

# Closing a Failed Bank

Resolution Practices and Procedures



David C. Parker

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**David C. Parker**

International Monetary Fund

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# Contents

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Acknowledgments.....	<a href="#">vii</a>
Preface.....	<a href="#">ix</a>
<b>CHAPTER 1</b> INTRODUCTION .....	<a href="#">1</a>
Legal Framework.....	<a href="#">2</a>
Deposit Insurance during Bank Failures .....	<a href="#">3</a>
Media and Public Relations .....	<a href="#">4</a>
Chapter Summaries.....	<a href="#">4</a>
<b>CHAPTER 2</b> PROBLEM BANK RESOLUTION AND SUPERVISION.....	<a href="#">7</a>
Problem Bank Supervision.....	<a href="#">7</a>
Problem Bank Resolution .....	<a href="#">12</a>
<b>CHAPTER 3</b> BANK INTERVENTION PROCEDURES.....	<a href="#">15</a>
Duties and Responsibilities of Intervention Team.....	<a href="#">16</a>
Advance Preparation for Intervention.....	<a href="#">17</a>
Immediate Actions at Intervention.....	<a href="#">22</a>
Annex 3.1. Functional Area Checklists* .....	<a href="#">32</a>
Annex 3.2. Sample Problem Bank Resolution Action Plan* .....	<a href="#">66</a>
Annex 3.3. Intervention Organizational Chart.....	<a href="#">67a</a>
Annex 3.4. Publication Notice of Appointment of Conservator or Receiver* .....	<a href="#">67b</a>
Annex 3.5. Notice for Registration at the Appropriate Court* .....	<a href="#">67c</a>
Annex 3.6. Door Notice of Appointment of Conservator or Receiver* .....	<a href="#">68a</a>
Annex 3.7. Notice to General Director of Appointment of Conservator or Receiver* ..	<a href="#">68b</a>
Annex 3.8. Notice to Correspondents of Appointment of Conservator or Receiver* ....	<a href="#">69a</a>
Annex 3.9. Notice to Bank Employees of Appointment of Conservator or Receiver* ..	<a href="#">69b</a>
Annex 3.10. Employee Code of Conduct and Confidentiality Agreement* .....	<a href="#">70</a>
Annex 3.11. Notice to Shareholders, Depositors, Borrowers and Vendors of Appointment of Conservator or Receiver* .....	<a href="#">71a</a>
Annex 3.12. Initial Information.....	<a href="#">71b</a>

Annex 3.13. Outline for Initial Intervened Bank Employees Meeting .....	<a href="#">72</a>
Annex 3.14. Sample Press Releases .....	<a href="#">73</a>
Annex 3.15. Questions and Answers for the Press related to [Failed Bank]* .....	<a href="#">76</a>
Annex 3.16. Telephone Script (Liquidation)* .....	<a href="#">78b</a>
Annex 3.17. Bank Intervention Managers Book Table of Contents* .....	<a href="#">79a</a>
Annex 3.18. Inventory Book of Assets and Liabilities .....	<a href="#">79c</a>
Annex 3.19. Estimated Loss in Assets Form* .....	<a href="#">81</a>
Annex 3.20. Cash Count Sheets* .....	<a href="#">82</a>
Annex 3.21. Asset Review Sheet* .....	<a href="#">88</a>
Annex 3.22. Bank Account Reconciliation Guidelines.....	<a href="#">89</a>
Annex 3.23. Subsidiary Due Diligence Review Checklist* .....	<a href="#">91</a>
Annex 3.24. Business and Disposition Plan .....	<a href="#">104</a>
<b>CHAPTER 4</b> CONSERVATORSHIP OPERATIONS.....	<a href="#">107</a>
Operations and Policies .....	<a href="#">108</a>
Immediate Concerns.....	<a href="#">109</a>
Ongoing Operations .....	<a href="#">109</a>
Annex 4.1. Funds Flow Analysis .....	<a href="#">116</a>
Annex 4.2. Contingency Funding Plan Summary* .....	<a href="#">119</a>
<b>CHAPTER 5</b> FINAL RESOLUTION .....	<a href="#">121</a>
Resolution Preparation.....	<a href="#">123</a>
Marketing Strategy .....	<a href="#">124</a>
Legal Documents .....	<a href="#">129</a>
Potential Acquirers .....	<a href="#">130</a>
Marketing Presentation .....	<a href="#">130</a>
Due Diligence .....	<a href="#">131</a>
Bid Acceptance .....	<a href="#">132</a>
Contract Signing.....	<a href="#">132</a>
Closing the Transaction.....	<a href="#">132</a>
Public Awareness .....	<a href="#">132</a>
Annex 5.1. Example of a Resolution Timeline* .....	<a href="#">134</a>
Annex 5.2. Sample Deposit Transfer Form* .....	<a href="#">135</a>
Annex 5.3. Confidentiality Agreement* .....	<a href="#">136</a>
Annex 5.4. Escrow Agreement* .....	<a href="#">139</a>

Annex 5.5. Exhibit “A” Bid Form* .....	<a href="#">141</a>
Annex 5.6. Sample Print Advertisement for Bank Resolution* .....	<a href="#">145</a>
Annex 5.7. Official Receipt* .....	<a href="#">146</a>
<b>CHAPTER 6</b> BANK LIQUIDATION PROCEDURES .....	<a href="#">147</a>
Bank Liquidation Operations .....	<a href="#">148</a>
Annex 6.1. Asset Management Companies .....	<a href="#">154</a>
Annex 6.2. Structure Example: Division of Liquidation Office .....	<a href="#">156</a>
<b>CHAPTER 7</b> ASSET MANAGEMENT AND DISPOSITION .....	<a href="#">157</a>
Asset Disposition Strategies and Timelines .....	<a href="#">157</a>
Asset Collection Procedures .....	<a href="#">158</a>
Delegation of Authority .....	<a href="#">167</a>
Case Memorandum System .....	<a href="#">169</a>
Reporting .....	<a href="#">171</a>
Filing System .....	<a href="#">171</a>
Annex 7.1. Sample Case Memoranda* .....	<a href="#">174</a>
Annex 7.2. Case Memorandum Log* .....	<a href="#">181</a>
Annex 7.3. Asset Collection Report* .....	<a href="#">182</a>
<b>APPENDIX</b> PURCHASE AND ASSUMPTION AGREEMENT .....	<a href="#">183</a>
<b>GLOSSARY</b> .....	<a href="#">221</a>
<b>BOXES</b>	
2.1. What Makes a Problem Bank? .....	<a href="#">9</a>
3.1. Intervention Staffing .....	<a href="#">18</a>
4.1. Placing a Bank in Conservatorship .....	<a href="#">108</a>
5.1. Open Bank Assistance .....	<a href="#">122</a>
5.2. “Bridge” Banks and Nationalization .....	<a href="#">129</a>
5.3. Branch Breakups .....	<a href="#">129</a>
5.4. Paying Insured Deposits via Electronic Transfers to Another Bank .....	<a href="#">130</a>
6.1. Example of Bankruptcy Claims Priorities .....	<a href="#">148</a>
7.1. The 80/20 Rule .....	<a href="#">157</a>
7.2. Asset Management in a Liquidation Context .....	<a href="#">158</a>

\* Available in user-interface format on the companion CD-ROM.

7.3. Liquidation Goals .....	<a href="#">160</a>
7.4. Some Loan Restructuring Guidelines .....	<a href="#">161</a>

## FIGURES

2.1. Decision Tree for Problem Bank Resolution.....	<a href="#">8</a>
2.2. Bank Intervention Flow Chart.....	<a href="#">12</a>

## TABLES

1.1. Contrasting a Special Bank Insolvency Regime with Commercial Bankruptcy Law ...	<a href="#">3</a>
2.1. Examples of Informal and Formal Supervisory and Enforcement Actions.....	<a href="#">10</a>
2.2. U.S. Prompt Corrective Action Capital Categories.....	<a href="#">11</a>
3.1. Intervention Documents .....	<a href="#">19</a>
5.1. Summary of a Typical Purchase and Assumption Transaction .....	<a href="#">126</a>
5.2. Assuming Bank Purchase and Assumption Example .....	<a href="#">127</a>
5.3. "Bridge" Bank Purchase and Assumption Example.....	<a href="#">128</a>
7.1. Asset Types and Primary Disposition Strategies .....	<a href="#">159</a>
7.2. Property Type and Loan-to-Value (LTV) Ratio .....	<a href="#">164</a>
7.3. Examples of Discount Rate Calculations.....	<a href="#">165</a>
7.4. Basis and Requirements for Write-offs by Type of Asset.....	<a href="#">168</a>

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# Preface

This manual addresses problem bank resolution from the time a bank is identified as being in problem status through intervention to liquidation. Forms and checklists used during that process can be accessed on the companion CD-ROM through a user interface that allows practitioners to input information about a particular bank resolution case and then download or print the customized documents.

Chapter 1 sets the context of the book, discussing various (and preferred) legal frameworks; the function of deposit insurance during bank failures; and the importance of public and media relations throughout.

Chapter 2 provides the background for problem bank resolution by discussing problem bank supervision and the various measures and procedures used by a supervisory authority to rehabilitate, restructure or resolve a problem bank.

Chapter 3 covers bank intervention procedures. The primary goal of bank intervention is to control and inventory the assets of the bank, prepare a final balance sheet and, as applicable, compensate insured depositors. A bank intervention team should be prepared to accomplish functional duties such as security, cash operations, assets, deposit operations, facilities, information technology, and legal matters. Depending on the number of branches, branch teams must be prepared to perform the same functions at each branch. The supervisory authority and the deposit insurance agency (DIA) must work in partnership to accomplish these goals. Supervisory authority personnel are responsible for the inventory and control of assets, whereas the DIA is responsible for making repayment to insured depositors.

Chapter 4 looks at conservatorship operations. If the supervisory authority believes there is a chance to rehabilitate the bank, then it may appoint a conservator to accomplish this objective. The conservator appointed should thus have management control over the institution, with powers that replace those of shareholders, the board of directors, and senior management. The conservator should be given a specific time frame in which to thoroughly analyze the bank's condition and prepare a resolution plan, if feasible, or its liquidation. To maintain confidence in the banking system during conservatorship, the bank should remain open to allow depositors access to their funds. Conservatorship functions should be limited (e.g., there should be no new lending) and focus on cost-saving measures and asset collection.

Chapter 5 covers various bank resolution alternatives along with methods for marketing a problem bank via a purchase and assumption (P&A) agreement. To promote public confidence, providing prompt repayment to insured depositors is paramount in a failed bank situation. To this end, the supervisory authority or conservator should work with the DIA to market the bank via a P&A whereby another bank would purchase certain assets and assume certain liabilities of the bank. Failing that, the receiver should attempt to arrange for another bank to act as paying agent for the DIA to compensate insured depositors. In some countries, depending on the competitive environment, banks may bid for the right to assume the deposits because it is an inexpensive method of increasing market share. In other countries, the DIA or supervisory authority may have to pay a bank a fee to act as paying agent. Problem bank resolution alternatives may be limited in countries without special bank insolvency regimes.

Chapter 6 looks at the operations and administrative procedures for bank liquidation or receivership and discusses liquidation office structures. Functions that relate to depositor and creditor claims, settlements, legal, management information systems, audit, and other administrative matters are covered.

Chapter 7 discusses asset management and disposition. A receiver should responsibly liquidate a failed bank's assets with the goal of maximizing recovery to uninsured depositors and creditors of the receivership, using present value concepts in asset sales and collections. Standardized procedures are presented

that deal with asset liquidation, including delegations of authority, case memorandum systems (i.e., a decision-making system), and reporting and filing systems.

It should be noted that this book is not about bank restructuring, which, while sometimes effective in stabilizing a banking system during a systemic crisis, is one of the least effective problem bank resolution methods during “normal” times. Throughout the decline of the bank into problem status, shareholders and senior managers have ample opportunity to reorganize (and/or recapitalize) the bank. The fact that they do not, despite shareholders presumably motivated by the potential loss of their investment, is an indication that new capital, not just restructuring, is required. When new capital is not forthcoming, it is an indication that the expected return was not sufficient to attract private equity investors.

In addition, bank restructuring, with continued participation of shareholders and senior management, does not solve the typical underlying problems at the institutions—abusive insider transactions and illiquidity. The problems (losses) are usually much greater than initially expected, and the anticipated turnaround is more difficult to pull off. Avoiding a complicated, drawn-out restructuring plan with a doubtful outcome in favor of a quick resolution of the problem bank will curtail the losses and allow a more accurate approximation of the cost of resolution.

# Introduction

Banks are special institutions. In virtually every country, they dominate financial intermediation. The functions of banks are so vital to a country's economy that, collectively, they comprise a public service. This position is commonly justified by three characteristics of banks, namely:

1. Asset/liability mismatch (demand deposits/long-term loans), which is sensitive to maintaining public confidence to prevent massive deposit withdrawals (i.e., bank runs)
2. Provision of financial services, which is fundamental to the functioning of the economy (primary source of liquidity for most companies)
3. The link between the monetary policy process and the economy.<sup>1</sup>

Banks can be more susceptible to moral hazard because their profits are generated by using other people's money (deposits).<sup>2</sup> This tendency to take greater risks leads to a greater potential for problems, ranging from poor asset quality to fraud.

As with health matters, when dealing with problem banks, prevention is preferable to cure. The vital responsibility of bank supervisors is to respond promptly when problems emerge in banks. Moreover, despite the public service aspect of banking, disciplining excessive risk-takers who allow banks to fail is characteristic of an effective bank supervision regime in a strong economy.

The aphorism that "banking is essential; banks are not" is true: Although banking is necessary for a country in this modern world, a specific individual bank is not. Problem banks should be resolved as expeditiously as possible to reduce costs and maintain financial stability and public confidence in the

banking sector. In other words, in a healthy economy banks should be allowed to fail.<sup>3</sup>

An effective bank supervision system is critical to a country's financial stability. Prudential regulations set forth the framework within which banks must operate, and the supervisory authority is responsible for enforcing these regulations. When a bank faces financial difficulties or operates in an unsafe and unsound manner, the supervisory authority is responsible for taking action to resolve these problems.

Most effective banking laws contain provisions that allow the supervisory authority to take such corrective action. Action can range from moral suasion (appealing to the bank management and board of directors for their sense of public responsibility), informal and formal enforcement (including fines and removal of personnel), and appointment of a conservator to license revocation and appointment of a receiver. (Conservatorship is an appropriate action when, for example, fraud is detected in an otherwise good bank that has some franchise value. The bad management is then removed and the conservator runs the bank, conserving its assets while developing a resolution plan.)

