
102. Bank Supervision in the Group of Ten, supra note 7, at 10-11.
104. Id., at art. 19 bis (1).
105. Id., at art. 19 bis (2).
106. WELCH, Belgium, supra note 2, at 7.
Specific requirements were not imposed, but banks and their auditors from that time on were expected to follow generally accepted auditing standards in presenting a "true and fair" view of a bank's consolidated condition.\textsuperscript{107}

B. REGULATIONS AND RATIOS

1. Loans to Single Borrowers

Disclosure requirements and general solvency ratios, but not strict limits, apply to loans to single borrowers. The Belgian Banking Act gives the Belgian Commission Bancaire power to issue regulations establishing the ratios to be maintained between other balance sheet data, own capital and the total of assets, claims and contingent claims on a single enterprise or on a group of affiliated enterprises which, in practice, form a single risk.\textsuperscript{108} Banks must report on a monthly basis to the Belgian Commission Bancaire all credits granted which individually exceed 20 percent of a bank's own capital. Such loans in excess of 20 percent of a bank's capital would also require additional capital backing.\textsuperscript{109} Credits to separate but connected borrowers are aggregated for purposes of the monthly reports.\textsuperscript{110} Moreover, the Belgian Commission Bancaire has generally recommended that loan concentrations to single borrowers be reduced when they are in excess of 50 percent of the bank's capital.\textsuperscript{111}

Notice requirements apply to large loans in excess of one million Belgian francs. The Service Centrale des Risques of the Banque Nationale de Belgique (Belgian Central Risks Service) was set up in 1965 for the purpose of monitoring such credits.\textsuperscript{112} Reports of large loans, which are also made available to the Belgian Commission Bancaire, are filed monthly by commercial banks and Belgian branches of foreign banks. The information collected by the Belgian Central Risks Service may be shared with foreign bank supervisory authorities.\textsuperscript{113}

2. Capital Adequacy

Art. 11 of the Belgian Banking Act gives the Belgian Commission Bancaire power to regulate capital adequacy ratios and liquidity ratios.\textsuperscript{114}

\textsuperscript{107} Bank Supervision in the Group of Ten, supra note 7, at 11.
\textsuperscript{108} WELCH, \textit{Belgium}, supra note 2, at 17; this authority is provided by the Mammouth Law of June 30, 1975.
\textsuperscript{109} DALE, \textit{International Banking}, supra note 37, at 101.
\textsuperscript{110} WELCH, \textit{Belgium}, supra note 2, at 6.
\textsuperscript{111} Bank Supervision in the Group of Ten, supra note 7, at 9; DALE, \textit{International Banking}, supra note 37, at 101.
\textsuperscript{112} The decree of Oct. 9, 1967 expanded the powers of the Central Risks Service; WELCH, \textit{Belgium}, supra note 2, at 21–22.
\textsuperscript{113} Bank Supervision in the Group of Ten, supra note 7, at 9; Belgian Banking Act, supra note 81, at art. 12.
\textsuperscript{114} Belgian Banking Act, supra note 81, at art. 11.

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The Belgian Commission Bancaire is authorized to issue solvency and liquidity regulations after consulting with the Banque Nationale de Belgique and obtaining the approval of the Minister for Finance and Economic Affairs. To date, capital adequacy, but not liquidity, is subject to formal prudential requirements.

The Belgian Commission Bancaire currently applies two capital adequacy ratios for supervisory purposes, the “risk assets” ratio and the “fixed assets” ratio. In theory, compliance with each of these ratios is determined on a consolidated basis. In practice, this is not yet always the case because many Belgian commercial banks are apparently still discussing the appropriate form of consolidation with the Belgian Commission Bancaire. Capital is defined as the sum of equity capital, reserves, unallocated provisions for losses (if such amounts are reported on a bank’s balance sheet or notes to its balance sheet), and retained earnings. Subordinated debt may also be included up to a limit of 50 percent of total capital.

The “risk assets” ratio is calculated in accordance with a complex formula which requires relatively higher capital coverage for small banks than for large banks as well as higher capital coverage for greater concentrations of risk among a small number of borrowers than for a large number. The “fixed assets” ratio stipulates that a bank’s holdings of fixed assets should not exceed its capital and revenues.

3. Liquidity

No specific regulations for liquidity have been issued by the Belgian Commission Bancaire, although that regulatory body possesses the requisite authority to issue them. Banks’ liquidity positions are monitored by the Belgian Commission Bancaire through analysis of monthly statistical returns and regular reports of auditors. Monthly statistical returns include the computation of two liquidity ratios: (a) a special liquidity ratio, for which only assets and liabilities denominated in Belgian francs are taken into account and (b) a general liquidity ratio calculated separately for assets and liabilities denominated in Belgian francs and in foreign currencies and

115. Welch, Belgium, supra note 2, at 26.
117. Bank Supervision in the Group of Ten, supra note 7, at 8.
119. Dale, International Banking, supra note 37, at 100.
120. Id.
122. Welch, Belgium, supra note 2, at 16.
123. Id.
for total assets and liabilities.\textsuperscript{124} There is also a general survey every six months to insure that all banks are sufficiently liquid.\textsuperscript{125}

4. \textit{Foreign Exchange Exposure}

Banks must be authorized to engage in foreign exchange transactions by the Institut Belgo-Luxembourgeois du Change (IBLC) before they can operate in the official foreign exchange market. The Belgian Commission Bancaire has the power to fix statutory limits on exchange transactions, but it has not done so.\textsuperscript{126} However, the Belgian Commission Bancaire’s solvency regulation of June 13, 1972, requires that each bank maintain capital equal to 0.2 percent of the total of claims on Belgian and foreign currency arising from forward foreign exchange transactions on both the official and free markets.\textsuperscript{127} In practice, approved bank auditors and internal auditors are expected to make certain that each bank maintains adequate controls on foreign exchange dealers and their confirmation systems.\textsuperscript{128}

C. \textbf{Supervision of International Lending}

1. \textit{Country Risk and Provisions for Loan Losses}

Country risk evaluation systems have been a recent focus of attention by the Belgian Commission Bancaire. In March of 1984, the Belgian Commission Bancaire initiated a new system of detailed reporting on country risk exposure.\textsuperscript{129} Details of a bank’s international lending must be categorized by country, type and maturity.\textsuperscript{130} The new system requires that off-balance sheet risks, unutilized loan commitments, forward exchange transactions and assets and liabilities held in local currencies be reported. Reports on such items must be prepared on a consolidated basis and submitted quarterly.\textsuperscript{131} Country risk information is treated on a confidential basis, although the Belgian Commission Bancaire publishes aggregate statistics in its annual report.\textsuperscript{132}

Actually, a country risk evaluation system has been in place since 1980, when approved bank auditors were first required to report on each bank’s internal country risk evaluation process. Using classifications of “substandard,” “doubtful” and “loss,” auditors report all problem loans. Provisions

\textsuperscript{124} Swolfs, \textit{Belgium}, in \textit{International Bank Accounting}, \textit{supra} note 2, at 77-78.

\textsuperscript{125} Welch, \textit{Belgium}, \textit{supra} note 2, at 16.

\textsuperscript{126} Id., at 19-20.

\textsuperscript{127} Commission Bancaire, solvency regulation of June 13, 1972.

\textsuperscript{128} Welch, \textit{Belgium}, \textit{supra} note 2, at 21.

\textsuperscript{129} Bank Supervision in the Group of Ten, \textit{supra} note 7, at 10.

\textsuperscript{130} Id.

\textsuperscript{131} Id.

\textsuperscript{132} Id.
and write-offs related to country risk must be included in the auditor's report. As a general rule, the Belgian Commission Bancaire requires that loans to countries outside the EEC's "preferential zone" not exceed 50 percent of the lending bank's capital.

Hidden reserves are not addressed by the Belgian Banking Act. However, hidden reserves are utilized in practice. Banks often establish extra loan loss reserves without disclosing them in the accounts presented to the public. There are no specific requirements for reserves for potential loan losses on international loans.

2. Lender of Last Resort

Liquidity support for banks in Belgium would presumably be provided by the Banque Nationale de Belgique in the event of crisis. In addition, the IRG, a public body which is jointly administered by representatives of commercial banks and the government, has the power to provide liquidity support to commercial banks. The IRG enjoys broad discretion in fulfilling both deposit protection and liquidity functions. The IRG's reserves consist of one billion Belgian francs in equity capital, which is raised through subscriptions from commercial banks, money market borrowings, and borrowings from the Banque Nationale de Belgique. The IRG has the authority but not the obligation to pay off creditors of failed institutions. It also has the authority to provide liquidity assistance if it should deem such assistance to be in the public interest.

It is difficult to predict what the response of the Banque Nationale de Belgique or IRG would be in the event of a true solvency crisis. Indeed, several Belgian commercial bankers and central bank officials have stated that while Belgian authorities would certainly look to the Basle Concordat for guidance, it would be difficult to predict the precise response of the Banque Nationale de Belgique or the IRG to a widespread solvency crisis.

133. Id.
135. Swolfs, Belgium, in International Bank Accounting, supra note 2, at 75.
137. Welch, Belgium, supra note 2, at 22. The IRG was established by Royal Decree No. 175 of June 13, 1935.
138. Dale, International Banking, supra note 37, at 144.
139. Id.
3. Treatment of Branches and Subsidiaries of Belgian Banks Operating Abroad

There are no special requirements applicable to foreign branches and subsidiaries of Belgian banks. However, Belgian banks are expected to notify the Belgian Commission Bancaire prior to the establishment of a foreign branch. Moreover, because of consolidated reporting requirements, the balance sheets of a Belgian bank's branches in another country would be included in the bank's global figures for solvency ratio purposes.

4. Treatment of Foreign Banks in Belgium

Belgian branches of foreign banks must file with the Belgian Commission Bancaire. Supervisory controls applicable to Belgian banks generally, including rules for the preparation of annual and interim accounts, apply to foreign bank branches and subsidiaries operating in Belgium. Pursuant to art. 6 of the Belgian Banking Act, foreign banks which maintain one or more branch offices in Belgium are required to maintain a separate balance sheet for their Belgian operations. Capital adequacy requirements are, however, different for branches of foreign banks.

Pursuant to art. 40 of the Belgian Banking Act, the Belgian Commission Bancaire is entitled to provide to foreign bank supervisory authorities information that it has received from branches or subsidiaries of foreign banks. Reflecting the rather exceptional willingness of Belgian authorities to cooperate with bank supervisory agencies in other countries, the initiative for the exchange of information can come either from the Belgian Commission Bancaire or from the foreign bank supervisory authority.

5. Attitudes towards International Cooperation

In assessing Belgian attitudes towards international cooperation, it is important to remember that only three or four of the largest Belgian commercial banks are actively engaged in international lending to LDCs. Moreover, the lending done by Belgian banks has been very diversified geographically. This has resulted in a reasonable and limited exposure to LDC debt.

141. Bank Supervision in the Group of Ten, supra note 7, at 7.
142. WELCH, Belgium, supra note 2, at 12.
143. Bank Supervision in the Group of Ten, supra note 7, at 7.
144. Belgian Banking Act, supra note 81, at art. 6.
145. Swolfs, Belgium, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 72.
146. Belgian Banking Act, supra note 81, at art. 40 (as amended by the law of June 30, 1975).
147. WELCH, Belgium, supra note 2, at 25.
The Belgian Commission Bancaire views the Basle Concordat as the most important source of guidance among countries in establishing regulatory or supervisory policies to deal with international lending. The Belgian Commission Bancaire has also taken a leading role in promoting the exchange of information among domestic bank supervisors that has always been encouraged by the Cooke Committee.\(^\text{149}\) Belgian bankers and supervisors are in agreement that crisis solutions, such as an international debt discount agency, would only transform a problem that appears to be solvable by present measures into a much more serious intergovernmental problem.\(^\text{150}\)

III. Bank Regulation and Supervision in the Netherlands

A. Generally

The bank regulatory and supervisory system in the Netherlands places both central bank functions and primary supervisory responsibility in the Nederlandsche Bank. The system is complex and rule-oriented, and relies on comprehensive guidelines for solvency and liquidity. The extensive rules are similar to those of the United States or West German supervisory systems, but the pattern of frequent informal communications between the Nederlandsche Bank and commercial banks is reminiscent of the consultative dimensions of the United Kingdom system.