Ultimately, a bank's management, board of directors, and shareholders are responsible for its profitable operations and viability. The supervisory authority, however, is responsible for problem bank resolution. Many jurisdictions have implemented "prompt corrective action" in their banking laws, which requires the supervisory authority to take action when a bank's capital falls to a certain level, even if it is not technically insolvent.

Maintaining public confidence in the banking system is critical to avoiding bank runs and sustaining financial sector stability. Public confidence can be enhanced by promptly paying depositors and by limiting the adverse economic

<sup>1</sup> Eva Hupkes, "Insolvency – Why a Special Regime for Banks?" *Current Developments in Monetary and Financial Law*, Vol. 3 (International Monetary Fund, Washington, 2003) pp. 2–3.

<sup>2</sup> Moral hazard is the tendency to take greater risks than normally would have been taken if only the funds of bank owners were at risk. This condition is magnified in jurisdictions with an explicit deposit insurance scheme.

<sup>3</sup> Note that the procedures discussed in this manual are not necessarily intended to apply in cases of systemic crises, or in large complex financial institution resolution. Although generally the principles and guidance are applicable, in such cases it may often be necessary to take action that contradicts these recommended methods; for example, not adhering to the "least-cost" restriction when providing open bank assistance.

impact of a bank failure in a community.<sup>4</sup> When banks are resolved expeditiously, the cost is lower, and asset and franchise values are protected and maximized. Allowing problem banks to continue operating distorts the market and increases moral hazard. Forbearance or procrastination invariably increases the cost of problem bank resolution.

This manual contains comprehensive standard procedures that can serve as a practical guide for problem bank resolution. The measures described represent best practices for countries where there is macroeconomic stability and a sound banking system with appropriate regulations and effective supervision.

For purposes of this manual, the following definitions of some important terms are used:

- **Supervisory authority.** The institution responsible for licensing, regulating, and supervising banks, whether contained within the central bank or an independent body.
- **Conservatorship.** Also known as special or provisional administration, or simply administration. Conservatorship is a supervisory action whereby a conservator is appointed to conserve the assets of a problem bank and prepare a resolution plan. Conservators generally, though not always, are granted all the powers of a bank's management and board of directors.<sup>5</sup> Usually, appointing a conservator does not involve license revocation.<sup>6</sup> Depending on the banking law, conservatorship may or may not require public notice.
- **Intervention.** The process of securing and making an inventory of a failed bank's assets and preparing a final set of financial statements.<sup>7</sup> The process is also referred to as "closing."
- **Receivership.** Used synonymously with liquidation in this manual, receivership is the condition resulting from a failed bank that has had its license revoked and closed down. A receiver is generally responsible for liquidating a failed bank's assets and satisfying claims to the extent possible. Receivership usually requires public notice.
- **Resolution.** The decisive action to solve the problems of the bank. Problem bank resolution can involve private solutions (e.g., recapitalization, sale of bank shares, merger); assisted transactions (e.g., P&A transaction,

insured deposit transfer; or liquidated payout (see Chapter 5).

Note that although this manual is linear and sequential as it describes corrective measures, conservator appointment, and other key matters, not all actions are necessarily a required step in problem bank resolution. Often a bank's condition may be so serious that it may be necessary to skip some corrective measures or conservatorship, or both, and proceed directly to appointment of a receiver and final bank resolution.

## LEGAL FRAMEWORK

Problem bank resolution is difficult to complete through commercial bankruptcy courts because of shareholder and creditor rights (e.g., time-consuming appeals, hearings), which can postpone various actions (e.g., license revocation, depositor repayment), resulting in asset deterioration and less recovery through liquidation. These problems can often be exacerbated by bankruptcy trustees, who may be responsible for a bank's liquidation but know little about the banking business. One of the biggest problems regarding bank resolution in countries without a special bank insolvency regime is the common inability to make prompt payment to depositors.

The commercial bankruptcy system is primarily concerned with protecting creditors.<sup>8</sup> In bank bankruptcies, therefore, there is conflict between public and private interests. Some jurisdictions solve this problem by establishing special bankruptcy regimes for banks, whether as a separate proceeding, such as that enjoyed in the United States by the Federal Deposit Insurance Corporation (FDIC), or as an administrative function within the banking law, subject to review and finalization by the commercial bankruptcy court. In either case, any damages that a shareholder or creditor may be awarded are limited to financial amounts and not injunctions or reversals of decisions (to close the bank, for example). One argument against involving bankruptcy courts in the problem bank resolution process suggests that "Since banks are already subject to special regulation which determine the conditions of their operation, it is only the bank supervisor who is in a position to determine whether a bank is viable."<sup>9</sup>

The policies and procedures specified in this manual work best in countries with a special insolvency regime for banks; that is, where supervisors and liquidators are not hampered in taking expedient action by shareholder and creditor appeals processes that are common to commercial bankruptcy law.<sup>10</sup> See Table 1.1 for a comparison of selected elements for the two systems.

<sup>4</sup> An assisted transaction, such as a purchase and assumption (P&A) agreement, can help accomplish both these goals, with the added benefit of keeping a good deal of the failed bank's assets in the private sector.

<sup>5</sup> A country's banking law usually defines the conservator's powers, duties, and responsibilities.

<sup>6</sup> An example of an exception to this general statement occurred during the U.S. savings and loan bailout when the Office of Thrift Supervision revoked thrift licenses and appointed the Resolution Trust Corporation as conservator.

<sup>7</sup> Intervention is covered in Chapter 5. Note that, although a bank is in conservatorship, it is not necessarily a failed bank; conservators would do well to follow Chapter 5 guidelines while taking stock of the bank under their management. After all, as a substitute for bank management and the board of directors, conservators are responsible for the security and value maintenance of the bank's assets.

<sup>8</sup> Also in many countries, the commercial bankruptcy system places an emphasis on protecting shareholders.

<sup>9</sup> Eva Hupkes, "Insolvency – Why a Special Regime for Banks?" *Current Developments in Monetary and Financial Law*, Vol. 3 (International Monetary Fund, Washington, 2003) p. 8.

<sup>10</sup> Many countries' banking laws provide for administrative bank liquidation and are not subject to commercial bankruptcy measures until after completion of administrative liquidation, if then.

TABLE 1.1

## Contrasting a Special Bank Insolvency Regime with Commercial Bankruptcy Law

Level of Judicial Review	Special Bank Insolvency Regime	Commercial Bankruptcy Law
Judicial review	A judge cannot substitute his opinion for the supervisory authority's expertise and reverse that authority's actions (e.g., bank license revocation). Successful shareholder (or other) appeals are restricted to monetary damages, not reversal of action.	Based on a successful shareholder appeal, a bankruptcy judge can often reverse the supervisory authority's actions (e.g., order the banking license restored).
Claims process	A receiver has the power to allow or disallow claims. The holder of a disallowed claim may litigate its claim in federal court.	A bankruptcy trustee can object to a claim, but the bankruptcy court makes the allowance decision.
Contract repudiation	A receiver may repudiate any burdensome contract within a "reasonable time" of appointment.	A bankruptcy trustee can repudiate only executory contracts.
Stay of litigation	A receiver can request a stay of legal proceedings of up to 90 days.	The automatic stay in bankruptcy becomes effective immediately upon the bankruptcy petition filing.
Avoidance powers	Both a receiver and bankruptcy trustee have avoidance powers, that is, the ability to pursue fraudulent transfers by obligors made with the intent to hinder, delay, or defraud the institution.	A bankruptcy trustee generally can use only the defenses that were available to the debtor to defeat claims.
Special defenses	A receiver has special statutory defenses that it can use to defeat the defenses of obligors of a failed bank.	

Note: This table was adapted from Federal Deposit Insurance Corporation, *Resolutions Handbook* (Washington, 1998).

In countries where there is no special insolvency regime for banks, supervisors and liquidators may have to modify the guidance from this manual to adapt to the local situation. (Many of the measures described here can work equally well in circumstances where banks are liquidated through commercial bankruptcy courts.) Moreover, this manual (especially Chapter 7) assumes that reasonable creditor rights exist in the country (e.g., enabling a liquidator to take possession of collateral securing a nonperforming loan).

Additionally, many countries may have social contracts or labor union rights that may hinder problem bank resolution. The supervisory authority and the legal adviser must resolve these problems with the union or employee representatives. Reasonable severance may be called for; however, employee issues cannot justify forbearance in resolving a problem bank.

The legal representative of the supervisory authority will have ongoing duties throughout the resolution process. Generally, the representative will be involved in drafting corrective measures, legal documents, and any required notices. Additional duties will consist of providing legal assistance to a conservator or liquidator on broad matters, such as challenges to the supervisory authority's actions, and more specific matters, such as assets in litigation, foreclosures, bankruptcies, etc.<sup>11</sup> To the extent that the legislative system permits, the legal representative should assist outside counsel or liquidation staff, or both, in actively pursuing insider abuse and professional liability claims (e.g., actions against the failed bank's directors and officers, auditing firms, legal firms), when there is negligence.

Finally, the supervisory authority and the deposit insurance agency (DIA), as applicable, may want to consider pro-

<sup>11</sup> Duties of the legal adviser during the various phases of bank resolution are specified in more detail in the appropriate chapters.

viding legal protection for their employees' actions taken in good faith and in the normal course of their duties during the conservatorship or receivership process.

## DEPOSIT INSURANCE DURING BANK FAILURES

To be thorough, this manual assumes that a narrow-mandate DIA exists. A narrow-mandate DIA has the primary responsibility of repayment of insured depositors; its bank resolution responsibilities are limited.<sup>12</sup> In countries with no extant DIA, however, modifications to this guidance will be necessary.

Countries that have a DIA generally require repayment of insured depositors within a specified period. Many DIAs have adopted the European Union Directive on Deposit Insurance, which requires repayment within three months;<sup>13</sup> however, to maintain confidence in the banking system, more prompt payment is preferred. DIA legislation generally specifies a trigger event (i.e., intervention, appointment of receiver, or revocation of a banking license) after which insured deposit repayment is to begin. Following the trigger event, the DIA is to compensate insured depositors according to the law.<sup>14</sup>

<sup>12</sup> Other duties for a narrow-mandate DIA include managing the fund and filing a subrogated claim for insured deposit repayments. In countries where the DIA has a narrow mandate, the supervisory authority will bear virtually all the responsibility for bank resolution. Where a DIA has a more involved role in bank resolution, the responsibilities explained in this manual will need modification to reflect responsibility divergence.

<sup>13</sup> As of the date of this printing, an EU revision of the directive was in process that would require insured depositor repayment to begin within 20 days.

<sup>14</sup> Countries' deposit insurance and banking laws must be harmonized so that the trigger event is defined equally in each piece of legislation to avoid any confusion or conflict.

To maintain confidence in the banking system and minimize financial disruption, payments to insured depositors must be made as promptly as possible. Therefore, it is important that the DIA be involved early in the problem bank resolution process and work closely with the supervisory authority to accomplish this goal. Involvement early in the process helps to (1) prepare for insured deposit repayment and (2) analyze the impact of bank failure(s) on the deposit insurance fund (i.e., determine whether emergency funding will be needed).

There should be official documentation (e.g., legislation, regulation, or a memorandum of understanding) to formalize this agreement and set forth the responsibilities of each party. The agreement must provide for information, and possibly resource sharing between the two parties, along with division of responsibilities during a bank failure. As mentioned above, the DIA should be involved in, or at least informed about, marketing and negotiations of an assisted transaction (i.e., P&A and insured deposit transfer) or contracting with another bank to act as paying agent for insured deposits, among other duties.

This partnership arrangement is crucial, especially during the following periods:

- Bank intervention where the DIA would bear responsibility for reconciliation of deposit liabilities and computation of insured deposit amounts (in cases that go directly to receivership)
- Conservatorship where plans for final resolution take shape
- Bank resolution when negotiations for an insured deposit transfer or other paying agent bank transaction may take place
- Liquidation during the receivership, because the DIA, in subrogation to insured depositors, is likely to have the largest claim against the receivership (or especially when the DIA has a broad mandate and acts as liquidator or receiver).

## MEDIA AND PUBLIC RELATIONS

Public awareness and education are important to maintain confidence in a country's banking system. Any government body (supervisory authority, DIA, etc.) that implements new or reform programs has the responsibility to promote public understanding by developing communications plans and a formal media and public relations structure. This section covers media and public relations issues regarding bank intervention, conservatorship, and final resolution.

All safety net participants (i.e., central banks, regulatory authorities, and DIAs) should strive to develop sound media relations and communications programs to build bridges among the press, public, government, and banks. An official communications program serves two basic purposes: first, to respond to legitimate media inquiries; and second, to help

carry out the agency's mission of promoting reform while fostering a safe and sound banking system.

A supervisory authority and DIA should coordinate their efforts to promote a consistent message to the public. This is crucial in winning and maintaining public confidence in the DIA and banking system, especially in an emerging market economy.

Press releases and public appearances by senior executives can help build long-standing relationships and trust with media representatives who cover the financial sector. Learning about the needs of the media will provide an opportunity to communicate authorities' perspective on events and issues. When this perspective is included in news reports, it will contribute to the public's confidence in the underlying strength of the banking system and the DIA. These relationships will prove invaluable when the banking sector is experiencing problems.

Management of media and public relations is extremely important at virtually every stage of problem bank resolution. To maintain confidence in the banking system, proper handling of the media and public is critical during intervention, conservatorship, resolution, and liquidation. The goal is to deliver the message that authorities have taken a strong and serious action that will ultimately strengthen the banking sector.

Before any problem bank action is taken, communications departments from both the supervisory authority and the DIA should coordinate and provide information through one spokesperson. They should prepare and deliver a media statement immediately after taking control of a bank, providing information in a positive light to reassure the public. The information piece should stress that authorities have acted in the best interests of the depositors and the financial stability of the banking system. (See the section on media and public relations in Chapter 3 for specific guidance during a bank intervention.)

Without a communications plan, authorities will often spend much of the time on the defensive, reacting to criticism that may or may not be fair or accurate. This can be stressful and have an adverse impact on the banking system's credibility and effectiveness.

## CHAPTER SUMMARIES

Chapter 2 provides the background for problem bank resolution by discussing problem bank supervision and the various measures and procedures used by a supervisory authority to rehabilitate, restructure, or resolve a problem bank.

Chapter 3 covers bank intervention procedures. When progressive enforcement actions have failed to restore a bank to profitability or there is no chance for the bank to return to profitable operations, or both, the supervisory authority will decide to intervene the bank (with the aim to either rehabilitate it through conservatorship or liquidate it according to the law). The primary goal of a bank intervention is to control and inventory the assets of the bank, and to compensate insured depositors. A bank intervention team should be prepared to accomplish functional duties related to security,

cash operations, assets, deposit operations, facilities, information technology, and legal matters. Depending on the number of branches, branch teams must be prepared to perform the same functions at each branch.

Chapter 4 reviews conservatorship operations. If the supervisory authority believes there is a chance to rehabilitate the bank, then it may appoint a conservator to accomplish this objective.<sup>15</sup> Upon appointment, the conservator should have management control over the institution, with powers that replace those of the board of directors and senior management. The conservator should be given a specific time frame in which to thoroughly analyze the bank's condition and prepare a resolution plan, if feasible, or liquidation. During conservatorship, the bank should remain open and maintain confidence in the banking system by allowing depositors access to their funds. Conservatorship functions should be limited (e.g., there should be no new lending) and focused on cost-saving measures and asset collection.<sup>16</sup>

Chapter 5 covers various bank resolution alternatives, along with methods for marketing a problem bank via a P&A agreement or an insured deposit transfer. If it is determined that it is not cost-effective to rehabilitate the bank, then liquidation through receivership should begin. To provide prompt repayment to insured depositors, the receiver should work

with the DIA to market the bank via a P&A whereby another bank would purchase certain assets and assume certain liabilities of the bank.<sup>17</sup> Failing that, the receiver should attempt to arrange for another bank to act as paying agent for the DIA to compensate insured depositors. In some countries, depending on the competitive environment, banks may bid for the right to assume the deposits because it is an inexpensive method of increasing market share. In other countries, the DIA or supervisory authority may have to pay a bank a fee to act as paying agent. Problem bank resolution alternatives may be limited in countries without special bank insolvency regimes. It is critical that advance preparation for both intervention and resolution be concurrent and well coordinated.

Chapter 6 looks at the operations and administrative procedures for bank liquidation or receivership and discusses liquidation office structures. Functions that relate to depositor and creditor claims, settlements, legal, management information systems, audit, and other administrative matters are covered.

Chapter 7 discusses asset management and disposition. A receiver should responsibly liquidate a failed bank's assets with the goal of maximizing recovery to uninsured depositors and creditors of the receivership, using present value concepts in asset sales and collections. Standardized procedures are presented that deal with asset liquidation, including delegation of authority, case memorandum systems (i.e., a decision-making system), and reporting and filing systems.

<sup>15</sup> Banking laws in some jurisdictions envision using this as a period to gain control and plan for an orderly resolution, even if there is no chance of rehabilitation.

<sup>16</sup> If deposit outflow is so great that it proves untenable to continue operations, then the bank should be put into receivership even if the conservatorship period has not run its course.

<sup>17</sup> If insured deposits exceed the amount of "good" assets, the DIA would be expected to fund the difference.



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# Problem Bank Resolution and Supervision

A supervisory authority's bank supervision department must be proactive in identifying and responding to emerging issues and problems. Off-site analyses of individual bank and banking system data, on-site inspection activity, and frequent open communication with bank administrators are essential to effective supervision. When problems arise, the supervisory authority should tailor its response to the situation and deal with the matter in a timely manner. Strong supervision can be effective in avoiding undesirable consequences that lead to conservatorship and receivership. Box 2.1 details some of the characteristics of problem banks.

When a bank is identified as a problem bank (i.e., one in potential danger of failure), it must be closely monitored on a daily basis. At times individual or aggregate financial indicators, or both, resulting from on-site and off-site activities will raise supervisory concern across a broad segment of the market. Such conditions call for close monitoring of the level of classified and nonperforming loans. Authorities must remain ready to implement corrective action when and as warranted.

Figure 2.1 represents a decision tree for problem bank resolution. The content of this manual follows the flow of the decision tree, especially with regard to the more serious actions of bank intervention, conservatorship, and receivership.

## PROBLEM BANK SUPERVISION

### Corrective Measures

A bank's managing board and owners are responsible for the troubled bank's problems and for correcting them. If the bank fails, it is the fault of these parties for not performing their duties and responsibilities effectively and successfully.

Generally, a central bank's bank supervision department has various informal and formal measures to deal effectively with problem banks (decision tree boxes 2 and 3 in Figure 2.1). These tools include the following:

- Written warnings
- Monetary penalty assessments

- Removal of bank personnel<sup>1</sup>
- Restricting shareholders' rights<sup>2</sup>
- Other corrective action to remedy unsafe and unsound practices and conditions.

Progressive administrative or enforcement action should comprise a formal policy for dealing with problem banks. Actions should gradually become stronger based on failure to implement corrective measures. In other words, the supervisory authority should progressively build up to severe enforcement actions instead of implementing such actions initially. The best corrective measure strategy is the one that accomplishes the desired objective with the least exposure and risk to the supervisory authority. The best action is the one taken at the lowest level of authority under the law and produces corrective results in a satisfactory period of time.

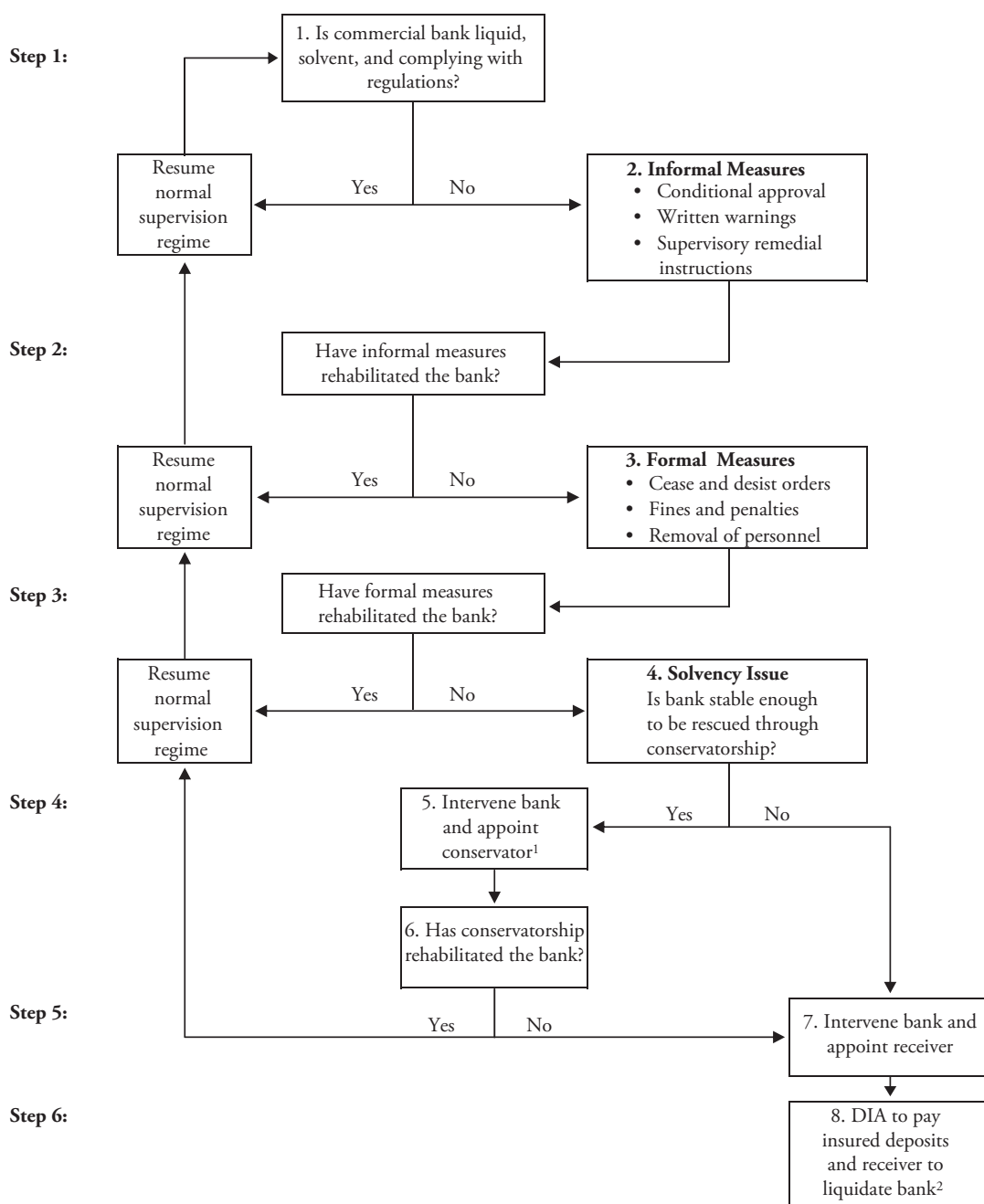
Because it is in the public interest for banks to operate safely, the supervisory authority should work with the bank to get problems corrected or eliminated. The supervisory authority should also encourage and, when necessary, pressure the bank's managing board to take the necessary actions and eliminate existing problems. These actions should be documented by appropriate written agreements between the supervisory authority and the bank. The supervisory authority should communicate to the bank and its boards that non-compliance with such an agreement may lead to more severe action.

Additionally, as mentioned earlier, it is important to involve the deposit insurance agency (DIA) early in the problem bank process so that insured deposit repayment can be prepared and the potential impact on the reserve fund analyzed. The DIA should be involved when a bank moves from

<sup>1</sup> When persons are removed by such an order, they should also be permanently barred from ever working for any other bank.

<sup>2</sup> This can include barring shareholders from voting their ownership at a general shareholders' meeting and can also provide for the forced divestiture of shares by an owner that is a company and not an individual.

**Figure 2.1 Decision Tree for Problem Bank Resolution**



<sup>1</sup> In countries where banking law provides for appointment of conservator.

<sup>2</sup> In countries where a deposit insurance agency (DIA) exists.

informal to formal enforcement measures, at the latest.<sup>3</sup> See Table 2.2 for examples of enforcement actions.

<sup>3</sup> Some supervisory authorities contend that it is inappropriate to involve a DIA because of the confidential nature of the information involved. DIA employees should be “fit and proper” professionals and be privy to necessary information to fulfill their mandate. If banking laws preclude such involvement, then the banking law should be amended to allow such information sharing.

As mentioned above, enforcement action should be progressive, so that actions taken help build a case for stronger action if needed later. The supervisory authority should help the bank correct its problems by implementing constructive and cooperative measures. If bank officials do not take adequate recommended actions, however, the supervisory authority can progress to stronger action. For example, the supervisory authority and the bank’s management board may

### Box 2.1. What Makes a Problem Bank?<sup>1</sup>

#### Management Oversight Deficiencies

Although economic conditions are a major influence on a bank's well-being, management is the dominant factor. Decisions made today can have far-reaching implications on a bank's future condition, and a strong manager will take steps to avoid or mitigate the severity of possible adverse economic forces. Here are some common management deficiencies:

- Nonresponsive management
- Passive or uninformed board of directors
- Increasing noncompliance with laws or internal standards
- Insufficient planning and response to risks
- Inadequate talent and experience at the CEO level.

#### Significant Off-Balance-Sheet Exposure

With the increase in bank securitization activity and the proliferation of capital market products, more and more credit risk is shifting to off-balance-sheet transactions. Traditionally, off-balance-sheet credit risk has come primarily from loan commitments and letters of credit. The credit risk in these products is straightforward. The credit risk inherent in capital markets products, such as asset securitizations and derivatives, is more difficult to quantify.

#### Asset Quality Deterioration

Whether caused by economic factors, poor management, anxiety for earnings, insider abuse, or other factors, poor asset quality is a factor in nearly all problem banks. The following signals may indicate asset quality deterioration:

- Increasing levels of past due and nonperforming loans as a percent of loans, either in aggregate or within loan types
- Increasing levels of other real estate owned
- Increasing levels of interest earned not collected as a percent of loans
- Deterioration in local economic conditions
- High growth rates in overall loans or individual loan types, particularly subprime or high loan-to-value products
- Increasing proportion of long-term loans
- Large volume of policy and underwriting exceptions
- Large volume of loans with structural weaknesses
- Excessive credit/collateral documentation deficiencies
- Inadequate or inaccurate management information systems
- Inordinately high volume of out-of-area lending
- Large or increasing volume of unsecured lending
- Increasing concentrations.

#### Rapid Growth/Aggressive Growth Strategies

Excessive growth, particularly as measured against local, regional, and national economic indicators, has been viewed as a potential precursor to credit quality problems. Such growth can strain bank underwriting and risk selection standards, as well as the capacity of management, existing internal control structures, and administrative processes. Excessive growth may also reflect fundamental changes in bank practices. Changes in bank practices evidenced by excessive growth include changes in underwriting and pricing standards, revisions to customer/product risk tolerances, increased anxiety for income, introduction of unbalanced compensation programs, and expansion of, or changes to, lending areas or sources of loans. Therefore, aggressive growth will also serve to exacerbate problems at a bank with preexisting risk management deficiencies.

<sup>1</sup> This box is summarized from Comptroller of the Currency, Administrator of National Banks, *Problem Bank Identification, Rehabilitation and Resolution* (Washington, January 2001).

#### Strained Liquidity

Funding constraints can be precipitated for numerous reasons, including deterioration in a bank's financial condition, fraud, or external economic events. A bank's liquidity situation may also become compromised if its reputation "on the street" is suspect due to either real or perceived shortfalls. In any event, the extent of a potential funding problem depends on the risk tolerance of a bank's fund providers.

This is important because retail and wholesale fund providers have different credit and interest rate sensitivities and will react differently to changes in economic and bank conditions. Retail fund providers—generally insured public depositors—historically have not been credit- or interest rate-sensitive. In contrast, wholesale fund providers—typically other financial institutions, governmental units, large commercial and industrial corporations, or wealthy individuals—are usually placed by professionals and are generally credit- and interest rate-sensitive. The following are examples of potential liquidity strain indicators:

- Low levels of on-hand liquidity (i.e., money market assets and net unpledged marketable investment securities)
- Significant increases in large certificates of deposit, brokered deposits, or deposits with above-market interest rates, particularly in banks that have been heavily retail-funded
- Significant increases in borrowing and warehouse lines (assuming no seasonality)
- Funding mismatches (i.e., funding long-term assets with short-term liabilities)
- Higher costs of funds relative to the market
- Reduction in borrowing lines by correspondent banks
- Counterparty requests for collateral to secure borrowing lines.