In late November 1985, the Dutch government announced a series of measures to deregulate Dutch capital markets. The measures were aimed at increasing competitiveness with the United Kingdom and the Federal Republic of Germany. As announced by Mr. H. Onno Ruding, the Finance Minister, the measures included permission to use such innovative instruments as floating rate notes, certificates of deposit and commercial paper and were expected to increase competition from foreign banks because foreign banks would be permitted for the first time to lead manage issuing syndicates for guilder bonds and to underwrite up to one-third of a bond issue.\(^\text{151}\)

1. The Dutch Banking Act

The Act on the Supervision of the Credit System (the Dutch Banking Act) became effective on January 1, 1979.\(^\text{152}\) It reflects a comprehensive revision...
of prior statutes and much parliamentary discussion. The Dutch Banking Act was originally submitted to the Dutch Parliament in 1970. Subsequently, its consideration was delayed, due to changes of government, the desire to make the law correspond to EEC proposals on harmonization of banking laws and a general tightening up of attitudes towards prudential controls. A revised version was submitted to the Dutch Parliament in July 1975 and was approved by Parliament on April 11, 1978.\textsuperscript{153}

2. The Nederlandsche Bank

The Nederlandsche Bank is responsible for enforcing the Dutch Banking Act and for the general supervision and regulation of Dutch banks. The Nederlandsche Bank was founded in 1814 and nationalized by the Bank Act of 1948 (the Nederlandsche Bank Act), which is its charter.\textsuperscript{154} It is controlled by a Board of Commissaries (supervisory board) which has twelve members appointed by the Dutch government. The Board of Commissaries is responsible for supervising the management of the Nederlandsche Bank and for oversight of its annual balance sheet and profit and loss account. A Governing Board, consisting of between five and seven members appointed by the Crown, is responsible for the day-to-day administration of the Nederlandsche Bank.\textsuperscript{155} The Dutch government exercises further control over the Nederlandsche Bank through the appointment of a Royal Commissioner, 'who is responsible for supervising the Nederlandsche Bank's actions on behalf of the Government.'\textsuperscript{156}

Art. 9 of the Nederlandsche Bank Act states that one of the functions of the Nederlandsche Bank is "to supervise credit operations on the basis of the provisions of the (Dutch Banking Act)."\textsuperscript{157} Sec. 18 of the Dutch Banking Act grants the Nederlandsche Bank "power to seek or have sought on its behalf from any credit institution any information which it considers material to the proper performance of the tasks imposed on it by (the Dutch Banking Act)."\textsuperscript{158} Subject to limited exceptions, any information regarding

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153. Id.
154. WELCH, The Netherlands, supra note 2, at 201.
155. Id.; there is also a Bank Council, which is charged with advising the Nederlandsche Bank and the Minister of Finance on policy matters.
156. Id.
158. Dutch Banking Act, supra note 152, at sec. 18(1). An English translation is available from Nederlandsche Bank. The Dutch language version is set forth at Staatsblad voor het Koninkrijk der Nederlanden, and in Nederlandse Staatswetten, editie Schuurman & Jordens.
individual banks obtained pursuant to sec. 18 is granted confidential treatment.\textsuperscript{159} One important result of sec. 18 is that the Nederlandsche Bank has full power to instruct Dutch commercial banks to verify statistical and other returns submitted to it.\textsuperscript{160}

The primary powers of the Nederlandsche Bank relate to the examination of detailed returns submitted by Dutch commercial banks. Pursuant to sec. 11 of the Dutch Banking Act, each commercial bank must submit its accounts to the Nederlandsche Bank, on an annual basis, within six months of the end of the fiscal year. The required information includes the balance sheet and the profit and loss account accompanied by an explanatory report.\textsuperscript{161} These annual accounts must be certified by a registered accountant or other certified expert.\textsuperscript{162}

In addition, each bank is required to submit a monthly return, in balance sheet form. Like the annual returns, monthly returns are used both for supervisory purposes with respect to each bank, and for aggregation with national statistics on the Dutch banking industry.\textsuperscript{163} The monthly returns are also used for monetary supervision.\textsuperscript{164}

The bank regulations administered by the Nederlandsche Bank are technical and complicated, particularly with respect to matters such as capital adequacy and liquidity. However, Dutch commercial bankers emphasize that frequent informal contracts between the central bank and senior management of commercial banks overcome potential problems of overly rigid statutory interpretation.\textsuperscript{165}

3. \textit{Commercial Banks and the Supervisory Process}

Membership in the Dutch Bankers' Association (Nederlandsche Bankiersvereniging) is open to all Dutch banks and branches of foreign banks. Its stated purpose is to provide a link between its members and the Nederlandsche Bank. The basis for the consultative function of the Dutch Bankers'
Association is set forth in secs. 21 and 22 of the Dutch Banking Act. Any changes in regulations or laws affecting commercial banks must first be discussed with the Dutch Bankers’ Association.

Consultation also takes place directly and informally between the Nederlandsche Bank and top management of commercial banks. As a Dutch banker noted, “the Dutch Bankers’ Association is quite useful, but we don’t need to go through it to get our message across to the Nederlandsche Bank.” Other bankers emphasize the “small banking community with significant informal communication between the central bank and commercial banks.” However, the consultative aspects of the Dutch bank supervisory system should not be overemphasized. There are specialized rules and regulations covering most aspects of the supervisory process and these are carefully monitored.

4. Accounting and Disclosure Requirements

The Dutch supervisory system emphasizes disclosure and accounting requirements. In accordance with sec. 11 of the Dutch Banking Act, the Nederlandsche Bank has issued the Model Annual Accounts for Credit Institutions. Such model annual accounts contain instructions and guidelines which must be followed by commercial banks. Sec. 11 of the Dutch Banking Act provides that a reporting bank must supply the Nederlandsche Bank with all information which it requests and which may reasonably be deemed necessary to carry out its duties. The Nederlandsche Bank is required by statute to give the reporting bank the opportunity to be present when the external registered accountant furnishes information.

Reporting is done on a fully consolidated basis. Dutch bankers typically distinguish Dutch consolidation principles from those of the United Kingdom or the Federal Republic of Germany. British and West German con-

166. Dutch Banking Act, supra note 152, at secs. 21(2), 22(1).
167. Id.
168. Interview, senior official of major Dutch commercial bank, Amsterdam, Feb. 3, 1984 (notes on file with author). Communication between commercial banks and supervisors is facilitated by the small number of major Dutch banks engaged in significant amounts of international lending. Such banks include Algemene Bank Nederland, Amsterdam-Rotterdam Bank and Rabobank.
169. Interview, senior official of major Dutch commercial bank, Amsterdam, Feb. 6, 1984 (notes on file with author).
170. Interview with senior officials of Nederlandsche Bank, Amsterdam, June 3, 1985; interview with senior officials of major Dutch commercial bank, June 3, 1985 (notes on file with author).
171. Van der Beek and Ruijter, The Netherlands, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 169. The Model Annual Accounts for Credit Institutions are set forth at 176-79.
172. Dutch Banking Act, supra note 152, at sec. 11(3).
173. Id.
solidation principles are said to be less complete than those applied in the Netherlands. Dutch banks are not allowed to "net out" balances among affiliates and subsidiaries in their consolidated reports. Balances must be shown individually as well as collectively.

B. REGULATIONS AND RATIOS

1. Loans to Single Borrowers

The basic rule is that no credit institution may lend in excess of 25 percent of its capital to any one private commercial borrower without the prior approval of the Nederlandsche Bank. However, the limit is raised to 50 percent for claims on foreign governments, foreign credit institutions and risk assets guaranteed by foreign banks. In the case of claims on foreign banks with share capital of 12 billion Dutch guilders or more, the upper lending limit is 100 percent. Loans guaranteed by domestic banks are exempt from this requirement.

There are also related limits on large loans. Pursuant to its general supervisory powers set forth in sec. 18 of the Dutch Banking Act, the Nederlandsche Bank requires all banks to report monthly on the extension of large credits of two million Dutch guilders or more, or amounting to 5 percent or more of a bank's capital. In addition, the capital adequacy requirements discussed below impose certain additional requirements for loans to any single borrower or group of connected borrowers in excess of 15 percent of a bank's capital. The additional capital requirements range from 100 percent to 200 percent of the basic capital requirements.

2. Capital Adequacy

The Dutch Banking Act gives the Nederlandsche Bank power to exercise prudential controls in respect of capital adequacy and liquidity of banking institutions. In simple terms, the solvency or capital adequacy directives require that capital be available in proportion to the volume of a bank's risk-bearing operations. The liquidity directives require that liquid assets be readily available to prevent maturity mismatching.

In contrast to the old supervisory Banking Act of 1956, which provided the Nederlandsche Bank with only a few instruments for intervention when

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175. Interview, senior officials of Nederlandsche Bank, Amsterdam, Feb. 2, 1984 (notes on file with author).
176. Bank Supervision in the Group of Ten, supra note 7, at 69.
177. DALE, INTERNATIONAL BANKING, supra note 37, at 120.
178. Id.
179. WELCH, THE NETHERLANDS, supra note 2, at 203.
180. Bank Supervision in the Group of Ten, supra note 7, at 68–69.
a bank failed to comply with its directives or when the Nederlandsche Bank identified developments that could endanger a banking institution's liquidity or solvency, the Dutch Banking Act offers the Nederlandsche Bank the use of a broader range of instruments, supported by the sanctions of the Economic Offenses Act, to counter undesirable developments affecting capital adequacy.\(^{181}\)

Pursuant to sec. 24 of the Dutch Banking Act, with respect to prudential controls, the Nederlandsche Bank may give binding instructions on the course of action to be pursued instead of recommendations. If such instructions are not followed, the Nederlandsche Bank may (a) put the bank into "secret receivership," (b) publish the instructions, or (c) consult with the chairman of the Dutch Bankers' Association to determine if a financially strong institution might be called upon for help.\(^ {182}\)

In addition, sec. 46(3) of the Dutch Banking Act empowers the Nederlandsche Bank to exchange data or information regarding capital adequacy or prudential control generally with foreign bank supervisory authorities. In this respect, the Netherlands and Belgium have been the first EEC member states to erect a legal foundation for international contacts on matters relating to bank supervision.\(^ {183}\)

The solvency directive attempts to insure that a bank's "own funds" or capital will be sufficient to cover the risks entailed in the conduct of its business. To this end, assets are classified according to the degree of risk and must be covered by capital in varying proportions between zero and 100 percent.\(^ {184}\) Capital is defined as paid-in capital plus published reserves, certain types of "hidden" reserves and subordinated debt, provided that the total amount of subordinated debt does not exceed paid-in capital and reserves and that the maximum annual redemption does not exceed five percent of capital and reserves.\(^ {185}\) In addition, two undisclosed or "hidden" reserve items are considered capital for purposes of solvency requirements. These are the reserve for general business risks and the reserve for deferred taxes, both of which are contained in a broader balance sheet liability account entitled "creditors."