#### Insider Abuse and Fraud<sup>2</sup>

Insider abuse and fraud have been contributing factors in many bank failures. Such conduct can quickly affect a bank's condition and undermine public confidence even in banks that are otherwise in sound condition. Financial institution fraud can occur throughout a bank's operations and usually is accompanied by a lack of oversight and controls. Some actions that constitute financial fraud include:

- Dishonest or fraudulent acts (especially regarding lending)
- Forgery or alteration of documents
- Misapplication of funds or assets
- Impropriety in reporting financial transactions
- Profiting from insider knowledge
- Disclosing securities transactions to others
- Accepting gifts from vendors.

Fraud and abuse typically are concealed from routine scrutiny; however, as with other types of problems, there usually are symptoms that can aid in detection. These can include transactions with insiders and their related interests that may indicate preferential treatment, a breach of fiduciary duty, or personal gain.

#### Risk Management Deficiencies

All risk management systems should identify, measure, monitor, and control risk. Although the structure of risk management systems will vary from bank to bank, areas to consider include:

- Policies (internal standards, risk tolerance limits)
- Processes (internal controls, audits, validation tests)
- Personnel (management, expertise levels, training)
- Controls (audit, management information systems).

<sup>2</sup> The term "insider" refers to a bank's executive management, board members, and major stockholders (and their families).

**TABLE 2.1**  
Examples of Informal and Formal Supervisory and Enforcement Actions

Type of Corrective Action	Description of Action
<b>Informal Actions</b>	
Supervisory authority-required board resolution	Bank-generated document designed to address one or more specific concerns identified by the supervisory authority. It is not a binding legal document.
Commitment letter	Document signed by bank representatives, reflecting specific written commitments to take corrective action in response to concerns identified by the supervisory authority. It is not a binding legal document.
Memorandum of understanding	A bilateral document similar to more formal enforcement actions in form and content. It is not a binding legal document.
Corporate leverage	An action by the supervisory authority to withhold or condition approvals as part of the corporate approval process.
<b>Formal Actions</b>	
Formal written agreements	A bilateral document signed by the board and the supervisory authority. Its provisions are set out in an article-by-article form to prescribe necessary corrective action. Violations of a formal written agreement can provide the legal basis for more serious proceedings (e.g., cease and desist).
Consent order	Similar in format to a formal written agreement. May be enforced through application to court. A cease and desist order is identical to a consent order but is imposed on an involuntary basis following an administrative hearing.
Temporary cease and desist order	Interim order to impose immediate measures pending resolution of a final cease and desist order. May be challenged in court within 10 days of issuance but effective on issuance.
Capital directive	An order designed for establishing and enforcing capital levels and for taking capital-related action. May be issued without a hearing before an administrative law judge.
Civil money penalties	Authorized civil money penalties for violations of law, formal written agreements, final orders, conditions imposed in writing, certain unsafe and unsound banking practices, and breach of fiduciary duty.
Conservatorship	Places the rights to control or dispose of the bank in the hands of a supervisory authority-appointed conservator.
Prompt corrective action measures	Mandatory and discretionary measures based on a bank's prompt corrective action category (e.g., restrictions).
Orders enforcing safety and soundness standards	Noncapital-based supervisory restrictions for banks that fail to comply with established safety and soundness standards. Following agency notification of a deficiency, the bank may be directed to submit a compliance plan. If the bank fails to submit a timely, acceptable plan or fails to adhere to an accepted plan, the supervisory authority may issue an order requiring the bank to take corrective action.

agree to certain corrective measures (e.g., change lending policies, increase capital, replace key officers, develop liquidity plan). If the measures are not implemented effectively and the bank continues to deteriorate, however, then stronger action is needed (e.g., a formal order or appointment of a conservator) to effect changes to protect the bank and its depositors.

Written agreements should include a warning that non-compliance may be met with stronger action. This will provide some leverage to ensure the bank's cooperation with the written agreement. The agreement proves consistency, legitimacy, and the determination of the supervisory authority to undertake the above-mentioned actions if necessary. The supervisory authority should explain to the managing board and owners that action (e.g., memorandum of understanding, letter of agreement) is being taken owing to their cooperative action and their commitment to correct the problems. The supervisory authority should also explain the various administrative enforcement actions (including conservatorship) provided in the law to the managing board and owners. Bankers also have to understand that harsher measures can be taken if real improvements are not made and the promised corrective actions are not adequately carried out.

If the bank subsequently tries to block stronger actions, the supervisory authority would have the signed written agreement as proof that the supervisory authority cooperated with the bank to resolve the problem. Then the supervisory authority could show that the bank (i.e., owners, managing board, officials) did not effectively comply with items of the agreement, which forced the supervisory authority to use stronger measures to protect the bank's depositors.<sup>4</sup>

Two of the most common examples of informal enforcement actions are moral suasion and letters of agreement (LOAs). Moral suasion is nonwritten communication and pressure for a bank to correct some problem. LOAs are informal written corrective measures. Using an LOA, the supervisory authority oversees and provides direction to management, requires certain corrective efforts by a bank's

<sup>4</sup> Good banking laws set forth clear appeals procedures for any corrective measure, including any deadlines, and how and where to file. Such appeal procedures allow the supervisory authority greater control of the process, while protecting management and shareholders' rights. Providing an appeals process can strengthen the supervisory authority's position if the bank deteriorates further and bank owners try to implement stronger actions later on.

**TABLE 2.2****U.S. Prompt Corrective Action Capital Categories**  
(In percent)

Capital Category	Total RBC	Tier 1 RBC	Tier 1 Leverage
Well capitalized	> 10	> 6	> 5
Adequately capitalized	> 8	> 4*	> 4
Undercapitalized	< 8	< 4*	< 4
Significantly undercapitalized	< 6	< 3	< 3

\*3 percent for 1-rated banks.

Note: RBC = risk-based capital.

managing board and officials, and requires periodic reports regarding corrective action achievements.

If informal enforcement measures are unsuccessful in bringing a problem bank to proper status, then formal action is required. When a bank's problems become severe enough for formal action, it is important to share information with the DIA, and, ideally, involve its officials in discussions and resolution plans.

Actions, whether informal or formal, can be tailored to the needs of the bank. For example, formal action, such as a capital directive or order, requires correction of deficient capital, whereas a management directive or order addresses a deficiency in management practices or actions. The latter order could serve to restrict certain types of lending, issuance of guaranties, liquidity problems, deceptive practices, related party activities, and so on.

If the bank's managing board does not cooperate or is careless in complying with regulations, then a supervisory authority order to cease and desist may be an appropriate action. This formidable action is designed to assure compliance with corrective measures at the risk of financial or other penalties. It is frequently used when the bank's officials cannot be trusted and need strong messages.

The articles in a cease and desist order are often similar to those in an LOA. The concept, however, is more forceful (i.e., an order versus an agreement). As with the LOA, the cease and desist order focuses on the changes to be made in order of priority. The order requires the managing board to take certain action to achieve desired objectives or it requires the managing board to take certain action to stop undesired activities. These requirements must be related to an existing problem or anticipated problems, and must be reasonably achievable.

The supervisory authority may also want to consider introducing internal transaction monitoring procedures for problem banks. Such procedures should be used for banks that are troubled but not yet candidates for conservatorship or receivership and could include (but not be limited to) the following:

- Requirement that cash shipments to the subject bank be dispatched only when there are sufficient funds in the bank's account or arrangements have been made for a loan from the supervisory authority.

- Prefunding of the subject bank's electronic credit transactions.
- Interception of electronic debit payment and settlement transactions moving through the supervisory authority's payment network with release subject to approval of a bank supervision official. This interception should not be apparent to the recipient bank/customer.<sup>5</sup>
- Maintenance of current branch location information for the institution.
- Maintenance of current contact information for bank supervision staff, DIA staff, and other key supervisory authority/DIA officials.
- Notification of supervisory authority branch office management officials as appropriate for effective coordination.
- Notification of home or host country supervisors as necessary.
- Daily assessment of public confidence levels.

### Prompt Corrective Action

Some countries have embraced prompt corrective action (PCA) in dealing with problem banks. PCA includes provisions for discretionary and mandatory supervisory action by the supervisory authority.

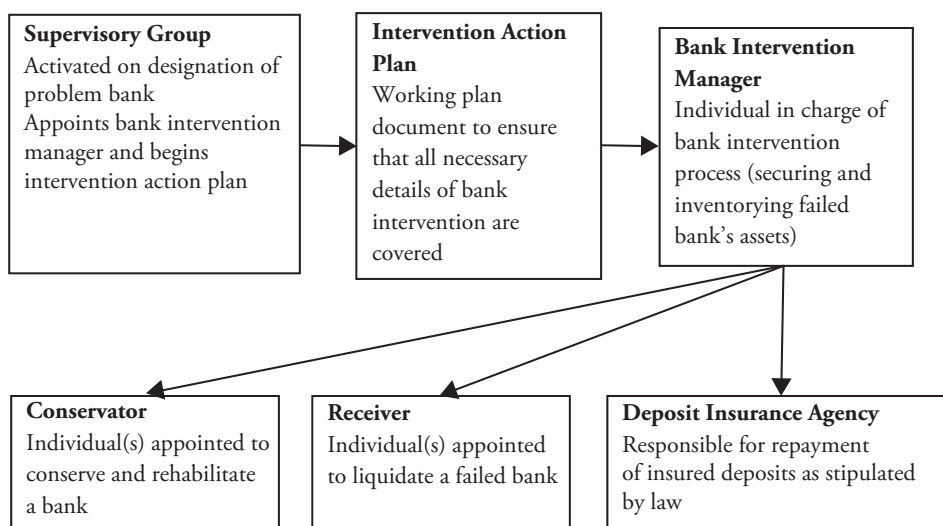
The statutory and regulatory framework of PCA establishes a capital-based supervisory scheme that requires regulators to place increasingly stringent restrictions on banks as regulatory capital levels decline. PCA merely assigns banks to certain capital categories and subjects them to the respective requirements, limitations, and restrictions of those categories. Regardless of a bank's capital level, the bank is not considered well capitalized under PCA if it is subject to a cease and desist order, a formal agreement, or a capital or PCA directive that requires it to achieve or maintain a higher level of capital.

Table 2.2 shows examples of PCA capital categories as applied in the United States.

PCA usually contains an important provision that authorizes examiners to reclassify a bank's capital category to the

<sup>5</sup> At times, rejecting a transaction may cause greater harm or a systemic problem. In such cases, a supervisory authority official must take a decision regarding disposition alternatives. The supervisory authority's lending powers may be needed; hence, all prerequisites for lending should be in place.

Figure 2.2 Bank Intervention Flow Chart



next lower level when based on supervisory criteria. This discretionary aspect of PCA is used when examiners determine that a bank is in an unsafe or unsound condition or is engaging in an unsafe or unsound practice. For example, if the bank is well capitalized, the supervisory authority can reclassify it as adequately capitalized. Likewise, if the bank is in the adequately capitalized category, the supervisory authority can reclassify it as undercapitalized. Once reclassified, the bank may be subject to one or more limitations, requirements, and restrictions applicable to that category under PCA.<sup>6</sup>

## PROBLEM BANK RESOLUTION

When progressive enforcement action in conjunction with private efforts by a bank's owners and managers has failed to rehabilitate the bank, the supervisory authority can place the bank in conservatorship or receivership. Hoping that a bank will generate enough earnings to recover or that capital will inexplicably grow is not an effective approach to bank resolution. Scenarios involving the liquidation of domestic banks include cases where a bank suffers from poor management or asset quality, or both, and is slowly deteriorating, with no chance of recovery. If there is intrinsic, or franchise, value to the bank, such a case might call for conservatorship.<sup>7</sup> In other cases, where a bank has severe financial problems as a result of taking huge risks in order to grow, or is engaging in illegal activities, it is probably best to go directly to receivership to

minimize further losses.<sup>8</sup> Either action requires bank intervention (decision tree boxes 5 and 7 in Figure 2.1; see also Figure 2.2, which is a bank intervention flow chart).

## Intervention

The primary goal of a bank intervention is to control and inventory the assets of a bank, prepare a final balance sheet and, as applicable, compensate insured depositors. The supervisory authority and the DIA must work closely to accomplish these goals. Supervisory authority personnel are responsible for the inventory and control of assets, while the DIA is responsible for making repayment to insured depositors.<sup>9</sup> A bank intervention team should be prepared to accomplish functional duties related to security, cash operations, asset control, deposit operations, facilities, information technology, and legal matters. Depending on the size of the bank, some of these functions may be combined. Depending on the number of branches, branch teams must be prepared to perform the same functions at each branch (see Chapter 3 for more details).

## Conservatorship

If the supervisory authority believes that there is a chance to rehabilitate the bank (decision tree box 4 in Figure 2.1), then conservatorship (decision tree box 5) may be a good option. When a conservator is appointed, that person should be granted management control over the institution, with powers that replace those of the board of directors

<sup>6</sup> Summarized from Comptroller of the Currency, Administrator of National Banks, *Problem Bank Identification, Rehabilitation and Resolution* (Washington, January 2001).

<sup>7</sup> On the other hand, as noted earlier, some jurisdictions envision using the conservatorship period to gain control and plan for an orderly resolution, even if there is no chance of rehabilitation.

<sup>8</sup> After any significant action, such as intervening a bank, it is important to monitor deposits throughout the banking system for contagion.

<sup>9</sup> In some jurisdictions, where the DIA has a broad mandate that includes bank resolution responsibilities, the DIA will take a greater role in staffing intervention procedures, and the supervisory authority will have a lesser role.

and senior management. The conservator should be given a specific time frame (usually 60 days, but could be longer depending on size and complexity) in which to thoroughly analyze the bank's condition and prepare a feasible rehabilitation plan. During conservatorship, the bank should remain open to maintain confidence in the banking system by allowing depositors access to their funds. The conservatorship should perform limited functions (e.g., there should be no new lending) and focus on cost-saving measures and asset collection. If deposit outflow is overwhelming, causing operations to halt, then the bank should be put into receivership even if the conservatorship period has not run its course (see Chapter 4 for more details).

### Final Resolution

To provide prompt repayment to insured depositors, the DIA should work with the supervisory authority's bank supervision department or the conservator, or both, to market the bank via a purchase and assumption (P&A) agreement (decision tree boxes 3 and 6 in Figure 2.1). A P&A

agreement provides for another bank to take certain assets and assume the first bank's insured deposits, acting as paying agent for the DIA to compensate insured depositors. In some instances, depending on the competitive environment, banks may bid for the right to assume the deposits because it is an inexpensive method to increase market share. In other instances, the DIA or supervisory authority may have to pay a bank a fee to act as paying agent (see Chapter 5 for more details).