Solvency ratios are applied on a pro rata consolidated basis, with respect to all holdings exceeding 25 percent.\(^ {186}\) A June 1983 revision changed the

\(^{181}\) Dutch Banking Act, supra note 152, at sec. 24.
\(^{182}\) Dutch Banking Act, supra note 152, at sec. 24(3).
\(^{183}\) Dutch Banking Act, supra note 152, at sec. 46(3). This section provides in pertinent part that "the (Nederlandsche Bank) has power to exchange data or information relating to the solvency and liquidity of credit institutions with foreign agencies charged with the supervision of credit institutions in their own country, provided that these agencies are bound to keep the data or information received secret."
\(^{184}\) WELCH, The Netherlands, supra note 2, at 209.
\(^{185}\) Bank Supervision in the Group of Ten, supra note 7, at 68.
\(^{186}\) Interview, senior officials of Nederlandsche Bank, Amsterdam, Feb. 2, 1984 and
solvency rules to require that the risks associated with loans to foreign governments, foreign credit institutions and "semi-public" domestic entities, all of which had previously been free of any specific solvency requirements, be included in the calculation of solvency ratios.\textsuperscript{187} At present, no equity is required to be held against loans made to or under the guaranty of the Dutch government. A solvency ratio of 1 percent is required against loans to or under the guaranty of foreign governments.\textsuperscript{188}

3. \textit{Liquidity}

Liquid assets must be held in relation to certain liabilities of credit institutions so that anticipated liabilities can be met on the due date, or on demand, as the case may be.\textsuperscript{189} Liabilities are differentiated on the basis of type and maturity. Special and more stringent guidelines apply to "large item" liabilities when such individual liabilities exceed 1 percent, 2 percent or a total of 15 percent of total liabilities.\textsuperscript{190}

4. \textit{Foreign Exchange Exposure}

There are no specific limits on a bank's open foreign exchange positions. However, in accordance with its general authority over prudential ratios, the Nederlandsche Bank can require that exposure be reduced if it exceeds a level considered appropriate for normal banking activities.\textsuperscript{191} The solvency directive imposes a 2.5 percent capital requirement on uncovered foreign exchange positions. All banks authorized to deal in foreign exchange must submit to the Nederlandsche Bank monthly reports on their positions.\textsuperscript{192}

C. \textsc{Supervision of International Lending}

1. \textit{Country Risk and Provisions for Loan Losses}

Since June 30, 1981, banks have been required to submit semi-annual consolidated country exposure reports to assist the Nederlandsche Bank in monitoring country risk.\textsuperscript{193} No figures on particular countries are published.

\footnotesize
\begin{tabular}{l}
\textsuperscript{187} June 3, 1985 (notes on file with author); Bank Supervision in the Group of Ten, \textit{supra} note 7, at 68; \textsc{Dale, International Banking}, \textit{supra} note 37, at 119. \\
\textsuperscript{188} Bank Supervision in the Group of Ten, \textit{supra} note 7, at 68; \textsc{Dale, Bank Supervision}, \textit{supra} note 52, at 48. \\
\textsuperscript{189} Amsterdam-Rotterdam Bank, N.V., \textit{Instruments of Monetary Policy in the Netherlands} 14, June 1983. \\
\textsuperscript{190} De Nederlandsche Bank, N.V., \textit{Solvency and Liquidity Directives}, June 1983. \\
\textsuperscript{191} Bank Supervision in the Group of Ten, \textit{supra} note 7, at 69; \textsc{Dale, International Banking}, \textit{supra} note 37, at 119. \\
\textsuperscript{192} Bank Supervision in the Group of Ten, \textit{supra} note 7, at 69; \textsc{Dale, Bank Supervision}, \textit{supra} note 52, at 50. \\
\textsuperscript{193} \textit{Id.} \\
\end{tabular}

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Only aggregate figures for lending to particular geographic regions are revealed. Information submitted to the Nederlandsche Bank is treated confidentially. The central bank may request that a bank reduce exposure to particular countries if such exposure is deemed excessive. However, the rules on loan concentration do not apply directly to country risk. Each commercial bank is responsible for developing its own system of country risk evaluation and the Nederlandsche Bank's role is limited to that of suggesting changes in bank policies. The Nederlandsche Bank distinguishes between loans to countries actually experiencing payment difficulties and those only requiring special attention.

Formal reporting procedures for country risk are supplemented by semi-annual meetings between the Nederlandsche Bank and commercial banks to discuss broad questions about country risk. These discussions encourage banks to discuss fully the main outlines of their internally developed country risk evaluation procedures.

Banks in the Netherlands are not required to make particular provisions for loan losses. In practice, however, banks set aside reserves for anticipated bad debts, in addition to special reserves for known bad debts. In contrast to banks in some other West European countries, including Switzerland, Dutch banks use basket provisions for loan losses, i.e., a certain percentage is set aside for each group of countries. Dutch commercial bankers view the requirements on treatment of anticipated and known bad debts as quite flexible.

In addition, Dutch banks generally maintain a loss contingency reserve fund to cover potential unforeseeable losses on indebtedness, such as large-scale debt defaults and nationalizations. Accounting practices in the Netherlands require that transfers to a loss contingency reserve be made on a consistent basis and maintained at a reasonable minimum in relation to the risks that are intended to be covered.

2. Lender of Last Resort

Art. 15 of the Nederlandsche Banking Act gives the Nederlandsche Bank broad powers to provide liquidity assistance. However, art. 16 of that Act

194. Bank Supervision in the Group of Ten, supra note 7, at 71.
195. DALE, INTERNATIONAL BANKING, supra note 37, at 120.
196. Interview, senior officials of Nederlandsche Bank, Amsterdam, June 3, 1985 (notes on file with author).
197. WELCH, The Netherlands, supra note 2, at 210.
199. Interview, senior official of major commercial bank, Amsterdam, Feb. 3, 1984 (notes on file with author).
states that "the Bank shall grant no credit or advances without security."\textsuperscript{201} Commercial bankers agree with the Nederlandsche Bank that there has never been any further guidance on what constitutes security for this purpose.\textsuperscript{202}

The Nederlandsche Bank has expressed some hesitancy with respect to a lender of last resort role. Under certain unspecified circumstances, it would presumably act as a lender of last resort with respect to Dutch guilders, but not with respect to other currencies. Moreover, a lender of last resort role would depend, even in a domestic crisis, on the circumstances surrounding the particular liquidity or solvency problem.\textsuperscript{203}

In practice, commercial banks do not expect the Nederlandsche Bank to act as a lender of last resort except in the case of an international financial crisis of great magnitude. However, despite such expectations, the Nederlandsche Bank did provide some assistance in the relatively small-scale crisis affecting the Slavenburg Bank.

3. Treatment of Branches and Subsidiaries of Dutch Banks Operating Abroad

There are no specific restrictions in the Dutch Banking Act on establishing branches or subsidiaries in other countries.\textsuperscript{204} In general, however, the acquisition of an interest of 5 percent or more in any other corporate entity requires specific prior approval.\textsuperscript{205} Consolidation requirements insure that strong central controls will be maintained over foreign operations.\textsuperscript{206}

4. Treatment of Foreign Banks in the Netherlands

With some minor additional requirements, foreign banks are subject to the same regulatory controls that apply to domestic banks.\textsuperscript{207} Such regulatory controls apply only to the extent that such foreign banks conduct business in the Netherlands.\textsuperscript{208} Pursuant to secs. 2 and 3 of the Dutch Banking Act, arts. 15, 16.

\textsuperscript{201} Nederlandsche Bank Act, arts. 15, 16.
\textsuperscript{202} Interview, senior officials of major commercial banks, Amsterdam, Feb. 3 and 6, 1984 (notes on file with author).
\textsuperscript{203} Interview, senior officials of Nederlandsche Bank, Amsterdam, Feb. 2, 1984 (notes on file with author).
\textsuperscript{204} WELCH, The Netherlands, supra note 2, at 206.
\textsuperscript{205} Dutch Banking Act, supra note 152, at sec. 25.
\textsuperscript{206} Van der Beek and Ruijter, The Netherlands, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 170.
\textsuperscript{207} Dutch Banking Act, supra note 152, at sec. 1(5).
\textsuperscript{208} Id. Specifically, sec. 1(5) provides that, "In respect of enterprises and institutions which have their registered office outside the Netherlands and which are in this country engaged in the business of a credit institution through one or more offices, branches, agencies or permanent
Banking Act, branches of foreign banks must be licensed before they can carry on banking business in the Netherlands. Before obtaining a license, a foreign bank must provide detailed information on its home country regulatory system and on the ability of its headquarters or parent bank to supervise operations in the Netherlands.

Sec. 27 of the Dutch Banking Act requires that branches of foreign banks keep separate accounts with respect to their business in the Netherlands. Certain special requirements apply to banks which are not from member countries of the EEC. Sec. 7(2) of the Dutch Banking Act provides that, "if an enterprise or institution is concerned which does not have its registered office in a Member State of the European Communities or in which such an enterprise or institution has direct or indirect control," the Minister of Finance may decide whether to grant or refuse a license or whether to grant it conditionally upon the basis of reciprocity.

5. Attitudes towards International Cooperation

The Nederlandsche Bank's 1984 annual report is not optimistic about finding solutions for the LDC debt crisis. However, representatives of both Dutch commercial banks and the Nederlandsche Bank have expressed support for continuing or enhanced roles for the BIS, IMF and World Bank. They are uniformly opposed to new international agencies, such as a debt discount agency, which would provide more dramatic "solutions" for the LDC debt crisis. Dr. William Duisenberg, head of the Nederlandsche Bank, has stated that even central banks should not be more involved than they already are in the international debt crisis. Solvency ratios of Dutch banks showed improvement in 1984 and this is viewed as an encouraging

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209. Dutch Banking Act, supra note 152, at secs. 2 and 3. Section 2 states that "[a]n enterprise or institution shall only be permitted to engage in the business of a credit institution after it has received a license to do so from the Bank."

210. Bank Supervision in the Group of Ten, supra note 7, at 66.

211. Dutch Banking Act, supra note 152, at sec. 27(1). Sec. 27(1) states that, "Enterprises and institutions referred to in sec. 1(5) shall keep separate accounts for their business in this country."

212. Dutch Banking Act, supra note 152, at sec. 7(2).


214. Interviews, senior officials of major commercial banks, Amsterdam, Feb. 3 and 6, 1984 (notes on file with author).

215. Id.

indication of the comparatively strong general financial condition of Dutch banks. However, commercial bankers as well as representatives of the Nederlandsche Bank cited a need for greater cooperation and restraint by supervisory authorities in creditor countries where lax supervisory systems have permitted tax havens or lightly supervised subsidiaries of foreign banks to flourish.

Dutch commercial banks are convinced that the LDC debt crisis will be a problem for the international banking community for the foreseeable future. While noting the positive developments of 1984, the annual reports of both Algemene Bank Nederland and AMRO Bank stressed the need for a continued focus on creating the conditions for an ultimate solution to the problem. Mr. H. Johannes Witteveen, Chairman of the Group of Thirty and former director of the IMF has outlined his views for greater international cooperation in a number of public settings. In Witteveen's opinion, the problem for which a solution must be found is "how to stimulate bank lending now, while establishing discipline for the future."

IV. Bank Regulation and Supervision in Switzerland

A. Generally

A few large commercial banks dominate the Swiss banking system, and, in this respect, it bears some similarity to the West German and Dutch systems. However, both the Swiss National Bank and the Federal Banking Commission assume more modest regulatory responsibilities than their West German or Dutch counterparts. In contrast to the Bundesbank and the Nederlandsche Bank, the Swiss National Bank has no prudential supervisory role and rather serves as interested and concerned advisor to the Swiss banking community. The Federal Banking Commission is also relatively weaker than the German FBSO. The supervisory system itself is primarily prudential rather than rule-based and in this respect it is closer to the U.K. system than the German or U.S. systems of bank supervision.

217. Interviews, senior officials of the Nederlandsche Bank and Dutch commercial banks, Amsterdam, June 3, 1985 (notes on file with author).
218. Id.
221. The so-called "Big Five" banks include the Union Bank of Switzerland, the Swiss Bank Corporation, Credit Suisse, Suisse Volksbank and Bank Leu.
222. An important distinction from the United Kingdom, however, is that there is no daily dialogue on supervisory matters between the Swiss National Bank or the Federal Banking Commission and commercial banks.
The concept of bank secrecy in Switzerland is well-known.\textsuperscript{223} Bank officers who disclose confidential information may be subject to penalties under Swiss banking law as well as under Swiss criminal law, which makes it a punishable offense to reveal information that is harmful to the Swiss state to representatives of a foreign country.\textsuperscript{224} Moreover, the applicable tax treaty between the U.S. and Switzerland allows the United States to penetrate Swiss secrecy laws only when a tax infringement constitutes a criminal offense under the laws of both the United States and Switzerland.\textsuperscript{225} Commercial banks expect and receive confidential treatment for all statistics and most other information they submit to bank regulators and supervisors.\textsuperscript{226} Recent proposals to change bank secrecy laws were rejected in a referendum of the Swiss electorate in May 1984.\textsuperscript{227} A 1985 OECD draft recommendation requesting governments to amend bank secrecy regulations so that information could be passed across borders to tax authorities has also been vigorously opposed by the Swiss commercial banking community.\textsuperscript{228}

A trend towards deregulation of capital markets in certain other countries, notably the United Kingdom, the Federal Republic of Germany and the Netherlands, has been met with only limited acceptance in Switzerland. However, the Swiss National Bank announced in late October of 1985 that it was reappraising its capital markets policy. Under the proposed changes, Swiss franc bonds, or dual-currency issues featuring Swiss francs, could be

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\textsuperscript{223} Wilkinson and Zoller, \textit{Switzerland}, in \textit{INTERNATIONAL BANK ACCOUNTING}, supra note 2, at 201.