### Receivership

If it is determined that it is not cost-effective to rehabilitate a bank, then liquidation through receivership should begin (decision tree boxes 7 and 8 in Figure 2.1). The DIA is responsible for insured deposit repayment, whether directly or via a paying agent bank. The receiver should responsibly liquidate the failed bank's assets with the goal of maximizing recovery to uninsured depositors and creditors of the receivership, using present value concepts in asset sales and collections (see Chapters 6 and 7 for more details).



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# Bank Intervention Procedures<sup>1</sup>

The primary goal of a bank intervention is to control and inventory the assets of the bank, prepare closeout financial statements (balance sheet and income statement), and, as applicable, compensate insured depositors.<sup>2</sup> The supervisory authority and the deposit insurance agency (DIA) must work closely to accomplish these goals. Supervisory authority personnel are responsible for the inventory and control of assets, whereas the DIA is responsible for making repayment to insured depositors.<sup>3</sup> A bank intervention team should be prepared to accomplish functional duties related to security, cash operations, asset control, deposit operations, facilities, information technology, and legal matters. Depending on the size of the bank, some of these functions may be combined. Depending on the number of branches, branch teams must be prepared to perform the same functions at each branch.

There are three situations when a bank intervention is necessary:

- When a bank has its license revoked and is closed (whether via an assisted transaction or straight to liquidation), a situation that calls for prompt and speedy action to accomplish the intervention procedures.
- When the supervisory authority appoints a conservator—generally, banking law does not require onerous time constraints, but the authorities should still strive for prompt and speedy action, particularly with regard to securing assets.
- When the conservator executes a resolution plan (such as a P&A agreement)—since there would have been an intervention upon appointment of a conservator, this can be considered an update of the completion of the asset inventory and financial statements.

Banking law usually empowers the supervisory authority to appoint a conservator or receiver for a problem bank. As mentioned in Chapter 1, banks need not necessarily be placed in conservatorship prior to being placed in receivership for final resolution. Often a bank will be in such a dire financial condition that it will necessitate skipping the conservatorship stage and proceeding directly to receivership. In such situations, the checklists and directions in this chapter can be streamlined, omitting those provisions dealing with continued operations.

There are two alternatives to guide the extent of intervention activities in case of conservatorship:

1. Where existing owners and management cooperate in trying to preserve value and rehabilitate the bank; and
2. Where a bank's owners and management do not cooperate and oppose any intervention.

In the first case, the conservator may be comfortable with the quality of the bank's staff, operations, and controls, and not require a full-scope intervention. The conservator would do well, however, to follow this chapter's guidelines to take stock of the bank to be managed. After all, as a replacement for bank management and board, the conservator is responsible for securing and preserving the value of the bank's assets.

In the second case, the supervisory authority should fully incorporate the bank intervention procedures outlined in this chapter to prevent asset stripping, destruction of records, and so on, and any consequent potential adverse impact on public confidence.

Whether a bank is placed in conservatorship or receivership, there are certain basic operating procedures and policies that must be observed. For example, though most banks have adequate management information, auditing, reporting, and filing systems, the conservator or receiver must ensure that these systems meet minimal standards. Where there are deficiencies, the conservator or receiver should use the appropriate sections of Chapters 6 and 7 as a guide.

In the case of problem bank resolution, regardless of whether there is an acquiring bank or the bank goes to liquidation, the intervention team must be prepared for a large number of customers who want their deposits. Deposit operations team members, comprised of the DIA staff, must be

<sup>1</sup> An earlier version of this chapter was published in David C. Parker, *Provisional Administration - FBA* (Washington, U.S. Agency for International Development, 2000).

<sup>2</sup> If the supervisory authority believes that there is a chance to rehabilitate the bank, then conservatorship may be a good option. Conservatorship operations are discussed in Chapter 4.

<sup>3</sup> In some jurisdictions where the DIA has a broad mandate that includes bank resolution responsibilities, the DIA will take a greater role in staffing intervention procedures, and the supervisory authority will have a lesser role.

prepared to repay insured depositors as well as counsel uninsured depositors on their uninsured amount (and how to file a claim for that amount).

## DUTIES AND RESPONSIBILITIES OF INTERVENTION TEAM

### Conservator

- Responsible for conserving the assets and liabilities, preparing a final resolution plan, and winding up all affairs of the conservatorship
- Handles all contacts with the media after the intervention period
- Has power of attorney to execute documents on behalf of the conservatorship.

### Receiver

- Responsible for liquidating the assets and liabilities and winding up all affairs of the receivership
- Handles all contacts with the media after the intervention period
- Has power of attorney to execute documents on behalf of the receivership.

### Bank Intervention Manager

- Plans, manages, and coordinates all activities relating to the intervention
- Manages the intervention team, including release dates
- Acts as the primary contact for the assuming bank and failed bank employees.

### Accounting Team

- Closes out the books of the failed bank
- Reconciles general ledger accounts and compiles an adjusted final balance sheet for the failed bank.

Where there is a purchase and assumption (P&A) agreement and an assuming bank, the accounting team:

- Compiles a balance sheet for the assuming bank reflecting the assets and liabilities assumed per the agreement, and a balance sheet of assets and liabilities retained by the receiver
- Determines the amount of money to transfer to the assuming bank on the first business day following intervention
- Coordinates continuation of asset servicing of receiver's loans by the assuming bank (per the servicing agreement)
- Manages the settlement process, including:
  - Administering any transactional agreement (e.g., P&A)
  - Monitoring transactions to assure compliance with all terms and conditions of the agreement by the assuming bank and the receiver

- Administering the transfer of funds to and from the assuming bank for the payment of assets sold under the agreement and the reimbursement of expenses incurred on behalf of the receiver or the assuming bank
- Notifying all correspondent banks and transfers accounts
- Acting as the assuming bank's key contact during the settlement process.

### Asset Team

- Inventories, segregates, and secures pooled notes, files, and collateral
- Determines, based on the agreement, the split of assets between the assuming bank and the receiver
- Receipts assets to the assuming bank
- Begins disposal of retained other real estate, vehicles, and other assets
- Reviews assets retained by receiver, assembles packages, and implements procedures to market and sell the assets, via a sealed bid process, to interested investors (see Chapter 7).

### Branch Operations Team<sup>4</sup>

- Controls branch premises and operations
- Takes control of the cash and any other valuable documents (notes, negotiable collateral, safekeeping items, and other negotiable instruments) at these branches
- Inspects branch sites and evaluates physical facility and local market, collects pending items such as approved or in process loans, and ensures that information flows and conservator or receiver controls are in place at every branch location
- Coordinates branch operations with functional areas, including facilities management, personnel, lending, teller, and deposit functions.

### Deposit Operations Team

- Responsible for the repayment of insured deposits
- Notifies and meets with uninsured depositors
- Completes determinations of insurance and creditor claims
- Determines and notifies the general creditors that the bank has failed and communicates the claims filing procedures (time period, etc.).

<sup>4</sup> The term "branch" is defined here as any office (e.g., loan processing office, branch office, etc.) where the bank conducts business and where valuable business records or property, or both, are held.

## Facilities and Security Team

- Responsible for financial and physical maintenance of office properties and other fixed assets
- Arranges and maintains work stations for all employees (locates and provides additional work space if needed)
- Arranges for delivery of copiers, fax machines, and printers as needed
- Places movable assets, such as vehicles, furniture, fixtures, and equipment, under control and immediately inventories them (from largest to smallest value)
- Safeguards the assets of the bank and safety of employees by preventing entry by unauthorized persons, vandalism of property, including files and records, and theft of bank property.

## Information Technology Team

- Coordinates and communicates with the data processing servicer, whether in-house or off-site
- Coordinates report generation and distribution
- Controls, transfers, or terminates any e-banking capability.

## Legal Team

- Works in an advisory capacity with the conservator or receiver and bank intervention manager prior to and during the bank intervention
- Ensures that the intervention documents are complete, accurate, signed, and properly filed
- Preparation and/or review of communications items
- Review of contingent liabilities and preparation of the closing memoranda and the legal closing book
- Oversight of inherited litigation intake
- Provides intervention team with legal interpretations of all transactional agreements
- Processes bond claims and director and officer insurance claims, with duties including employee interviews, desk audits, and gathering and inspection of bank records.

## Personnel Team

- Audits and inventories the failed bank's personnel files for receipt by the assuming bank
- Holds employee meetings for failed bank employees to explain the situation.

In summary, intervention (takeover) of a bank and appointment of a conservator or receiver are serious and often complicated procedures. Effective preliminary preparation and execution of the action plan can make the intervention much easier. This chapter sets forth the various roles and responsibilities of the supervisory authority and DIA

employees involved in the intervention.<sup>5</sup> It is divided into three sections:

1. Advance preparation for intervention
  - Intervention action plan
  - Management and legal
  - Information packages
  - Function areas
  - Advance preparation.
2. Immediate actions at intervention
  - Intervention steps
  - Management and legal
  - Public/media relations
  - Function manager plan and intervention actions.
3. Functional area checklists (Annex 3.1).<sup>6</sup>

## ADVANCE PREPARATION FOR INTERVENTION

### Planning

When it is determined that a failing bank cannot be recapitalized or rehabilitated by its owners and management, the supervisory authority may consider appointing a conservator according to the banking law. If it is determined that there is no chance of rehabilitating the bank, then the supervisory authority may skip the conservatorship stage and appoint a receiver to liquidate the bank. Either of these actions will require an intervention of the bank, with a primary aim of controlling and inventorying the bank's assets.

Upon this decision, a bank intervention manager should be appointed to carefully design an intervention action plan for the actual takeover of the bank (Annex 3.2). The bank intervention manager will administer and take fundamental responsibility for this action plan. The bank intervention manager is responsible for the critically important but short-term bank intervention process detailed in this chapter. A conservator is primarily responsible for the longer-term conservatorship process, whereas a receiver is responsible for the receivership process (liquidation of the bank's assets).<sup>7</sup> At the appropriate "trigger" event, the DIA is responsible for compensating insured depositors.

<sup>5</sup> The allocation of responsibilities assumes the existence of a DIA with a narrow mandate. For those jurisdictions where a DIA has a broader mandate, especially with regard to bank resolution activities, the various responsibilities must be modified. The tasks still must be accomplished; there just may be deviation from the text inasmuch as mandates dictate responsibility.

<sup>6</sup> Function area checklists are designed comprehensively so as to include duties that must be completed to ensure effective conservatorship operations. In cases where a bank is intervened to be placed in receivership, the checklists can be streamlined, with items regarding conservatorship operations eliminated. The items that can be eliminated from receivership checklists have been identified in the footnotes in each checklist.

<sup>7</sup> Depending on the size and complexity of the bank, it is possible that one person can fill more than one role, as in the case, for example, of a small bank.

### Box 3.1. Intervention Staffing

The bank intervention manager will decide the appropriate resource level for the bank intervention. This includes the number of personnel required to fulfill the functions, an adequate amount of supplies and equipment, and assurances of obtaining the necessary deposit reports.

The supervisory authority and deposit insurance agency (DIA) bear primary responsibility to staff the bank intervention team. Under the leadership of a bank intervention manager, appointed by the supervisory group, supervisory authority and DIA officers should act as function managers, to manage areas such as security, cash operations, asset control, deposit operations, technical facilities, information technology, and legal issues during the conservatorship. The bank intervention manager and function managers together comprise the bank intervention team. Depending on the size of the bank, the team can combine some of the intervention functions. Depending on the number of branches, branch teams must be prepared to perform the same functions at each branch.<sup>1</sup>

<sup>1</sup> In jurisdictions with a narrow-mandate DIA, the supervisory authority will bear the bulk of staff responsibility. In jurisdictions with a broad-mandate DIA, particularly those with bank resolution powers, the DIA will bear the bulk of staff responsibility. In case of a large bank intervention, either or both may need to employ contractors.

Former employees of the problem or failed bank can assist in these functions. For larger bank failures, it will probably be necessary to recruit supervisory authority employees from outside the bank supervision department.

- Supervisory authority's administrative staff can assist on inventory and control of fixed assets, to change locks, or to control certain records. (Note: intervened bank staff can assist with inventory functions; however, they should not have control of assets and/or records.)
- Supervisory authority's information technology experts can assist on computer control and security.
- Security concerns may require some type of assistance from other government authorities (e.g., the Ministry of Internal Affairs).
- The supervisory authority and bank staff should be prepared to work extended hours in the early part of the process.
- Prepare for emotional reactions by people involved, especially bank's staff. Supervisory authority staff must be firm while remaining calm and professional when dealing with bank staff and customers.

On the intervention organizational chart (Annex 3.3), the bank intervention manager reports to the conservator or receiver who has authority from the supervisory authority through the banking law. (Any decision beyond the conservator's or receiver's delegated authority will be referred to the appropriate level for disposition.) The bank intervention manager is supported by function managers responsible for the various intervention duties required.

The bank intervention manager has responsibility for the following:

- Coordinates and manages all intervention functions, including staffing level determination, personnel selection, designation of assignments, and liaison with all supervisory authority departments (see Box 3.1)
- Organizes and supervises intervention personnel in all aspects of the intervention, assuring that all resources are efficiently and properly used
- Provides input to the function managers regarding specific requirements for the intervention
- Coordinates all meetings and intervention personnel matters
- Establishes and ensures appropriate lines of communication with all function managers.

Some key items and time frames for specific assignments to consider for the bank intervention manager are:

- Use the intervention action plan as a checklist for planned actions and assignments (who, what, when, where, why, how)
- Ensure that all areas of risk will be controlled without delay

- Plan the date and entry time in a way that minimizes confusion, allowing for the most effective and efficient action. (Which key officials should be present and available? Do you plan a Friday afternoon entry and work during weekend?)
- Walk through action plan with key staff members
- Walk through action plan with everyone involved (maybe in function subgroups)
- Ensure that those involved understand their assignment.

One or two days before the intervention the conservator or receiver should review the intervention plan with the bank intervention manager and key staff members. Checklists should be finalized and approved by the bank intervention manager prior to this meeting. This is an opportunity to resolve any outstanding issues and make sure all duties have been assigned. It is also a good time to finalize the date and time for intervention.