\textsuperscript{224} \textit{Id.}; article 47 of the Federal Banking Law imposes penalties on bank officers who disclose confidential information and para. 273 of the Swiss Criminal Law makes it a punishable offense to divulge anything to the disadvantage of the Swiss state to representatives of a foreign country.


\textsuperscript{226} Swiss Bankers' Association and Swiss National Bank, Agreement on the Observance of Care by the Banks in Accepting Funds and the Practice of Banking Secrecy, July 1, 1982. The continuing importance of this confidential treatment was emphasized in interviews with officials of various commercial banks in Zurich in Feb. of 1984.

\textsuperscript{227} Swiss Reject Bank Secrecy Reform, Fin. Times, May 21, 1984, at 20; Swiss Voters Reject Initiative for Weakening Secrecy Laws, 42 WASH. FIN. REP. 907, May 28, 1984. Subsequently, the State Council voted not to allow Swiss authorities to provide information to foreign governments on alleged fiscal wrongdoing unless a specific breach of Swiss law could be proved. House of Swiss Parliament Votes to Limit Disclosure by Authorities, 42 WASH. FIN. REP. 988, June 11, 1984. In July of 1984, however, the Swiss government implemented some changes in the Swiss Banking Law that were to increase cooperation with regulators, like the SEC, in other countries in preventing use of Swiss bank accounts for illegal purposes by foreigners. Swiss Government Announces Plans for Revising Bank Secrecy Laws in 1985, 43 WASH. FIN. REP. 39, July 9, 1984. As of Jan. 1985, the changes appeared to have little effect. See, Swiss at Last Moving on Loopholes, Am. Banker, Jan. 11, 1985, at 2.

\textsuperscript{228} Dullforce, \textit{Swiss Bankers Fight OECD Attempts to Ease Bank Secrecy}, Fin. Times, June 17, 1985, at 2.
underwritten by banks outside Switzerland as long as there were Swiss participants in the syndicate. 229

1. Swiss Banking Law

Swiss law relating to banking institutions is based on arts. 31 (quarter 1) and 39 of the Swiss Federal Constitution. 230 Pursuant to art. 31 (quarter 1), the federal government is authorized to promulgate statutes and regulations affecting the banking sector. Art. 39 sets forth the duties of the Swiss National Bank and regulates the issue of bank notes. The following laws relating to banks and banking in Switzerland are currently in force: the Federal Law Relating to Banks and Savings Banks of November 8, 1934, as amended on March 11, 1971 (the Swiss Banking Law); the Implementing Ordinance of May 17, 1972 (the Implementing Ordinance); and the Federal Law Relating to the Swiss National Bank of December 23, 1953, as amended December 15, 1978 (the Swiss National Bank Law).

After the Swiss government's defeat in the 1984 referendum on bank secrecy laws, it dropped an earlier proposal for a comprehensive revision of the Swiss Banking Law. However, certain partial revisions and reforms are still under serious consideration. Among them are proposals to increase government controls over finance companies. Currently, finance companies require no specific authorization from bank supervisory authorities prior to commencing business, but are subject to reporting requirements if they solicit deposits from the public and to certain capital export restrictions. 231

2. The Federal Banking Commission and the Swiss National Bank

The highest supervisory and implementing authority for the Swiss Banking Law is the Federal Banking Commission, elected by the Federal Council of the Swiss Parliament and under its direct control. 232 The functions of the Federal Banking Commission include issuing implementing regulations for the Swiss Banking Law and supervising bank auditing procedures. 233

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232. The seven members of the Federal Banking Commission are assisted by a secretariat located in Berne which has been somewhat strengthened and expanded in recent years. Bank Supervision in the Group of Ten, supra note 7, at 81.
233. Swiss Banking Law, art. 23; Implementing Ordinance, art. 50. The original German version is set forth in Bundesgesetz über die Banken und Sparkassen, 51 Amtliche Sammlung der Bundesgesetz und Verordnungen der Schweizerischen Eidgenossenschaft (1936, as amended).
the Federal Banking Commission is required to report on its activities to the Federal Council at least once a year, it enjoys great independence in exercising its supervisory authority. The Federal Banking Commission has broad supervisory powers, ranging from suggestions for change to withdrawal of a license to actual liquidation of a bank under its jurisdiction.

The Federal Banking Commission is charged with the general monitoring of compliance by banks with the Federal Banking Law. The audit and control functions of the Federal Banking Commission are generally delegated to recognized audit firms which conduct actual bank audits. Other responsibilities of the Federal Banking Commission include granting and withdrawing bank licenses, determining which audit firms shall be recognized to act as bank auditors, issuing statements concerning bank audit and reporting practices, and reviewing applications from banks wishing to exceed lending and other limits.

The Swiss National Bank Law assigns basic responsibility for monetary policy to the Swiss National Bank. Pursuant to an agreement between the Swiss National Bank and the Federal Banking Commission, the Swiss National Bank also takes a strong consultative interest in bank supervisory matters and discusses important issues with the Federal Banking Commission on an informal basis.

In addition, the Swiss National Bank collects and analyzes certain information submitted by commercial banks. Banks are required, for example, to provide their annual balance sheets to the Swiss National Bank. Moreover, "whenever the size of a bank or the nature of its business activities warrant it," the Swiss National Bank may require the submission of detailed semiannual balance sheets. Banks are required to inform the Swiss National Bank before they conclude or participate in certain business transactions, including loans to foreign borrowers.

234. Swiss Banking Law, at art. 23(3).
235. Swiss Banking Law, at art. 23; Bank Supervision in the Group of Ten, supra note 7, at 81.
236. Wilkinson and Zoller, Switzerland, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 193-94.
237. Swiss National Bank Law, art. 2(1) provides that "[t]he principal tasks of the National Bank consist of regulating the circulation of money within the country, facilitating payment transactions and pursuing a credit and monetary policy advancing the national interest." The original German version of the Swiss National Bank Law is set forth in Bundesgesetz über die Schweizerische Nationalbank in Sammlung der Eidgenössischen Gesetze, as amended.
239. Swiss Banking Law, art. 7(1).
240. Swiss Banking Law, art. 7(2) provides that the Swiss National Bank may demand from the banks additional disclosures concerning balance sheets.
241. Swiss Banking Law, art. 8(2).
3. Commercial Banks and the Supervisory Process

One unique aspect of bank supervision in Switzerland is the role of the Swiss Bankers’ Association, which serves as the collective voice of Swiss commercial banks.242 The Swiss Bankers’ Association is invited to comment on any proposed bank legislation.243 The small number of large Swiss commercial banks creates the possibility for frequent exchanges of views among the banks, the Federal Banking Commission and the Swiss Bankers’ Association. Commercial banks emphasize that they are very conservative institutions which have traditionally adhered to policies of self-restraint in matters of lending and general business practices.244 They view regulation by the Federal Banking Commission as a supplementary restraint on their banking business but not the primary one.245 Capital adequacy and liquidity ratios (discussed below) are viewed as easily met prudential guidelines rather than as strict or difficult rules.246

4. Accounting and Disclosure Requirements

Swiss corporate law imposes certain auditing requirements on all corporations. These are supplemented in the case of banks by special requirements of the Federal Banking Law and the Implementing Ordinance. Swiss corporate law states that all corporations must appoint a statutory auditor who reports to the general annual meeting of shareholders whether books have been properly kept and whether financial statements have been prepared in accordance with applicable statutory provisions.247

Bank auditors have a special status under Swiss law and perform important tasks in connection with the supervision of banks.248 Auditors are appointed and paid for by the banks but are licensed by the Federal Banking Commission and act as its agents.249 Arts. 43–49 of the Implementing Ordinance identify certain specific points on which bank auditors must comment. These include such matters as potential loan losses and related

242. DALE, BANK SUPERVISION, supra note 52, at 55.
243. In the words of a senior official of the Swiss Bankers’ Association, it “serves a somewhat unique function in that it serves as a ‘representative of a concerned group’ which must be consulted in times of crisis or proposed legislation.” Interview, senior officials of Swiss Bankers’ Association, Basle, Feb. 21, 1984.
244. Interviews, senior officials of major Swiss commercial bank, Zurich, Feb. 22, 1984 and June 4, 1985.
245. Id.
246. Id.
247. Wilkinson and Zoller, SWITZERLAND, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 196.
248. Swiss Banking Law, at art. 20(1).
249. Swiss Banking Law, at arts. 18–22, Implementing Ordinance, at arts. 34–49 [hereinafter referred to as Implementing Ordinance].
reserves, the treatment of interest on doubtful accounts, coverage for potential losses on contingent liabilities, risks on foreign exchange transactions and any breaches of legal lending limits. Bank auditors are required to make certain that all violations of Swiss Banking Law are quickly corrected or reported to the Federal Banking Commission. The Federal Banking Commission is authorized to demand access to a bank's audit reports and may also require that any reports prepared by the auditing firm for its own use with respect to a particular bank be turned over to it for examination.

The Swiss Banking Law prescribes standards for yearly statements of condition as well as statements of profit and loss which must be submitted for review by the Federal Banking Commission. In addition, banks meeting specific asset requirements must publish quarterly and semiannual statements. These financial statements are made public, but the public does not have access to reports prepared by bank auditors.

B. REGULATIONS AND RATIOS

1. Loans to Single Borrowers

Loans to individual borrowers, measured as a proportion of a bank's capital, are generally required not to exceed 20 percent for unsecured loans, 40 percent for secured loans and 50 percent for loans to other banks. If these limits are exceeded, that fact must be reported to the Federal Banking Commission, which may require that some loans be reduced. Lending limits must be observed on a consolidated basis. Since consolidation requirements were not in effect at the time art. 21(4) of the Implementing Ordinance was adopted, some banks objected that limits on loans to individual borrowers

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251. The auditor's report on a particular bank must regularly express a definite opinion with respect to certain matters, including identification of risks, value adjustments of assets, provisions and undisclosed reserves established to cover losses, the treatment of interest on doubtful claims, compliance with the minimum capital and liquidity ratio requirements, and the observance of legal and statutory provisions regarding allocations to reserves. Implementing Ordinance, art. 44 (c), (d), (k), (l), (m).
252. Swiss Banking Law, art. 23 (bis) 2; Bank Supervision in the Group of Ten, *supra* note 7, at 87.
253. Swiss Banking Law, art. 6(3), provides that banks with a balance sheet total of over SF 50 million must prepare half-yearly interim balance sheets and those with a total of over SF 200 million, quarterly balance sheets.
255. Art. 21(5) of the Implementing Ordinance states that "legally independent companies and persons interlocked via their equity capital to an extent exceeding 50 percent are treated as one unit."
256. Implementing Ordinance, art. 21(4). The consolidation requirement prevents Swiss banks from placing excess loans through subsidiaries, as has been the practice until recently among German banks.
should be applied on an unconsolidated basis. The matter was eventually decided by the Swiss Federal Supreme Court, which upheld the Federal Banking Commission’s practice of applying lending limits on a consolidated basis.257

2. Capital Adequacy

The preparation of consolidated balance sheets has been required since 1978,258 and minimum capital adequacy ratios have been imposed on the basis of such consolidated balance sheets since 1981.259 Required capital ratios are graduated according to the presumed riskiness of different types of assets and are based on the asset structure of each bank.260 An additional capital requirement of 1.5 percent is required on the total of foreign assets included in the balance sheet. The ratios are guidelines rather than strict limits and may be varied by the Federal Banking Commission in special cases. The Federal Banking Commission is authorized to require additional capital for banks which are heavily engaged in international lending.261 The capital ratios of major Swiss banks are generally high.262

Pursuant to the terms of the Swiss Code of Obligations, all Swiss corporations, including banks, may set up hidden reserves. The means used by banks to set up such reserves include excess provisions for bad debts and foreign exchange fluctuations, and undervaluation of securities, foreign currencies, properties and fixed assets generally.263

3. Liquidity

Banks are required to maintain an adequate balance of liquid and market-
able assets in relation to short-term liabilities. Periodically, banks are required to file liquidity statements in accordance with a prescribed form. The relevant articles of the Implementing Ordinance provide that a bank must maintain the total of its liquid assets and easily marketable assets at a given percentage of its short-term liabilities, normally set at 6 percent, but established in accordance with formulas set forth in the Implementing Ordinance.

4. Foreign Exchange Exposure

Open positions in foreign currencies are subject to special capital adequacy specifications. Moreover, if the total foreign exchange exposure of a bank exceeds 40 percent of capital, it must inform the Federal Banking Commission. Other than these requirements, there are no specific limits on foreign exchange exposure. However, the Federal Banking Commission places a strong emphasis on the adequacy of internal control procedures.

C. Supervision of International Lending

1. Country Risk and Provisions for Loan Losses

The Swiss Banking Law provides that the issuance of foreign loans and the granting of credits to foreign borrowers is subject to prior authorization if such transactions amount to 10 million Swiss francs or more and are for a period of more than one year. The Federal Banking Commission has recently completed a major survey of approaches to country risk analysis utilized by various banks under its jurisdiction. While the Federal Banking Commission does not impose specific methods for such analysis, it does require that banks engaged in significant foreign lending develop and use a reasonably sophisticated system of country risk analysis. Additionally, auditors' reports are expected to contain information about the country risk systems used by each bank, as well as to comment on the country risk characteristics of a bank's interna-

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264. Required ratios are set forth in arts. 15 through 19 of the Implementing Ordinance.
265. Article 20 of the Implementing Ordinance; the required form is set forth at app. 1 to the Implementing Ordinance.
266. DALE, BANK SUPERVISION, supra note 52, at 55.
268. DALE, BANK SUPERVISION, supra note 52, at 57.
269. Swiss Banking Law, art. 8; SWISS NATIONAL BANK, 1984 ANNUAL REPORT, at 16 (1985).
271. Id. For a description of the system used by the Swiss Bank Corporation, see Philipp, SWISS BANK CORPORATION'S APPROACH TO COUNTRY RISK ASSESSMENT, (Swiss Bank Corporation) ECONOMIC AND FINANCIAL PROSPECTS (No. 2, 1983).
lational loan portfolio. As a complement to country risk analysis, each bank is expected to make appropriate provisions for potential loan losses. Recently, the Federal Banking Commission has begun to require that all banks make provisions of 20 to 30 percent for loans extended to specified problem countries.

The Swiss National Bank also has an interest in banks' analysis of country risk. Beginning with fiscal 1984, banks have been required to report country exposure to the Swiss National Bank on a consolidated basis. In practice, however, the Swiss National Bank is very cautious in its suggestions to commercial banks about the extent of their country risk exposure. The Swiss National Bank's view is that a bank's own managers should be totally responsible for country risk analysis. The Swiss National Bank believes that it would be obligated to serve as a lender of last resort in cases of excessive country risk exposure if it assumed an active supervisory role.

2. Lender of Last Resort

The powers of the Swiss National Bank enumerated in the Swiss Banking Law do not include the lender of last resort function. However, the general expectation is that, in a liquidity crisis, the Swiss National Bank would provide funds to banks under its jurisdiction, but only if such banks assigned marketable assets to the Swiss National Bank. In a solvency crisis, the expectation is that the Swiss National Bank would not intervene. A solvency crisis would be viewed as the responsibility of individual banks.

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272. Bank Supervision in the Group of Ten, supra note 7, at 86.
273. If necessary, such provisions could be made from hidden reserves.
274. Interview, senior officials of Federal Banking Commission, Berne, Feb. 21, 1984 (notes on file with author); Bank Supervision in the Group of Ten, supra note 7, at 86; Dullforce, Determined to Maintain Competitive Position, Fin. Times, Dec. 13, 1985, III Switzerland: Banking, Finance and Investment, at 2. It is important to note also that Swiss commercial banks have a comparatively modest exposure in Latin America and Eastern Europe. See, for example, the figures set forth in Table 94 in Swiss National Bank, DAS SCHWEIZERISCHE BANKWESEN IM JAHRE 1982, at 272-73 (Zurich, 1983).
276. Bank Supervision in the Group of Ten, supra note 7, at 86.
277. In the words of one Swiss commercial bank official, "it is unlikely that a lender of last resort would be needed by Swiss banks because they have strong capital positions, large reserves and relatively modest exposures." Interview, Zurich, Feb. 22, 1984 (notes on file with author).
279. Id.
3. Treatment of Branches and Subsidiaries of Swiss Banks Operating Abroad

No special domestic authorization is required for Swiss banks that wish to establish branches or subsidiaries abroad. The Federal Banking Commission requires that Swiss banks prepare balance sheets and statements of income on a consolidated basis and Swiss branches and subsidiaries located abroad must generally meet requirements that are imposed on Swiss banks operating domestically.280

4. Treatment of Foreign Banks Operating in Switzerland

Foreign-controlled banks and Swiss branches of foreign banks comprise a significant part of the Swiss commercial banking community. Changes adopted in 1984 eliminated a requirement that foreign branches meet independent capital requirements and this has encouraged the establishment of additional branches of foreign banks.281 In fact, over the past ten years, the number of foreign banking institutions has grown from about one hundred twenty to nearly two hundred, making Switzerland one of the largest international financial centers. Not all of the two hundred are commercial banking entities, however, with more than fifty of the newly established banks being so-called “finance companies.” Such finance companies now account for seventy-three, or more than one-third, of all foreign banking institutions in Switzerland, compared with a much smaller percentage ten years earlier.282 Commercial banks have criticized the Federal Banking Commission for interpreting reciprocity rules too liberally in allowing foreigners to set up finance companies in Switzerland.283

Generally, the Swiss Banking Law applies without distinction to all banks conducting business in Switzerland.284 The Ordinance Relating to Branches of Foreign Banks in Switzerland applies requirements for regulatory approvals, ratios, financial statement presentation and audits to branches of foreign banks.285 Thus, branches and subsidiaries of foreign

280. Interview, senior officials of Federal Banking Commission, Berne, Feb. 21, 1984 (the officials cited a recent case in which a Swiss court held that a Cayman Islands subsidiary of a Swiss bank was subject to Swiss Banking Law); Bank Supervision in the Group of Ten, supra note 7, at 83–84.
284. One exception is that, as of mid-1984, branches of foreign banks were not required to maintain minimum capital ratios but rather were required to hold 10 percent of their assets in Switzerland. Bank Supervision in the Group of Ten, supra note 7, at 84.
285. Wilkinson and Zoller, Switzerland, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 194.
banks are subject to regulation by the Federal Banking Commission to the same extent as if they were domestic banks. They are also required to provide assurances to the Swiss National Bank that they will comply with Swiss credit and monetary policies.

Certain additional requirements apply to branches and subsidiaries of foreign banks. Such entities are required to demonstrate that reciprocity is granted to Swiss banks in their home countries and to select a name which does not indicate a "Swiss character."

5. Attitudes towards International Cooperation

The attitudes of Swiss commercial banks and bank supervisory authorities towards the LDC debt crisis are influenced by the rather modest claims against developing countries held by Swiss commercial banks. According to one estimate, "no more than 15 percent of the foreign assets, i.e., about 5 percent of the total balance sheet, are claims against developing countries and eastern Europe." While more than 20 percent of foreign assets of United States banks represent claims against Latin American borrowers, only about 6 percent of Swiss banks' foreign assets represent such claims. Thus, a prevalent feeling is that for the Swiss banking community as a whole, the extent to which interbank business with established money market countries might be jeopardized by the LDC debt crisis is more important than the solution worked out for direct loans to developing countries.

The importance of strong economic growth in both industrial and developing countries is a common theme of Swiss commercial bankers. Swiss Bank Corporation's annual report for 1984, for example, noted that some progress had been made in establishing the necessary preconditions for LDCs to return to solvency. However, the report also observed that high United States interest rates continued to impose a serious burden on developing countries because of their impact on debt service requirements.

Many Swiss commercial bankers emphasize that long-term solutions to the LDC debt crisis can be developed only if developing countries open their

286. In the fall of 1983, the Federal Banking Commission warned several Swiss affiliates and subsidiaries of large U.S. banks that it considered their provisions for potential loan losses to be inadequate. McDermott, Changes on the Domestic Front are Inevitable, Fin. Times, Nov. 8, 1983, Pt. IV, Switzerland: Banking and Finance, at 4.

287. Bank Supervision in the Group of Ten, supra note 7, at 82.

288. Wilkinson and Zoller, Switzerland, in INTERNATIONAL BANK ACCOUNTING, supra note 2, at 194.


290. Id.

291. Id.

markets freely to Western investment. Some Swiss bankers have noted that they expect to see a period of much more "forced lending" or a rescheduling of existing debts as a percentage of new money to be loaned in conjunction with the IMF. Under this scenario, banks would have to lend money, whether they liked it or not.\textsuperscript{293}

While Swiss commercial banks and regulators are generally opposed to the transfer of regulatory authority to an international agency, they favor cooperation along the lines suggested by the Basle Concordat. Proposed amendments to the Swiss Banking Law which would provide a basis for exchanging information with bank supervisory authorities in other countries are currently under serious consideration.\textsuperscript{294} The attitude of many Swiss commercial bankers is summarized in the following statement by the Chairman of the Swiss Bank Corporation:

The soundness of the international banking system, however, would be considerably reinforced by an early international harmonization of the ratio requirements on a comparable basis. It would be desirable for the Bank for International Settlements to do even more than it already has as an advocate for such efforts in individual countries, because bank supervision in most states is the province of the central banks, and it is these authorities who are usually called upon when individual banks run into difficulties.\textsuperscript{295}

A greater cooperative role for Switzerland within the present institutional framework remains a distinct possibility. Herr Otto Stich, Finance Minister, has stated that Switzerland would consider joining the IMF and the World Bank even if the Swiss electorate votes against UN membership when that issue is decided in 1985 or 1986.\textsuperscript{296}

The so-called "Baker Plan," which is discussed in more detail below, was supported with some reluctance by Swiss banks. A draft letter of intent, reflecting the agreement of Union Bank of Switzerland, Swiss Bank Corporation and Credit Suisse to participate in the extension of specified amounts of new lending to certain LDCs over a three-year period, was prepared in December of 1985.\textsuperscript{297}

\textsuperscript{294} Interview, senior officials of Federal Banking Commission, Berne, Feb. 21, 1984 (notes on file with author).
V. The Role of International Supervision: Some Policy Suggestions

A. The Inadequacies of the Present System

Goals of disclosure, safety and soundness, competition, preventing excessive swings in bank lending and serving domestic and international economic needs are not being met by the present supervisory framework. Distinctive domestic bank supervisory approaches, weak cross-border cooperation among supervisory authorities and inadequate attention to supervisory matters at the international level have contributed to the current LDC debt crisis and are making its early and lasting resolution difficult.

1. Domestic Policy Failures

In the United States, the Comptroller, the FRB and the FDIC have developed separate approaches to the supervision of international lending. Their differing philosophies reflect the history of the dual banking system as well as the needs and interests of the banking institutions they supervise. Recent attempts at coordination by the three agencies do not negate their distinct concerns. Despite pressures to extend and coordinate regulations as the "price to be paid" for increased IMF funding, United States bank supervisory authorities have followed narrowly focused and rule-based approaches to supervising international lending.