The bank intervention manager and conservator or receiver should request a meeting with the bank's general director and key staff to be held at the bank immediately before the date and time of intervention.<sup>8</sup>

Generally, the supervisory authority will provide the legal adviser for the bank intervention team prior to the intervention. The legal adviser should plan to be on the premises with

<sup>8</sup> Depending on the circumstances, the general director and key staff will be relieved of duties and removed from the premises immediately upon intervention.

**TABLE 3.1**  
Intervention Documents

Document	Produced by:	Produced for:	Deadline for Completion
<b>Preliminary:</b>			
Problem bank resolution action plan Intervention organizational chart Initial bank information	BIM	Supervisory group, BIT	Begin upon problem bank designation and ongoing until intervention
<b>Communications:</b>			
Press releases Sample follow-up Q&A for press	BIM, communications officer, legal	BIM, supervisory authority/DIA officials, press	By intervention
<b>Intervention:</b>			
Function area checklists Bank account reconciliation guidelines Estimated loss in assets form Cash count sheets Asset review sheet	BIM, function managers	BIT	By intervention
Code of conduct for bank employees during conservatorship or receivership	Legal	Failed bank employees	By intervention
<b>Notifications:</b>			
Publication notice of appointment of conservator or receiver Notice for registration at the appropriate court Door notice of appointment of conservator or receiver Notice to general director of appointment of conservator or receiver Notice to correspondents of appointment of conservator or receiver Notice to bank employees of appointment of conservator or receiver Notice to shareholders, depositors, borrowers, and vendors of appointment of conservator or receiver	Legal	BIM, courts, receiver/conservator, general director, bank employees, correspondents, shareholders, depositors, borrowers, vendors	By intervention

Note: BIM = bank intervention manager; BIT = bank intervention team; DIA = deposit insurance agency.

the receiver at the entry into the bank and remain there for approximately the first week.

The legal adviser will have ongoing duties throughout the resolution process. Generally, the adviser will be involved in drafting corrective measures, transactional documents as applicable (i.e., P&A agreement), any required notices, and any required powers of attorney for the conservator or receiver, and responsible for providing legal assistance to a liquidator on broad matters, such as challenges to the supervisory authority's actions, and more specific matters, such as assets in litigation, foreclosures, and bankruptcies.<sup>9</sup> Additionally, to the extent that the legislative system permits, the adviser should assist outside counsel and/or liquidation staff in actively pursuing professional liability claims (e.g., actions against the failed bank's directors and officers, auditing firms, legal firms, etc.) when there is negligence.

Depending on the situation, the legal adviser may not thereafter be needed on a full-time basis but should remain on call and available to the receiver until the liquidation process is completed. Depending on the volume of bank interventions at any particular time, the supervisory authority may have several attorneys devoted to bank liquidation legal matters.<sup>10</sup>

A designated intervention team member should work with the legal division to prepare the following notices and other legal documents regarding appointment of the conservator or receiver:

- Publication in the [insert appropriate legal bodies names here] (Annex 3.4)
- Filing at the appropriate court (Annex 3.5)
- Door notification (Annex 3.6)
- Notice to the board of directors and management of bank (Annex 3.7)
- Notice to clearing system, correspondent banks, and ATM network (Annex 3.8)
- Notice to bank officers and employees (Annex 3.9)
- Code of conduct/consent and release for bank employees during intervention and conservatorship or receivership process (Annex 3.10)
- Notice to shareholders, depositors, borrowers, and vendors (Annex 3.11).

Table 3.1 contains a list of necessary intervention documents, including the responsible party and time frame for completion.

The sections below summarize basic preintervention duties and responsibilities according to the various function areas.<sup>11</sup>

<sup>9</sup> Duties of the legal adviser during the various phases of bank resolution are specified in more detail in the appropriate chapters.

<sup>10</sup> William Dudley, *Liquidation Closing Procedures and Liquidation Manual* (U.S. Agency for International Development, Washington, July 2003).

<sup>11</sup> Portions of this section are derived from the Federal Deposit Insurance Corporation's (FDIC) *Failed Financial Institutions Closing Manual* (Washington, 2004). Most, if not all, of these intervention actions are included in the various function manager checklists.

### *Conservator or Receiver*

If necessary, establish a preliminary failed bank employee retention strategy with the bank intervention manager, and management of any extant liquidation office, giving consideration to (1) the cost of the incentive versus the disruptive cost to the receivership should the employee(s) leave, (2) industry standards, and (3) alternative retention strategies. The receiver should hire any necessary employees on a limited-term contract in order to avoid labor problems later.<sup>12</sup>

Ensure that appropriate delegations of authority (see Chapter 7) and powers of attorney have been issued, as applicable.<sup>13</sup>

Make inquiries with the examiner-in-charge, or the appropriate bank employee, to determine when the bank employees were last paid and how much accrued vacation pay may be owed to them.

### *Bank Intervention Manager*

The bank intervention manager's main function is managing and coordinating all intervention team members to assure that the intervention goes as smoothly as possible. The bank intervention manager can delegate many of the functions to others; however, the bank intervention manager bears ultimate responsibility to assure completion of intervention activities as required. Initial activities include:

- Obtain and review a copy of the information package and other relevant information.
- Verify and coordinate with the function managers the number and distribution of noncomputer-generated reports and computer-generated reports.
- Determine the type of business conducted at each location.
- Develop strategies and assign responsibilities for business lines.
- Select a code name for the intervention.
- Ensure that lodging (if necessary) and meeting room arrangements have been made.
- Prepare "intervention packets" to be given to program areas and intervention team members (include organizational chart, telephone and fax number list, and information sheet).
- Coordinate with information technology (IT) team and get a copy of the preintervention IT analysis to determine the important information itemized on the IT checklist (e.g., When do accruals cut off? Can hold be placed on accounts?).

<sup>12</sup> Some countries have strict legislation regarding labor issues (i.e., retirement, severance pay, social benefits, etc.), which must be taken into account when dealing with staffing strategies.

<sup>13</sup> In some jurisdictions, a conservator or receiver has authority to conduct business on behalf of the bank because of appointment; in other countries the legal system may require a conservator or receiver to have an official power of attorney to represent the bank.

- Ensure that security and facilities teams are prepared to secure ATMs and night deposit boxes if locations are not purchased or the assuming bank wants them closed
- Conduct a preintervention meeting with the entire intervention team, making sure everyone understands what their job will be, whom they will report to, and how their assignment fits into the intervention as a whole.
- If applicable, contact the winning bidder, provide a copy of the assuming institution's preintervention information, and discuss the intervention process and weekend schedule and responsibilities, particularly in regard to deposit account holds and how to deal with the media (i.e., refer questions to supervisory authority's designated spokesperson). Stress the importance of confidentiality until the intervention.
- Obtain the following:
  - List of assuming bank's personnel attending the intervention
  - Name and telephone number of the contact person with the assuming bank
  - Assuming bank's board resolutions identifying names and signatures of employees authorized to sign official receipts
  - Insurance binder covering the institution building, contents, and liability, naming the conservator/receiver as additional insured as of institution intervention
  - Wire instructions
- Determine if payment of earned and unpaid payroll expenses of bank employees is in the best interest of the conservatorship/receivership and, if so, ensure payment prior to intervention.
- Obtain the failed bank employee roster and inquire among function managers if they need to use those employees for intervention activities. If possible, select a temporary employment service contractor as the method to pay failed bank employees for their services during an extended intervention or post-intervention period. For small, short interventions, arrange with the assuming bank to pay failed bank employees, with reimbursement through settlement.

### *Accounting Team*

- Review the information package to estimate the number and composition of assets that the receivership can expect to inherit.
- Review proposed transactional document (e.g., P&A agreement) for asset and liabilities splits with assuming bank, if applicable.
- Review bank's financial reports.
- Determine the staffing required for the intervention.
- Determine the computer equipment/software, and the supplies required to perform the accounting function.

- Attend preintervention function managers meetings and other meetings as applicable.

### *Asset Team*

- Review the information package to estimate the number and composition of assets that the receivership can expect to inherit.
- Review any nontraditional business lines in terms of how they operate, special skills needed, and staffing requirements.
- Determine the staffing required for the intervention.<sup>14</sup>
- Determine the computer equipment/software, and the supplies required to perform the asset intervention function.

### *Branch Operations Team*

- Identify the number of branches and the types of activities offered at each branch, the institution contact person, and the assuming bank contact (if applicable) at each branch. Plan for differences in language spoken, time zones, and hours of operation. For foreign branches, the banking and bankruptcy regulations of the country will take precedence and should be researched in advance. For branches located abroad, coordinate with the legal department to secure the services of an experienced banking attorney in each country prior to the intervention.
- Determine the staffing requirements of each branch. For large interventions with large branches, establish an on-call reserve force to help handle Monday customer lines and other unforeseen needs.
- Instruct each branch manager to check in during the first hour of the intervention to report status and problems.
- Obtain the address, directions to, phone number, and fax number of the branch and a copy of lease and landlord's name and phone number, if available.
- If a representative of the assuming bank plans to attend the branch intervention, prepare a copy of the closing overview for the representative's information. If this information has not been delivered, a copy should be provided just prior to the intervention or upon arrival of the representative.

### *Deposit Operations Team*

- Perform a preliminary insurance determination according to governing deposit insurance law.
- Identify any politically sensitive depositors such as churches, charitable or religious organizations, and public units unsecured, fully insured, and/or fully secured.

<sup>14</sup> For example, if most of the assets will be passed to an assuming bank via a P&A agreement, then fewer asset personnel will be needed for follow-up analysis of the assets.

## *Facilities and Security*

### Supplies:

- If needed, prepare a box of supplies to be sent to the intervention site; depending on the retail resources available at the intervention location, additional supplies may be obtained later.
- Ensure necessary forms and documents are loaded on laptop and a CD for back-up.
- Obtain printer for use at the hotel/failed bank.
- Arrange for an official seal, tape, or other means to control drawers, and use labels for inventory.

### Intervention team coordination:

- Review the information package and attend all preintervention meetings to determine the number of supplies, copiers, printers, and security officers needed to facilitate a smooth institution intervention.
- Prepare the intervention packets for distribution the intervention team members; suggested items to include information sheet, organizational chart, map with directions to the institution/hotel.
- As needed, arrange for intervention meetings with the team managers and/or entire intervention team.

### Logistics:

- If applicable, begin travel arrangements (i.e., hotel availability near the institution, airline schedules). Once the hotel is selected and a contract is negotiated, submit it to the bank intervention manager for the approval process. Ask for a 24-hour cancellation clause. Also, arrange for a room for meeting space and storage of supplies/equipment.
- Determine if the failed bank's existing facilities have the capacity to accommodate the intervention team. Arrange for additional work space if necessary (e.g., hotel conference rooms).

### Security:

- Meet with contracted security guard firm or police; provide instructions, determine locations and assignments.

## *Information Technology Team*

If possible, the IT manager should visit the failing institution to help prepare data files, equipment, and information needed for the intervention. The manager can use this opportunity to gather additional information and resolve unanswered questions where possible. Additional tasks include:

- Determine capability of stopping accruals, when to expect the download files, report generation capability, delivery logistics, and staffing.
- Coordinate with the bank intervention manager regarding the important information itemized on the IT checklist (e.g., When do accruals cut off? Can we



place holds on accounts? Has the bank been servicing loans for any other banks?).

### Legal Team

- Review the bank inspection report.
- Review the legal authority of the regulating and supervisory entities to commence the process, withdraw the bank's license, and designate a receiver, supporting the actions with legal foundations.
- Prepare the proper legal order (i.e., conservatorship or receivership) as required by law.
- Meet with the members of the receivership/liquidation team to review the strategy for the process.
- Provide the bank intervention manager with copies of applicable transaction documents (e.g., P&A agreement) once a bid has been accepted, if applicable.
- Review major contracts and agreements as requested by the conservator/receiver or the bank intervention manager (including letters of credit, open credit lines, unfunded and partially funded commitments, etc.).
- Accompany the conservator/receiver, the bank intervention manager, and the representative from the applicable supervisory authority when the proper legal notice (i.e., conservatorship or receivership) is served on the bank.
- Make sure that the notice is published in accordance with the law.
- Review important documents as indicated on the checklist (e.g., insurance policies, correspondence and claims, audit reports, board of directors minutes, legal and litigation files, etc.) for possible future legal action against the bank's directors and officers.
- Identify and prepare the initial target list of directors and officers whose electronic data are to be secured.

### Personnel Team

- Prepare sign-in/out sheets for intervention team and failed bank employees.
- Prepare timesheets for failed bank employees to use (unless theirs are acceptable).

### Information Packages

The bank intervention manager should ensure that information packages are developed and distributed to the bank intervention team, the conservator or receiver, and other appropriate supervisory authority employees prior to intervention. The information packages consist of:

#### 1. Master Package

The master package is strictly confidential and cannot be released to the public, bank personnel, or others who are not directly involved in the intervention. It should be available to the function managers and assistants for review only. It includes:

- Initial bank information (Annex 3.12) or general data summary about bank
  - Copy of supervisory authority appointment order and related documentation
  - List of bank personnel, members of bank board of directors, officers, management, and other staff
  - Organizational chart of the bank
  - Two most recent on-site examination reports
  - Most recent off-site report
  - List of key shareholders
  - Information on parties contributing to bank's problems
  - Any news items
  - Other relevant information.
2. Function Manager Packages
- List of bank intervention team and designated responsibilities
  - Copy of applicable sections of bank intervention manual, including checklist(s)
  - Bank data summary
  - Bank organization chart including personnel listing for designated function
  - Earlier examinations' summary reports
  - Bank intervention press release.

Each function manager should create and maintain the following files:

- Function plan and revisions (see function area section)
- Reports file (memorandum files of function area and bank).

## IMMEDIATE ACTIONS AT INTERVENTION

### Intervention Steps

Immediately prior to intervention, the bank intervention manager will conduct an intervention team meeting to go over the plan for entry into the bank. This meeting will include the initial intervention team and all other intervention team members. At this time, the bank intervention manager will go over the initial responsibilities for each team member. Any extra or special responsibilities will be assigned to the appropriate function manager.

The initial intervention team consists of:

- Bank intervention manager
- Senior officials of the supervisory authority
- Legal adviser
- Conservator or receiver
- Facilities/security function manager, along with any other necessary security personnel.

Note: The supervisory authority officials and *all* intervention team personnel should wear official identification badges during and after the intervention process.