Traditionally the United Kingdom system of bank regulation and supervision has been based primarily on informal communication between the Bank of England and major commercial banks. A rule-based system has been viewed as unnecessary because of the small number of major commercial banks (Barclays, Lloyds, National Westminster and Midland), the physical proximity of the Bank of England to each of the four, and the long-standing pattern of frequent extensive discussions between senior bank officers and representatives of the Bank of England. Shared expectations, rather than explicit rules, have constituted the basis of bank regulation and supervision in the United Kingdom. The frequently expressed belief of both commercial bankers and supervisors is that rules generate loopholes and that a flexible system based on close cooperation between supervisors and banks will be most effective. The effect of amendments to the United Kingdom Banking Act proposed in late 1985 would be to replace at least some of the traditional flexibility with specific regulations.

Like the United States system of bank regulation and supervision, the West German approach to bank supervision is largely rule-based. In contrast to the United States, there is only one primary supervisory authority, the FBSO. Also unlike the United States, there is a constant formal and informal dialogue among the largest German banking institutions (Deutsche Bank, Dresdner Bank, Commerzbank and Westdeutsche Lan-
desbank Gironzentralle), the FBSO and the Bundesbank. The net result has been, in Andrew Spindler's words, a "pattern . . . of quiet consensus, enhanced by official sensitivity to the banks' financial interests and the banks' responsiveness to government incentives and suasion."298 The open lines of communication have made the development of rules much easier than has been the case in the United States and the small number of major banking institutions has insured their relatively uniform application. The Herstatt crisis and the SMH crisis have led to a focus on bank safety and soundness, especially with respect to preventing foreign subsidiaries from engaging in risky lending. However, despite such concerns, rules on consolidation have yet to be fully implemented.

In Japan, the system of administrative guidance, with its encouragement of open, continuous communications between the thirteen largest commercial banks, the Ministry of Finance and the Bank of Japan, bears a superficial resemblance to the United Kingdom system. However, to a much greater extent than has been the case in the United Kingdom, Japan’s bank supervisory authorities have "shaped the country's banking system and effected the allocation of its resources through a broad range of signals, incentives, legally mandated supervision, and administrative guidance."299 The influence of the largest Japanese commercial banks on the supervisors is significant, but it falls short of the influence enjoyed by the largest banks in the Federal Republic of Germany or in the United Kingdom. The Japanese government has traditionally been expected to lead in the operation of the financial markets and to interfere when necessary in the conduct of the banking business.

The nationalizations of 1945 and 1982, supplemented by the recently adopted French Banking Act, have created a new relationship between banks and bank supervisors in France. The French Banking Act and the extensive written regulations which implement its provisions enable the Banque de France and the Commission Bancaire to exert a powerful authority over large French banks. An emphasis on the development of a banking industry that will serve the needs of French industrial policy and support French exports pervades the French system. Despite recent changes, regulations on capital adequacy and liquidity are not as completely or as strictly enforced as in similar regulations in the German or Dutch systems. Major French banks have adopted sophisticated systems for country risk analysis, but the French Banking Act does not impose any specific limits on international lending. The Banque de France is reluctant to accept responsibility for acting as a lender of last resort in the event of a solvency or liquidity crisis.

299. Id.
At the apex of the Belgian bank regulatory and supervisory structure is
the Belgian Commission Bancaire, a regulatory body which has tempered its
broad potential authority by following a cautious supervisory approach.
Auditors are assigned general responsibility for monitoring the solvency,
liquidity and profitability of particular banks and are expected to prepare
reports in accordance with comprehensive accounting-related statutes and
guidelines. The Belgian Commission Bancaire has issued specific regula-
tions with respect to capital adequacy ratios to be maintained by commercial
banks, but has not adopted formal liquidity regulations. A new system of
detailed reporting on country risk exposure was introduced by the Belgian
Commission Bancaire in March of 1984. While support would be provided
by the Banque Nationale de Belgique and the IRG in a liquidity crisis, it is
more difficult to predict what responsibilities such entities might assume in a
true solvency crisis.

The Nederlandsche Bank is responsible for implementing the Dutch
Banking Act and adopting regulations that govern banks in the Nether-
lands. The bank regulatory system directed by the Nederlandsche Bank is
complex and rule-oriented, particularly with respect to matters such as
capital adequacy and liquidity. However, frequent informal contacts be-
tween the central bank and senior officers of major commercial banks make
the system a consultative one as well. For example, formal reporting proce-
dures for country risk are supplemented by semiannual meetings between
the Nederlandsche Bank and commercial bank officers to discuss broad
questions relating to country risk. Dutch commercial banks do not expect
the Nederlandsche Bank to act as a lender of last resort except in the case of
an international financial crisis. Representatives of both Dutch commercial
banks and the Nederlandsche Bank have expressed support for continuing
or enhanced roles for the BIS, IMF and World Bank.

Switzerland has a supervisory framework containing elements of both the
rule-based systems of the United States and the Federal Republic of Ger-
many and the more consultative system of the United Kingdom. The Swiss
Banking Law sets forth a number of specific rules to be followed by Swiss
banks, but the Federal Banking Commission has asserted its authority to be
flexible when interpreting these rules and dealing with particular issues. The
regulatory system reflects the tradition of confidentiality and secrecy which
has long been characteristic of the Swiss banking system.

In sum, the bank supervisory systems discussed here and the factors
influencing their development are diverse. The rules governing the rela-
tionship between government supervisors and central banks, the standards
for accounting and disclosure, regulations and ratios directed at the prudent
conduct of banking business, and the specific rules for country risk, lender of
last resort and supervision of foreign branches and foreign banks are often
inconsistent. Reflecting differing traditions and concerns, each of the super-

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visory systems emphasizes the regulation of somewhat different aspects of
the international lending process. This should not be the case in an era when
consistent and effective domestic supervisory systems would facilitate a
smoother functioning of international financial markets and could form an
important part of a long-term resolution of the LDC debt crisis.

2. The Need for Supervision of the Interbank
Market and Offshore Banking Centers

As noted by David Holland, head of the International Division, Bank of
England, "the international interbank market has evolved rapidly over the
last two decades and now plays a key role in the process of international
financial intermediation."\footnote{D. Holland, Role of the International Interbank Market, Issues in Bank Regulation, at 147 (Summer 1984).} To date, a number of key aspects of interbank
market are largely unregulated even though they present certain risks for
individual banks and for the international banking system generally. At
present there are no supervisory mechanisms to insure that banks treat the
credit risk, mismatch risk and interest risk presented by the interbank
market with due caution.\footnote{For a general discussion of the international interbank market and the effect of its
widespread use on the vulnerability of the international banking system, see GuttenTag and

One problem is that there is no generally accepted manner of assessing
creditworthiness of other banks. As a BIS report on the interbank market
notes, "in general, interbank business tends to be viewed automatically by
banks as a relatively good risk, particularly where prime banks are
concerned."\footnote{BIS, Monetary and Economic Department, The International Interbank Market: A
Descriptive Study, BIS Economic Papers, No. 8, July 1983, at 34.}
The BIS report continues with the observation that it may
well be inappropriate to regard interbank lending to all banks as being of the
same low risk:

Not all banks have well diversified portfolios, and not all banks are well-managed.
There are also variations in the supervision banks receive. . . . Although these
differences can be important, banks' monitoring procedures may not always make
adequate distinction between the riskiness of lending to different banks in the
market.

Offshore banking centers\footnote{The commonly acknowledged offshore banking centers include the Bahamas, Bahrain,
Barbados, Cayman Islands, Cyprus, Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey,
Netherlands Antilles, Panama and Singapore.} have traditionally been a haven for unreg-
ulated activities by subsidiaries and branches of commercial banks. While
the activities of branches and subsidiaries under offshore jurisdiction have
gradually come under increased scrutiny because of the imposition of con-
solidated reporting requirements by domestic bank supervisory authorities,
much remains to be done in the area of cooperation between domestic and offshore supervisors and among offshore supervisors. An Offshore Group of Banking Supervisors (the Offshore Group) first met in Basle in October, 1980 and has convened on several occasions since that time.304

The offshore banking problem has another and more serious dimension in the well-known linkage between crime and secrecy in the use of offshore banks and companies.305 Tax evasion and drug-trafficking are the most serious consequences of largely unregulated offshore markets but the problems of Banco Ambrosiano and SMH are also illustrative of the need for better supervision of offshore markets. If "offshore" Luxembourg had maintained stricter controls over banking entities operating within its territory, Banco Ambrosiano and SMH might never have occurred.

3. The Need for International Cooperation

a. Generally

As Richard Dale has noted, "... the framework within which international banking is conducted and its impact on bank behavior ... creates instability and needs to be overhauled."306 Bank regulation and supervision in each of the creditor countries considered in this analysis has focused on particular problems affecting domestic commercial banks. Systemic problems affecting international financial markets are given insufficient attention, as are the general economic problems of LDC countries. In the absence of an international approach to bank regulation and supervision, there is no effective framework to deal with these broad problems. In addition, uniform standards of disclosure and of safety and soundness cannot be imposed effectively in the absence of an international consensus as to appropriate disclosure and safety and soundness measures. A final inadequacy of the present domestically based supervisory approach is the lack of an international forum capable of generating and encouraging creative supervisory responses to problems arising in connection with the LDC debt crisis.

304. C. Powell, Offshore Group or Banking Supervisors, ISSUES IN BANK REGULATION, at 11–14 (Summer 1984).


306. Dale, A Better Way Out of the World Debt Crisis, Fin. Times, Apr. 30, 1983; see also H. Wallich, International Lending and the Role of Bank Supervisory Cooperation, PROCEEDINGS OF INTERNATIONAL CONFERENCE OF BANKING SUPERVISORS, (Washington, Sept. 1981) [hereinafter referred to as Proceedings]: "But there is a need to individually adapt our national laws and practices into an international framework so that they will accommodate and support each other instead of creating gaps or even conflicts that could pose a threat to the world-wide system." Id., at 9.
b. Efforts to Coordinate Domestic Policies

The Committee on Bank Regulation and Supervisory Practices (the Cooke Committee) was formed in 1974 as an unofficial arm of the BIS. The Cooke Committee met for the first time in February 1975 and has met regularly three or four times a year since then.\(^{307}\) Gradually, the Cooke Committee has become an important force in the improvement of domestic regulation of international lending and the advancement of cooperation among domestic regulatory authorities.\(^{308}\) The main purpose of the Cooke Committee is to provide a forum for the discussion of policy issues affecting domestic supervision of international lending. To date, the Cooke Committee’s practical effectiveness has been limited by the need to rely on voluntary compliance with its informal and broadly drawn guidelines.\(^{309}\)

The most important work product of the Cooke Committee has been the Basle Concordat, first written in 1975 and subsequently revised in 1983. In both the original and amended versions, the focus was on the allocation of supervisory responsibility for branches and subsidiaries of foreign banks.\(^{310}\) The 1983 version attempted to overcome some of the ambiguities of the 1975 version by providing precise guidelines for the supervision of banks with subsidiaries operating abroad.\(^{311}\) However, it has been criticized by some

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\(^{308}\) It is significant that conflicts among United States bank regulators have extended even to the Cooke Committee. In testimony on the IMF legislation, for example, William Isaac complained about the lack of official status for the FDIC on the Cooke Committee. Until recently, the FDIC had access to information discussed at Cooke Committee meetings but did not participate in them. Statement of William M. Isaac, *International Lending, Hearing Before House Subcomm. on Financial Institutions, Supervision, Regulation and Insurance of House Comm. on Banking, Finance and Urban Affairs*, 98th Cong., 1st Sess. (Apr. 20 and 21, 1983), Report No. 98-16, at 231.


\(^{310}\) The 1975 version of the Basle Concordat contained the following key principles: (a) Parent and host countries have joint responsibility for the supervision of foreign banking establishments; (b) host countries have primary responsibility for the supervision of liquidity; (c) the supervision of solvency is essentially a matter for the parent authority in the case of foreign branches and primarily the responsibility of the host authority in the case of foreign subsidiaries; and (d) the exchange of information between host and parent authorities is to be encouraged. See Dale, *The Basle Concordat: Lessons from Ambrosiano*, *The Banker* (Sept. 1983) [hereinafter cited as Dale, Basle Concordat], at 55.

\(^{311}\) Most importantly, the 1975 version failed to address problems of differing supervisory standards. It left unclear the allocation of supervisory responsibilities between host country and parent bank supervisors for subsidiaries operating abroad, and failed to give a definite answer to the question of whether central banks could be expected to serve as lenders of last resort in the event of a crisis. Dale, Basle Concordat, supra note 310, at 55. A further impetus for the 1983 version of the Basle Concordat was provided by the collapse of Banco Ambrosiano in the summer of 1982. The collapse of Banco Ambrosiano’s Luxembourg subsidiary provided a clear
observers for its failure to provide a definitive guide to the assumption of lender of last resort responsibilities in the event of various liquidity or solvency crises.\textsuperscript{312}

Of course, there have been attempts outside the Cooke Committee to promote cooperation and coordination among domestic bank supervisory systems. One report has stated that, "while contacts between national supervisors were scanty and mostly of a bilateral character until the early 1970s, the past decade has witnessed a remarkable advance in international cooperation in the sphere of banking supervision."\textsuperscript{313} Groups of experts within the BIS, the Organization for Economic Cooperation and Development (the OECD) and the EEC have focused on ways to improve member countries’ bank supervisory systems.\textsuperscript{314} Within the EEC, there have been some tentative attempts to harmonize laws affecting solvency and liquidity requirements.\textsuperscript{315} The EEC has also urged member states to adopt consolidated reporting requirements for credit institutions.\textsuperscript{316}

example of differing views on the responsibility for providing lender of last resort facilities, the precise circumstances under which the lender of last resort function should be exercised and the nature of a parent bank’s legal and moral responsibilities towards its foreign subsidiaries. The problem in Banco Ambrosiano’s case was that Italian authorities felt a limited responsibility for a foreign subsidiary whose activities were beyond their control while the authorities in Luxembourg were of the view that local subsidiaries of foreign banks were the responsibility of parent country authorities. G. Johnson and R. Abrams, \textit{Aspects of the International Banking Safety Net}, at 24 (Washington: IMF, 1982).

312. The 1983 version states categorically that it does not address the lender of last resort function. However, there appears to be an implicit recognition that parent bank supervisory authorities are likely to have lender of last resort responsibilities under most foreseeable circumstances.


314. \textit{See Bank for International Settlements, Fifty-Third Annual Report}. The Eurocurrency Standing Committee, created by the Group of Ten central bank governors under the direction of BIS in 1980, deals with need for heightened surveillance because of the "appearance of acute external debt problems in major borrower countries." For a description of OECD efforts, \textit{see} Peccioli, at 105. The Contact Group of the EEC Group of the Bank Supervisory Authorities (the Contact Group) was established in 1972 to facilitate the exchange of information among supervisory authorities of EEC member states. For a discussion of the major activities of the Contact Group, \textit{see} M. Schneider, \textit{The Contact Group of EEC Supervisory Authorities, Issues in Bank Regulation}, at 15–18 (Summer 1984). In 1979, the EEC’s Advisory Committee for Banking Coordination was formed, \textit{see} Bonnardin, \textit{Proceedings}, \textit{supra} note 306, at 61–70.


c. Past Efforts to Strengthen the BIS, IMF and World Bank

The current international institutional framework (the BIS, the IMF and the World Bank) for managing the LDC debt crisis has not been utilized to full capacity. The BIS is often treated as a short-term bridge financing mechanism, while the IMF and the World Bank are similarly assigned quite modest economic roles, except in "crisis" situations. This has resulted in an unfortunate tendency to ignore the potential of these international institutions for expanded general economic roles and to focus instead on ways in which they might be used to "end" the debt crisis. The problem with such proposals for crisis use of the BIS, IMF and World Bank is that they are suitable only for dealing with an acute crisis and might be implemented in such a way as to create a separate "crisis" international financial system that could only slow down real progress in managing LDC debt and global economic development over the long term. While an international institutional framework should be capable of dealing with "crisis," it should not assume the worst and prepare only for that unfortunate possibility.

i. Crisis Institutional Reforms. Proposals for the creation of an international debt discount agency come within this "crisis solution" pattern. Under such proposals, an international institution (perhaps a subsidiary of the IMF or the World Bank) would issue long-term bonds to banks that sell their claims on the developing countries. Such debt relief would be financed by interest concessions or discounts from the face value of loans.317

A similar reform measure has been proposed by Felix Rohatyn. He has suggested that a new international finance agency buy out the claims of banks against LDCs through the issuance of long-term bonds. In this way, LDC debt could be stretched out to long-term maturities with reduced interest rates. Rohatyn acknowledges that the conversion to long-term, low interest loans would impose a loss on banks that would somehow have to be shared jointly by bank shareholders, taxpayers and governments.318 In addition Rohatyn observes that a possible need for bank capital could arise out of a major LDC default that required, for legal and accounting reasons, a loan loss write-off of such magnitude as to impair the capital of major banks. Therefore, he has proposed that the new international finance agency also have the authority to acquire preferred stock of banks with capital problems.319

Other proposals for crisis institutional reform abound. One suggestion is the formation of a new international lending institution to take over the syndicate lending function from banks with respect to LDC lending.\textsuperscript{320} Another suggestion is that the World Bank appoint a syndicate of investment bankers to sell a debt issue for the World Bank with a 20-year maturity at 9 percent interest. The proceeds of the sale would be used to buy out LDC creditors up to an amount equivalent to their participation in the debt issue. Member countries of the World Bank would guarantee the loan.\textsuperscript{321} Gutten-tag and Herring have outlined, as part of a more comprehensive plan, a scheme for transforming old LDC debt into "consol certificates."\textsuperscript{322} Charles Meissner has suggested that a new institution funded by private banks be created to provide balance-of-payments loans to sovereign governments in conjunction with the IMF and the World Bank.\textsuperscript{323}

\textbf{ii. Crisis Financing Techniques.} A number of crisis financing techniques have been suggested to accompany the institutional responses discussed above. One proposed solution has been to impose a "cap" on how much the interest rate on LDC loans could rise.\textsuperscript{324} If applicable interest rates were to rise above the cap, excess interest payments would be added to the principal. Such a cap on interest rates has been suggested by Anthony M. Solomon, former president of the Federal Reserve Bank of New York and Paul A. Volcker, Chairman of the FRB.\textsuperscript{325} Alternatively, Mr. Solomon has suggested a variation of the interest cap idea, with quite similar consequences. Interest payments would be classified with respect to two rates: "real" interest and the portion of the interest rate represented by inflation.

\textsuperscript{322} Gutten-tag & Herring, \textit{The Current Crisis in International Banking}, BROOKINGS DISCUSSION PAPERS No. 8, Dec. 1983, at 42–43. For an argument that proposals such as those of Rohatyn and Aliber are unrealistic because they ignore economic realities of the commercial banking business, see Meissner, \textit{infra}, note 323.
\textsuperscript{323} Meissner, \textit{Debt: Reform Without Governments}, FOR. POLICY, at 81–93 (Fall 1984).
\textsuperscript{324} The problem, of course, is that most developing country debt is based on variable interest rates which are indexed to rise and fall with U.S. interest rates. There is a growing recognition that LDCs are already paying too much of their export earnings in interest payments on outstanding debt. Argentina, for example, spent approximately 85 percent of its 1983 export earnings on interest payments and the average for all Latin American countries in 1983, according to the IMF, was 42.7 percent. Kilborn, \textit{Borrowers and Lenders Hunt Solution to Latin Debt Crisis}, N.Y. Times, May 14, 1984, at A1.
\textsuperscript{325} N.Y. Times, May 7, 1984, at D1. Commercial bankers are generally opposed to such a cap because of fears that they would lose large amounts of money if interest rates were to rise.
Debtor countries would be asked to pay the "real" interest rate, or the cost of the loan in a world without inflation. The remaining interest payments would be added to principal.\textsuperscript{326}

Yet another variation of a cap on interest rates has been suggested by an official of the Morgan Guaranty Trust Company. In this variation, any excess interest payments over a capped rate would be added to later interest payments in periods when international rates fell below the cap rate. Excess interest payments would be capitalized only if rates stayed above the cap much of the life of the loan.\textsuperscript{327}

A second crisis financing technique is to spread out debt repayments over decades rather than over a few years. Some variants utilize the institutional approaches discussed above (i.e., conversion of outstanding short-term debt into long-term bonds under the auspices of the IMF or the World Bank), while others are based on a voluntary conversion of short-term to long-term debt through existing loan syndicates. The benefits of converting short-term debt into medium or long-term debt have been outlined by Dr. Otmar Emminger, former President of the Bundesbank: "A (partial) conversion of interest maturities into, say, medium-term bonds at fixed interest rates would enable those banks which feel unable to participate in the 'fresh money' approach to obtain an instrument which, in case of need, they could convert into liquidity in the market (perhaps at a discount)."\textsuperscript{328}

A third crisis financing technique that has attracted broad support is the idea that a cap might be placed on the total allowable indebtedness of each LDC.\textsuperscript{329} Lord Lever has suggested that the IMF might announce "quotas" of reasonable annual levels of external borrowing for its members.\textsuperscript{330} A similar conclusion was reached by a major study in the United Kingdom, which emphasized that such guidelines should be advisory rather than mandatory because banks must retain responsibility for deciding to whom they will lend.\textsuperscript{331}

iii. The World Bank Initiative of the United States. In October 1985, at the


\textsuperscript{327} Id.; Kahn, Index the Principal on Debt, Wall St. J., Aug. 10, 1983, at 24. Indexing the principal on debt has also been suggested as a way to overcome problems associated with fluctuating interest rates. One such proposal, made by Herman Kahn in 1983, was that an index for principal be based on a gross national product deflator.

\textsuperscript{328} Emminger, Letter to the Editor, Fin. Times, May 7, 1984.

\textsuperscript{329} Dale, Country Risk and Bank Regulation, The Banker 48 (March 1983). Dale argues that "a central weakness of the international lending market is that countries can engage in unrestrained and unconditional borrowing to the point where serious funding difficulties arise and only then are IMF conditions imposed."


\textsuperscript{331} Id.
joint IMF-World Bank meeting in Seoul, South Korea, Secretary of the Treasury James Baker called for a "Program for Sustained Growth," a major new United States initiative with respect to LDC debt and the role of the World Bank. Baker urged a three-fold emphasis:

First and foremost, the adoption by principal debtor countries of comprehensive macro-economic and structural policies supported by the international financial institutions, to promote growth and balance of payments adjustments, and to reduce inflation.

Second, a continued central role for the IMF, in conjunction with increased and more effective structural adjustment lending by the multilateral development banks, both in support of the adoption by principal debtors of market-oriented policies for growth.