The following are the *immediate* intervention steps:

- The initial intervention team enters the bank and meets with key bank officials and representatives.
- The designated supervisory authority official (this could also be the bank intervention manager, conservator or receiver, or designee) explains to the key bank officials what is taking place, and presents the intervention order to the general director or the representative in the general director's absence.
- The designated official advises the general director or the representative of the appointment of a conservator or receiver, introduces the conservator or receiver, and relieves the general director and selected management of their authority and responsibilities. The general director and problem management personnel should then be escorted from the premises (after collecting bank credit cards and any keys for bank-owned property—including automobiles).
- Ensure that the bank intervention notification is posted on the door.

### Security Team

- The security function manager should take immediate control of SWIFT and/or other wire transfer facilities.
- The security function and IT managers should ensure that ATMs are disabled and applicable networks notified.<sup>15</sup>
- All the night depositories should be locked and/or sealed, with official notices posted on them. Any night depositories must be emptied and the contents inventoried under dual control and work processed by the accounting team.<sup>16</sup>
- The initial intervention team must keep the key bank officials under control. Do not allow anyone to leave the meeting, make a phone call, or issue any instructions, as this may be detrimental to the bank.
- Depending on the nature of the bank's problems (i.e., responsibility of key bank management for the bank's problems), the former key bank management may be escorted out of the bank. In this case, they are not allowed to remove any items, personal or otherwise. The intervention team will inventory their offices and take control of anything important to the bank's business. The bank intervention manager or conservator or receiver will arrange for any personal items to be delivered later.

<sup>15</sup> If a bank is to continue operating as a conservatorship the ATMs should not be disabled.

<sup>16</sup> If a bank is to continue operating as a conservatorship the night depositories need not be locked and sealed.

The bank intervention manager then notifies the remaining intervention team members to enter the bank and commence their assignments. The intervention team may be much larger than the initial intervention team and in that case, team members should enter in small groups. Coordinate the entry scheduling of intervention team members to eliminate any confusion. Intervention team members with branch operations responsibilities can coordinate by phone.

Initial intervention team meets with remaining management, notifies them of the revocation of all authority and their new reporting responsibilities. Depending on staff size and locations, all employees may be included in initial staff meeting.

When team members enter the bank, each function manager immediately commences a meeting with bank staff in his/her assigned area. If the bank has a small number of staff, this meeting may be held with all bank employees at one time, or the bank intervention manager may have already conducted it. Coordinate this meeting during intervention planning. The outline for the meeting is shown in Annex 3.13.

Function managers are to follow the checklists that have been prepared and approved for their actions. The following critical areas are stressed:

- Ensure that everything concerning the ongoing operation is under control, including:
  - SWIFT or other wire transfer facilities
  - Cash
  - Loan notes, collateral, and other documentation
  - Deposit files and documentation
  - Wire transfer
  - Fixed assets
  - Other assets documentation
  - Telephones
  - Fax machines
  - Cars.
- Cash must be counted.
- Offices, desks, and storage areas, such as drawers, file cabinets, etc., must be secured and inventoried. If inventory cannot be accomplished immediately the storage areas must be secured by an official adhesive seal or tape to prevent contents from being stolen, lost, or destroyed. Initially, extra supervisory authority staff can help secure and inventory bank items. Bank staff may assist as long as they are accompanied by an intervention team member. Frequently bank personnel maintain some cash in their desks.
- Personal computers must be secured to prevent deletion of important files.
- The security function manager must collect the bank's official stamps, seals, and any other evidence of authority for bank. These must be inventoried and secured, with notification given to the proper authorities.

- General ledger must be posted to date, reconciled, and balanced.
- The supervisory authority must prevent any loss, destruction, or manipulation of records, assets, or liabilities. The function managers must be alert to potential problems with employees such as abuses, vandalism of documentation or systems, and similar problems.
- Immediately advise other affected parties (payment system, clearing system, correspondent banks) of the intervention, revocation of previous management's authorities, and transfer of authority to supervisory authority.

### Public/Media Relations

Well before any problem bank action, communications departments from both the supervisory authority and the DIA should diligently coordinate information and control information through one spokesperson. They should prepare and deliver a media statement immediately after taking control of a bank, providing information in a positive light to reassure the public. It should stress that the authorities have acted in the best interests of the depositors and the financial stability of the banking system. To avert any uncertainty and misconception, all communication should be provided in simple terms, as outlined below.

- Press releases should be brief, factually accurate, and as positive as possible (see Annex 3.14).
- Possible follow-up questions should be anticipated and answers prepared (see Annex 3.15).
- The authorities should share as much information as possible with the media in order to create and maintain goodwill.
- The initial message should describe the action taken and how the resolution will be handled.

Prior to any bank failures, the authorities should coordinate in developing a media and depositor education plan that answers, at a minimum, the following questions:

- Where will insured deposits be paid?
- Is there an acquiring bank to act as paying agent?
- Will all branch facilities be open for payment?
- When will deposits be paid (or be made available)?
- What information must an insured depositor provide to obtain payment?
- What happens to my loan?
- Must I continue making payments?

Function managers, team members, employees of the bank, and supervisory authority and DIA employees *must not* make statements to the press or the public. Channel all such contact through the designated official spokesperson.

Failed bank employees answering general telephone calls may be provided scripted information to provide to callers or

visitors to the failed bank premises (Annex 3.16). Inquiries for further information or callers demanding to talk to an official should be referred to the designated official spokesperson of the intervention team.

Finally a notification letter should be distributed to all shareholders, customers, borrowers, and vendors of the bank. The letter should provide basic information and a contact person and telephone number, and emphasize the continuing responsibilities of borrowers to the bank.

### Function Areas<sup>17</sup>

#### Function Manager Plan

This section describes the various objectives for each intervention function.<sup>18</sup> Each function manager is to prepare a plan for each area of responsibility prior to initial intervention. (Note: Neither the bank intervention manager nor the conservator or receiver should serve as a function manager during the intervention, unless the bank to be closed is small. The bank intervention manager should focus on managing and controlling the process and informing the conservator or receiver, who will be preparing for conservatorship or receivership. Other conservator or receiver team members may also serve as function managers, however.) The plan must be reviewed and approved by the bank intervention manager and conservator or receiver not less than three days prior to intervention. The plan should be developed as follows:

- Review applicable section of intervention manual and preliminary information package for bank.
- Talk to other function managers in charge of related functions to coordinate responsibilities (e.g., the IT team will have to interact significantly with the deposit operations team and asset team to ensure that they receive the necessary reports).
- Inform the bank intervention manager of any areas of significant overlap, or areas of responsibility with no one assigned.
- From objectives, checklists, and other items set out in this manual, develop a checklist of specific tasks to be accomplished, and establish the priority based upon importance and urgency. The checklist should focus on tasks required from the time of intervention.
- Discuss proposed plan with others on the intervention team in related functions and with persons familiar with bank (on-site and off-site), and revise the plan as necessary.
- Submit your plan to the bank intervention manager for review and approval. The bank intervention manager will review all plans and will be able to detect areas with duplicate or missing items.

<sup>17</sup> Note that most, if not all, of these intervention steps are included in the various function manager checklists.

<sup>18</sup> Portions of the objectives were taken from FDIC, *Failed Financial Institutions Closing Manual* (Washington, 2004).

- Revise the function plan. Intervention organization and procedures may need to be revised during the intervention period as the function manager learns more about the operation and organization of the bank.

The bank intervention manager will prepare a comprehensive intervention report for the conservator or receiver. The report should include accomplishments, a summary of problems encountered, pending issues, and other areas of concern assembled from the various function manager checklists. It should clearly explain the work performed and follow up concerns in priority order.

The function plan should contain the following components:

- Statement of objectives
- Tasks, with primary and secondary tasks listed in priority order
- Issues or questions requiring additional information or of special interest.

The function areas are:

1. Accounting
2. Asset management (cash, teller, and vault operations)
3. Branch operations
4. Deposit operations
5. Facilities and security
6. Information technology
7. Legal
8. Personnel.

Checklists for each function area are included in the function checklists at the end of this chapter. Checklists must be prepared and ready at the time of intervention. The bank intervention manager or conservator or receiver must approve any major changes and additions. Properly maintained checklists should provide a method for the bank intervention manager, function manager, and conservator or receiver to review the project status at any time.

### *Conservator or Receiver*

The conservator or receiver should attend, to the extent possible, daily bank intervention managers' meetings with function managers, settlement/P&A meetings with the assuming bank, and accounting meetings with the assuming bank, if applicable.

The conservator or receiver must also bear transition items in mind, such as:

1. Coordinating with the asset manager:
  - Ensure that assets transferred under terms of the P&A agreement are receipted to the assuming bank.
  - Present list of letters of credit to the assuming bank, and request that they replace the letters of credit prior to disaffirmation.
  - Present list of retained unfunded commitments to the assuming bank, and request that they review them for possible assumption prior to disaffirmation.

- Ensure that repossessed collateral is secured for later disposition in a proper and cost-effective manner.
  - Confirm with the asset manager that first notice letters have been sent to customers whose loans have been retained by the conservator/receiver.
  - Determine which, if any, unfunded commitments will be honored. Obtain approval to fund or disaffirm unfunded commitments. Set procedures with the intervention accounting manager and the assuming bank, if necessary, on funding and tracking advances for retained unfunded commitments.
2. Coordinating with the deposit operations manager:
    - Ensure that notice letters are sent to depositors whose accounts have been held.
    - Remind the assuming bank that it is their responsibility to sustain the account holds until appropriately released.
  3. Coordinating with the personnel manager:
    - Finalize and implement employee retention strategy.
    - Confirm how the failed bank employee costs are to be shared by the receiver and assuming bank, as applicable.
  4. Coordinating with the facilities manager:
    - Obtain schedule of contracts, agreements, and leases from closing team. Prepare disaffirmation cases and notices on items not assumed by the assuming bank. The assuming bank may decline certain contracts and agreements immediately, but others will need further review (a P&A agreement usually sets a 30-day deadline). In either case, disaffirm the contracts, agreements, and leases, as soon as possible.
    - Ensure that appropriate space, staffing, and equipment are available for any potential asset sales.
  5. Coordinating with the legal manager:
    - Obtain from the legal department a list of loans subject to litigation. Confirm with legal the correct litigation division between the conservator or receiver and the assuming bank.

Additionally, the conservator or receiver must have adequate staff and space available to meet with customers, answer questions, and respond to customer needs and problems regarding relevant aspects of the intervention process. Please refer to Chapters 6 and 7 for greater detail on transition and post-intervention activities.

### *Bank Intervention Manager*

The bank intervention manager has responsibility for the following:

- Coordinates and manages all intervention functions, including staffing level determination, personnel selection, designation of assignments, and liaison with all supervisory authority departments.

- Organizes and supervises intervention personnel in all aspects of the intervention, assuring that all resources are efficiently and properly used.
- Provides input to the function managers regarding specific requirements for the intervention.
- Coordinates all meetings and intervention personnel matters.
- Establishes and ensures appropriate lines of communication with all function managers.

The bank intervention manager should prepare a comprehensive intervention file to document all the intervention activities. The manager's book should contain documents and materials such as those listed in the sample table of contents in Annex 3.17.<sup>19</sup>

Additionally, the bank intervention manager should designate a member of the intervention team to prepare an inventory book of assets and liabilities. The inventory book is a compilation of important financial information and other data pertaining to the bank as of the date of receivership. This information provides an important reference to the receiver in the post-resolution period of the bank.

The inventory book should be completed within 120 days of the bank intervention date. Information should be compiled electronically whenever possible. Original "signed" documents (e.g., the P&A agreement) should be scanned if possible.

Verify the documents with the source contact as needed. The attachments should be reviewed and organized prior to submitting them to the bank intervention manager for approval. The manager may decide to include additional items in the book, as circumstances vary at each intervention.

Annex 3.18 presents a listing of the items to be included in the inventory book, a description of each item, and the contact responsible for providing the information.<sup>20</sup>

## Accounting

*Objective:* Manage and maintain the accounting function, including posting to the general ledger and subledgers and production of financial and management reports. Preserve integrity and accuracy of accounting system. Assist other function managers to identify all assets and liabilities and see that they are properly reflected on the books of the bank.

It is critical that the bank's accounting records be current and accurate in order that proper reports can be developed for the conservator or receiver and others to use in this process. The following additional tasks should be carried out:

- Obtain, catalog, secure, and analyze all existing reports in regular usage.
- Request and obtain all of the bank's account numbers at the clearinghouse, reports on accounting activity, and a daily balance sheet.

- Post any outstanding items after review at proper level.
- Analyze each general ledger account and identify the components of each subsidiary account. Prepare a pro forma balance sheet reflecting corrective adjustments. Identify additional write-offs and questionable entries discovered during the analysis.
- Provide an accurate financial statement as of intervention date (or most recent month-end) and on regular basis in the future.
- Reconcile accounting records internally, and with regulatory reports.
- Work with the asset function manager to prepare the "Estimated Loss in Assets" (Annex 3.19) report for the conservator or receiver.
- Produce cash flow statement (recent historic) and cash flow projection.
- Verify compliance with tax reporting and payment requirements.
- Produce bank regulatory and clearing reports in a timely manner.
- Interact closely with other departments on entries to help identify assets and liabilities that are not properly reflected on the bank's books.
- Manage the settlement process, including:
  - Administering any transactional agreement (e.g., P&A)
  - Monitoring transactions to assure compliance with all terms and conditions of the agreement by the assuming bank and the receiver
  - Administering the transfer of funds to and from the assuming bank for the payment of assets sold under the agreement and the reimbursement of expenses incurred on behalf of the receiver or the assuming bank
  - Notifying all correspondent banks and transfers accounts, acting as the assuming bank's key contact during the settlement process.

## Asset Management

*Objective:* Preservation of value of loans and other assets, including off-balance-sheet assets. The following tasks should be carried out:

- Inventory investments, loans, and other assets (non-facilities)
- Assess their condition
- Determine what actions are required to assure the necessary control, continued accounting, and administration of the assets during the conservator or receivership period.

General:

- Obtain physical control and preservation of loan files, other asset documents, and off-balance-sheet items, including written guaranties, commitments, and letters of credit.

<sup>19</sup> FDIC, *Failed Financial Institutions Closing Manual* (Washington, 2004), Exhibit 3.U.

<sup>20</sup> Ibid.

- Ensure secure storage of legal documents and other important documentation.
- Order and review most recent accounting records (trial balance, subsidiary ledgers).
- Locate all work in process and confirm exact status—interview loan officers and check their desk files.
- Enforce the general rule—no new loans or applications, and no renewals or extensions without written justification and approval by conservator or receiver.