Third, increased lending by the private banks in support of comprehensive economic adjustment programs.332

In practical terms, Baker's proposals meant that the World Bank was to be encouraged to significantly increase its lending to Latin America. Co-financing with commercial banks was to be developed and there was a possibility that the World Bank would guarantee commercial bank loans "selectively and carefully." Increased lending by private banks in support of comprehensive economic adjustment programs was also to be encouraged and Baker expressed the hope that $20-30 billion of new money would be made available to Latin America by commercial banks. For their part, principal debtor countries were to be encouraged to develop comprehensive economic policies that would promote economic growth, facilitate balance of payments adjustments and reduce inflation. A continued central role for the IMF was envisioned, but it was to be tempered by a recognition that dependence on IMF adjustment programs is not enough.333

In large part, the new United States policy approach stemmed from growing dissatisfaction with the IMF. The IMF's austerity packages had not encouraged the resumption of voluntary lending by commercial banks. Moreover, the short-term perspective of the IMF, which looks for economic improvements in one to three years, was increasingly recognized to be inadequate.334 As one United States commercial bank executive commented, "There has got to be a new approach, which allows a resumption of steady growth in the LDCs and offers them new flows of money, backed up by some kind of protection for the banking system. But the initiative cannot come from the IMF because it is living by an orthodoxy which is no longer accepted."335 Even Mr. Jacques deLarosiere, managing director of the

IMF, has strongly endorsed a greater role for the IMF in dealing with the LDC debt crisis. In a major shift in IMF policy, deLarosiere has also stressed the need for renewed growth in debtor countries.336

Despite its well-received emphasis on the World Bank, the new United States initiative is unlikely to fulfill the publicly-stated aims of its proponents. The proposed increases for commercial bank and World Bank loans, for example, are quite modest and imply an annual growth of only 2 1/2 percent in total LDC lending over the next few years.337 Economic models suggest that much more new money will be required to permit debtor countries to achieve minimum acceptable levels of economic growth.338

B. SOME SUGGESTIONS FOR REFORM

1. Generally

The lack of cohesion between economic and supervisory approaches to the LDC debt crisis is most apparent at the international level, where the World Bank, the IMF and the BIS provide a structure for further economic cooperation among creditor countries, but there is no similar international supervisory body. The suggestions for reform in the regulation and supervision of international lending outlined below have three basic components and reflect a belief that consideration should be given to the development of an international supervisory framework:

- Comprehensive reforms in domestic systems of bank supervision of international lending should be considered. Government-bank relations, accounting and disclosure rules, regulation of capital adequacy, liquidity and foreign exchange exposure, country risk, lender of last resort facilities and supervision of foreign bank branches and subsidiaries are areas of common concern for domestic bank regulators. Without significant exceptions, domestic bank regulators in the creditor countries discussed in this analysis would be well-advised to ask some basic questions about their supervisory efforts: When should international lending decisions be entrusted solely to bank management and when and how should governments be involved? Can better accounting principles and procedures assist in the development of more prudent lending? How much emphasis should be placed on capital adequacy ratios and provisions for loan losses? Should principles of full disclosure be applied to international lending? Does exhaustive country risk analysis assure better bank lending decisions? What can be done to encourage more competent supervision of foreign bank branches and subsidiaries?

336. Id.

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There should be greater international cooperation and more cross-border information sharing in an attempt to achieve not only better rules for bank supervision, but more compatible ones. The Cooke Committee's general efforts and the principles set forth in the Basle Concordat provide an appropriate starting point. Consideration should be given to developing means to expand the supervisory authority and influence of the Cooke Committee.

A strong international economic framework, with new functions for the BIS, the IMF and the World Bank should be developed. The BIS should assume a coordinating function based on voluntary agreement among major creditor countries. The IMF and World Bank need to be given enhanced economic responsibilities suitable for both normal and crisis situations. In conjunction with continued authority to suggest adjustment policies for debtor countries, consideration might be given to allocating more power to the IMF with respect to setting limits on interest rates to be granted by creditor governments and commercial banks to developing countries following adjustment programs. As needed, the IMF could also guarantee certain new loans extended by commercial banks in conjunction with IMF conditionality requirements. The World Bank should develop more extensive long-term cofinancing and guarantee facilities.

2. Comprehensive Domestic Reforms

a. Government-Bank Relations

Bank supervisory authorities in creditor countries should be given reasonably similar responsibilities for assuring the prudent conduct of international lending by commercial banks under their jurisdiction, at least with respect to such basic matters as oversight of capital adequacy, lending limits, disclosure of financial accounts and consolidated reporting of accounts. Regulatory and supervisory decisions affecting international lending should be matters for bank supervisors rather than government officials. In countries like the United States, where regulatory responsibility is divided among supervisory agencies, greater efforts at policy coordination should be initiated.

b. Accounting and Disclosure

It would be advisable for accounting systems which more fairly represent market values to be adopted with some degree of uniformity in various creditor countries. At present, significant differences in accounting systems in each creditor country distort competition in international lending and make it difficult to achieve realistic cross-border comparisons of bank positions and the true riskiness of international lending. Moreover, published


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accounts should reflect market reality to the fullest extent possible because public confidence in banks cannot be maintained if their books do not present their true financial condition.340

Disclosure of country risk exposures, reserves for potential loan losses, sources of major deposits, and capital adequacy, liquidity and foreign exchange ratios should be encouraged. It is no longer the case, if indeed it ever was, that the disclosure of true statements of bank financial positions could threaten the integrity of the international financial system. In an era when banks and other corporations compete for the same investors, it makes sense to encourage full and complete disclosure of relevant financial information. Both shareholders and depositors are entitled to know how their funds are being used. Moreover, if disclosure is full and accurate, the financial markets could operate to discipline banks that are incurring excessive risks.341

c. Prudential Rules for Capital Adequacy, Liquidity and Foreign Exchange Exposure

Not only should disclosure of various financial ratios and positions be encouraged, but similar rules for calculating them would be desirable. More needs to be done to strengthen rules for capital adequacy, liquidity and foreign exchange exposure. The capital adequacy ratios now being refined in the United States and the liquidity and foreign exchange ratios in effect in the United Kingdom could serve as useful guides for the development of similar ratios in all major creditor countries.342

d. Country Risk and Provisions for Loan Losses

Despite some potential problems of implementation, a uniform limit on loans to one country by a single bank should be established.343 Limits on loans to single borrowers, such as the 15 percent limit in effect in the United States, should be extended. In theory, limiting exposure of a bank to any one country and thereby diversifying risk appears to be a good idea because it would mitigate the leverage that countries with very large loans outstanding have over banks.

Moreover, since a country's financial status can change very quickly, a uniform rather than a risk-differentiated limit appears best.344 Graduated

340. Id.
341. Id. at 38.
342. See generally, DALE & MATTIONE, supra note 339, at 36. They argue that "[r]equiring banks to increase their capital against prospective losses is one of the few regulatory initiatives that strengthens the banking system in both the short and the long run."
requirements for general loan loss provisions should be imposed on the basis of a bank's loan concentrations in individual countries. Additional provisions could be required for rescheduled loans and for doubtful loans. In practice, a serious problem may be that some banks already have such high single-country exposures that "specifying a limit would either leave them in violation . . . or establish an uncomfortably high level that might lead other banks to excess." Moreover, specifying a single limit would not take into account the varying credit needs of large and small countries or wide differences in credit standing.

e. Lender of Last Resort

Parent country supervisory authorities need to assume greater responsibility for the subsidiaries of their banks operating abroad. It is unrealistic to expect the development of a supranational lender of last resort and the most pragmatic approach is for domestic central banks to take the lead in setting new rules. The Basle Concordat has set out some useful general rules with respect to the operations of foreign branches. These rules should now be extended to provide that parent supervisory authorities must act as a lender of last resort for majority-owned bank subsidiaries operating abroad.

f. Supervision of Branches and Subsidiaries Operating Abroad

Parent bank supervisory authorities should assume full responsibility for foreign branches of banks under their supervision. Subsidiaries present a more difficult question and the current governing document in this regard, the Basle Concordat, assigns joint supervisory responsibility to host country and parent bank supervisory authorities with respect to solvency and liquidity of subsidiaries. It would seem sensible to assign a primary supervisory

345. DALE & MATTIONE, supra note 339, at 35; see also Joint Memorandum of the Comptroller, FRB and FDIC: Program for Improved Supervision and Regulation of International Lending, submitted to the Chairman of the House Comm. on Banking, Finance and Urban Affairs, Apr. 7, 1983, reprinted in To Increase the U.S. Quota in the International Monetary Fund and Related Matters, Hearings Before the Subcomm. on International Trade, Investment and Monetary Policy of the House Comm. on Banking, Finance and Urban Affairs, 98th Cong., 1st Sess. (1983) (H. Rep. 98-17), at 128 [hereinafter cited as the Joint Memorandum]. The Joint Memorandum takes the position that country differences, the current high exposure of some banks to particular countries and various political pressures make country limits impossible.

346. See CLINE, supra note 344, at 100-02, for a useful description of possible theoretical approaches to differentiated country limits.

347. See DALE & MATTIONE, supra note 339, at 37, for a description of other types of proposals.

348. A distinction between provisions for rescheduled loans and doubtful loans is recommended; Cline, supra note 344, at 99-100. He suggests that provisions for rescheduled loans should be set at a much lower level than provisions for doubtful loans.

349. On the dangers of the existing ambiguity about lender of last resort facilities for bank subsidiaries operating abroad, see Guttentag & Herring, The Lender of Last Resort Function in
role to parent supervisory authorities and a secondary supervisory role to host country authorities.

3. **Supervision of Interbank Market and Offshore Banking Centers**

With respect to the interbank market, domestic supervisory authorities should be encouraged to insure that commercial banks recognize and fulfill their own responsibilities, including the setting and regular review of credit lines for other banks. The work of the Offshore Group to coordinate and improve supervision of branches and subsidiaries operating within offshore jurisdictions should be continued and expanded. Of course, commercial bank operations in the interbank market and in offshore banking centers would be affected by appropriate changes in the domestic supervision of such matters as capital adequacy and liquidity.

4. **Greater International Cooperation**

The Cooke Committee’s recognized expertise makes it the logical beginning point for closer cooperation among bank supervisory authorities of creditor countries. Its scope and powers should be expanded by voluntary agreement of member countries. The development of an international supervisory agency, either connected with the Cooke Committee or newly established, might be considered as one means of creating more uniform bank supervisory goals, standards and sanctions in the international lending area. Ideally, sanctions and an enforcement mechanism would accompany the creation of an international supervisory agency. Of course, there are difficulties at this point in the absence of generally binding principles of international law and resulting from basic national sovereignty. However, there is a useful ground between informal international “conventions” and formal international law and every attempt should be made to exploit it.

5. **A New International Organization Framework**

The BIS and the Cooke Committee might assume a coordinating function based on voluntary agreement among major creditor countries. The official BIS objective of increased cooperation among central banks would be furthered by official participation by the United States on its board of...
directors. Such official participation would permit the United States to influence BIS policies more effectively and would facilitate a continued role for the BIS in arranging short-term multilateral credits for developing countries.\textsuperscript{350}

The enhanced power of the IMF to impose adjustment programs as a "trade off" for continued IMF financial support and commercial bank lending is to be encouraged in the short term.\textsuperscript{351} Over the long term, consideration might be given to allocating more power to the IMF with respect to setting limits on interest rates on loans granted by creditor governments and commercial banks to developing countries following adjustment programs. As needed, the IMF could also guarantee certain new loans extended by commercial banks in conjunction with IMF conditionality requirements.\textsuperscript{352}

The World Bank should develop co-financing facilities and a greater capacity to act as a crisis mechanism. One aspect of a policy statement set forth in the World Bank's \textit{World Development Report 1984} should be given particular emphasis. That statement recognized that increases in voluntary lending by commercial banks over the long-term would be critical to the restoration of growth momentum in middle-income developing countries. It also recognized that a successful transition back to fully voluntary lending would require World Bank lending in support of policy reforms and extended co-financing, as well as World Bank support for greater private direct investment.\textsuperscript{353}

6. \textit{The Limits of Regulatory Reform}

The advantage of the above regulatory program is that it is relatively easy to achieve and builds on current advances that have been made in dealing

\textsuperscript{350} The BIS reserves a seat for the Federal Reserve Board on its board of directors. However, the United States has traditionally declined to fill its seat on the board. Therefore, the United States has been kept out of decisions concerning internal BIS policy matters and operational decisions. The policy of leaving the United States seat vacant was recently reaffirmed. Report to Congress by the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, and the Secretary of State of United States Membership in the Bank for International Settlements, Nov. 30, 1984.


\textsuperscript{352} Other observers have suggested a somewhat stronger supervisory role for a new adjunct facility of the IMF. One suggestion is that such an adjunct should have the authority to "(1) convene mandatory discussions between a debtor state and its commercial bank creditors; (2) order the commencement of and preside over debt renegotiation proceedings; (3) preempt unilateral creditor suits; (4) determine fair terms of debt renegotiation and establish a ceiling on those terms; (5) preclude the parties from undertaking other renegotiation efforts; (6) permit creditor banks' suits to proceed as a sanction against a debtor which refused to accept the renegotiated terms, and (7) require the debtor to adopt internal adjustment measures as a condition to renegotiations." Barnett, Galvis and Gouraige, \textit{On Third World Debt}, 25 HARV. INT'L L.J. 83 (1984).

with the LDC debt crisis. It addresses both the short-term and long-term aspects of the debt problem. Moreover, it does not destroy the present international financial structure in an attempt to deal with the current crisis. The suggested program has the capacity to deal with crisis but also contains the starting point of desirable gradual reform.