### Loans

Review each outstanding loan to determine current status, according to the asset checklist (e.g., verify that all outstanding loans are reflected on the general ledger and loan subsidiary ledger, verify that original documentation is in file, compile an inventory of any missing documents, review and evaluate pending commitments and approved loans, etc.).

### Other (Nonloan, Nonfacility) Assets

Other assets consist of repossessed assets, investments in subsidiaries, joint ventures, partnerships, consignment items such as commemorative coins, art, and apartments or holiday resort properties, or any otherwise unidentified asset that may have value to the bank. The following tasks should be carried out:

- Identify and inventory other assets.
- Assess the risk exposure for other items.
- Determine what further analysis is necessary.
- Recommend appropriate action to protect the value or minimize the risk of identified assets.

#### Off-balance-sheet items:

- Obtain accounting records.
- Identify and inventory off-balance-sheet items.
- Assess the risk exposure for off-balance-sheet items.
- Develop plans for most urgent items.
- Assess contingent liability and risk exposure, and prepare report on findings.
- Determine next steps and make recommendation.

#### Written-off loans and other assets:

- Obtain records and review.
- Identify assets that should be accounted for and tracked (collection expected).
- Evaluate collection possibilities.
- Take appropriate steps to liquidate assets, including starting litigation procedure of debtors, if justified.

Note: An important responsibility of the conservator, receiver, or liquidator is the creation of a map of related debtors, indicating their respective companies, as well as the asset and liability accounts involved, the associated collateral, and the persons or representatives through which the presumed

“fraud” of the directors and/or managers of the institution placed in conservatorship or receivership has been conducted, so that the legal and financial scam used for personal gain to the detriment of the bank will be absolutely clear.<sup>21</sup>

### Cashier, Teller, and Vault Operations<sup>22</sup>

*Objective:* Preserve and safeguard cash and cash-like assets.<sup>23</sup> The following tasks should be carried out:

- Inventory (count) all cash at teller drawers and vault cash at time of intervention (Annex 3.20).
- Inventory cash-like items (traveler’s checks, money orders, all other) at time of intervention.
- Continue teller operations.
- Review internal controls and make changes to protect cash and cash-like items.
- Develop and establish transaction authorizations. Provide clear and simple authorization levels at initial intervention, and modify as necessary.

### Branch Operations

*Objective:* Control branch premises, assets, and operations. The following additional tasks should be carried out:

- Take control of and inventory the cash and any other valuable documents (notes, negotiable collateral, safe-keeping items, and other negotiable instruments) at these branches.
- Inspect branch sites and evaluate physical facility and local market, and collect pending items such as approved or in process loans; ensure that information flows and conservator or receiver controls are in place at all branch locations.
- Coordinate branch operations with functional areas related to facilities management, personnel, lending, teller, and deposit functions.

### Deposit Operations

*Conservatorship objective:* To preserve the bank’s deposit base and provide liquidity for the bank.

<sup>21</sup> Fernando de Mergelina, *The Resolution Process for a Bank in Crisis and the Operating Manuals for that Process. Operating Manual No. 1: Conducting a Bank Receivership* (Inter-American Development Bank, Washington, 2004), p. 19.

<sup>22</sup> Note that the functions related to cash (tellers, vault, etc.) are under the asset management team. The function and checklist have been separated because of the urgency in taking control and counting the cash.

<sup>23</sup> Depending on the bankruptcy regime, cash may or may not be transferred to an assuming bank. Most bankruptcy legislation provides that receivership operating expenses have the top claim priority. If the receivership is conducted through bankruptcy court, then the bankruptcy trustee may need the cash for operations until it starts receiving loan payments. In jurisdictions where, for example, the DIA is also a liquidating agency (e.g., the FDIC), there may be enough funds in the agency’s budget to fund operations of another receivership without retaining the cash on hand. The local situation will dictate how to handle this matter.

*Receivership objective:* To compensate insured depositors.

The following tasks should be carried out:

- Be prepared to have adequate staff on hand to counsel uninsured depositors; staff must explain how the insured deposit was determined and how to file a claim for the uninsured amount.
- Develop contingency plan for a deposit run, and train employees.
- Regardless of whether there is an acquiring bank or the bank goes to liquidation, the intervention team must be prepared for a large number of customers gathering at the bank premises who want their deposits.
- Obtain and secure accounts' subsidiary ledgers and customer lists.
- Prepare deposit distribution schedules that show deposits according to priority of claim.
- Evaluate interest rates and other account terms on maturing accounts.
- Recommend changes to deposit account interest rates on a regular basis (e.g., weekly) according to market practices.
- Provide maturity information and pro forma to accounting for cash flow projection.

### Account Holds

In coordination with legal and the asset team, a member of the deposit operations team should develop a list of deposit accounts that may correspond to delinquent or matured loans (potential offset), or that are pledged as collateral for a loan or letter of credit.

Following are some criteria for freezing deposit accounts:

- The deposit amount is in excess of the deposit insurance limit.
- When any maker or guarantor of a loan (i.e., commercial, real estate, installment, etc.) is 60 days or more past due.
- When any maker or guarantor's loan is one or more days past maturity.
- The accounts of directors and/or officers, pending consultation with the legal team.
- All deposit accounts pledged as collateral on a loan or letter of credit.
- All accounts of any maker or guarantor of a charged-off loan.

Note: Holds should not be placed on any account or group of accounts for an amount that exceeds the party's indebtedness. If the loan is past due, past maturity, or charged-off, then a hold for the full amount of payoff (principal and interest) would be appropriate.

Account holds should be coordinated with the IT team prior to the start of business the next day.

In case of an assuming bank, management of the assuming bank is responsible for maintaining the holds. Provide an alphabetical listing of account holds to the assuming bank's tellers prior to the bank's reopening. Clearly instruct them that they have no authority to release *any* funds from held deposit accounts. Any problems should be referred to the bank intervention manager, conservator, or receiver.

Account hold notices should be prepared, reviewed by legal counsel, and mailed to all appropriate parties (e.g., account holders whose accounts are being held for reasons other than collateral).<sup>24</sup>

### Facilities and Security

*Facilities objective:* Responsible for financial and physical maintenance of office properties and other fixed assets. The following tasks should be carried out:

- Arrange and maintain work stations for all employees.
- Provide office supplies as necessary.
- Provide meal service for first night of intervention as appropriate.
- Arrange for delivery of copiers, fax machines, and printers as needed.
- Locate and provide support for additional work space for intervention team if needed.

In coordination with the asset manager:

- Place moveable assets, such as vehicles, furniture, fixtures, and equipment under control and immediately inventory (from largest to smallest value).
- Assess physical condition of real estate and determine whether repair or rehabilitation is necessary to preserve asset value.
- Assess all costs and outstanding expenses for reasonability, especially insider (bank's affiliates) transactions and recent changes.

In coordination with the accounting manager:

- Review recent purchases, outstanding payables, and similar large items for abuses or insider transactions.
- Continue rent and utilities payments on all office facilities and other fixed assets; notify all vendors immediately in writing (Annex 3.11).
- Continue collection of rents on office space and apartments; notify all tenants immediately in writing (Annex 3.11).
- Collect all insurance policies and evaluate amounts and types that are in force. What are maturity dates? Ensure that premium payments are made to continue coverage.
- Until a closed bank budget is approved, establish a level above which payments must be approved by

<sup>24</sup> FDIC, *Failed Financial Institutions Closing Manual* (Washington, 2004), Exhibit 5.A.

the function manager and, over a higher designated amount, by the conservator or receiver.

- Develop a six-month budget for anticipated facilities expenses.
- Coordinate funding requirements with the accounting function manager to ensure funds are available for necessary payments.

*Security objective:* To safeguard the assets of the bank by preventing:

- Entry by unauthorized persons
- Vandalism of property, including files and records
- Theft of bank property.

Two areas of particular vulnerability are actions of remaining employees and/or customers, and nonbanking hours when the intervention team is not in the bank.

- Access to the bank, particularly noncustomer areas, must be restricted to approved employees; asset storage facilities must be secured immediately; put official seals on vault, cash drawers, note cabinets, and any storage areas containing official stamps, negotiable collateral, safekeeping items, other negotiable items (unissued CDs, traveler's checks, check stock, etc., as applicable), and any other asset.
- Locks must be changed immediately, or as soon as possible;<sup>25</sup> distribution of new keys and combinations should be limited to a "need" basis, and be fully documented; keys/combinations to sensitive or significant areas should not be distributed.
- Security systems and services must be immediately brought under control of conservator or receiver (consider hiring new security service for after-hours security).
- Access codes and passwords to alarms, door entries, and computer systems must be immediately changed, with new distribution fully documented and limited to a "need" basis (see Alarm Instructions below).
- Coordinate crowd control with local police in case large gatherings of customers and/or employees threaten the public peace.
- In cases of deposit payoff, coordinate with deposit operations regarding the number of customers to allow inside the bank.

### General Security

- Require identification of any individual not readily identified as intervention team members, contractors, or former bank employees working for the conservator or receiver.
- Ensure all individuals sign in and out each time they leave or return to the bank premises.

- Inspect any large parcels, boxes, or suspicious items leaving the premises.
- Refer any questionable items being removed from the building that are not clearly personal in nature to the bank intervention manager, the conservator, receiver, or the facilities manager.
- All individuals not identified as intervention team members or former bank employees working for the conservator or receiver will be denied entrance to the building until cleared by the facilities manager.

### Vault Security

- Former bank employees are not permitted in the vault without being accompanied by an intervention team member.
- All individuals must sign in and out of the vault.
- Any item removed from or taken into the vault must be signed in and out.

### Other Requirements

- Provide contact information for the bank intervention manager and conservator or receiver to security personnel in case of an emergency after hours.
- After hours, no one is permitted into the bank unless accompanied or authorized by an intervention team member.
- Security personnel must ensure that the bank premises key is given to the next guard on duty.

### Combinations

- Obtain all combinations from bank personnel and place them in a sealed envelope with the critical information listed on the envelope (bank name, bank number, branch location, person obtained from and location of the vault). The combinations will be receipted to the assuming bank. In the event of a payout, receipt over to the owned real estate specialist.

### Alarm Instructions

- Obtain the alarm instructions, alarm code, and/or the alarm key from the bank's security officer. Place the instructions and key/code in a sealed envelope with the critical information listed on the envelope (bank name, bank number, branch location, person obtained from or bank's security officer, and alarm company name, contact person, phone number and the responding agency).
- Determine whether unauthorized personnel can impair the integrity of the system.
- If the system includes local law enforcement agency monitoring, notify the agency immediately of the bank's intervention. Advise the agency of the hours in which the premises will be occupied. Inform the

<sup>25</sup> If locks cannot be changed immediately, continue security guard presence at the site.



agency how they may contact the facilities manager around-the-clock in the event of an emergency.

### Information Technology

*Objective:* Maintain system integrity and continue services in accounting, reporting, and other management information and external beneficiaries. The following tasks should be carried out:

- Physically secure computer system, including on-site data processing operations, communications systems, e-banking services, wire transfer, personal computers, Internet provider, and networks. Secure and protect storage media.
- Disable automatic teller machines (ATM, Bancomat) and notify network service (Annex 3.8).<sup>26</sup>
- Act as point of contact between the bank intervention manager and failed bank's data processing operations staff and/or data processing servicer.
- Coordinate processing requirements for all bank intervention team functional areas.
- Coordinate ongoing operation with the assuming bank.
- Coordinate imaging and storage of documents associated with failed bank.
- Obtain and deliver downloads and reports as required.
- Review internal controls and limit access to system.
- Assess backup, archive system, and emergency situation plan; make necessary changes to ensure integrity and protection of systems and data.
- Review distribution procedures for reporting and make necessary changes to ensure proper and timely distribution.

One common possibility that the IT function manager should always bear in mind is that the bank employees may keep unofficial copies of information and/or documents, which could be of great value for the intervention team, whether or not the management of the bank has authorized those copies. Accordingly, any member of the intervention team who has access to or is aware of such information should inform the IT function manager for follow-up. Similarly, the IT function manager, interacting with whomever it may concern, should decide whether to prerecord the data or eliminate and/or disable the use of storage devices such as disk drives, CD writers, external hard drives, etc.<sup>27</sup>

### Legal Issues

*Objective:* Initiate, manage, and terminate intervention litigation. The following tasks should be carried out:

- Provide legal support to other functions.
- Provide counsel to the conservator or receiver on legal matters.
- Provide legal advice to functional areas at the direction of the conservator or receiver, especially with regard to risk exposure of contracts and viable alternative actions.
- Responsible for continuation of existing litigation, with timely and urgent assessment of whether and to what extent such litigation can and should be continued or concluded.
- Draft legal contracts and other required documents.
- Authority includes hiring and firing of law firms and payment of legal fees, subject to approval of conservator or receiver above a specified amount.
- Oversee modifications to loans and other contract signings.

### During the Receivership

- Assist the receiver or liquidator in the act of commencing the bank receivership process.
- Attend the meetings between the persons in charge of the bank placed in receivership and the receiver or liquidator.
- Obtain a list of all the litigation of the bank and the files on those cases (if the files are not at the bank, locate them immediately).
- Review the most important cases and submit a report on them to the receiver or liquidator.
- Provide advice on any legal matter regarding relations with the bank's employees (labor laws in effect, etc.).
- Provide advice to the members of the intervention team on any legal issue.
- Provide advice on the finalization of contracts or other pending obligations.
- Assist in finalizing or settling all the bank's fiduciary obligations.
- Collaborate in preparing notice to customers and other financial institutions and persons who may be affected by the bank intervention.
- Assist the receiver or liquidator in the review and resolution of any type of claim.
- Assist the receiver or liquidator regarding legal requirements involving payment priorities on claims (order of priority of creditors).<sup>28</sup>

### Personnel Issues

*Objective:* Maintain adequate staffing, in number and abilities, to accomplish objectives of the supervisory authority and the conservator or receiver acting in the best interest of the deposit insurance fund and the depositors and creditors of the failed bank. Continue personnel policies and procedures,

<sup>26</sup> For receivership.

<sup>27</sup> Fernando de Mergelina, *The Resolution Process for a Bank in Crisis and the Operating Manuals for that Process. Operating Manual No. 1: Conducting a Bank Receivership* (Inter-American Development Bank, Washington, 2004), p. 25.

<sup>28</sup> Ibid. p. 69.

while preventing abuses. The following tasks should be carried out:

- Prepare and maintain the failed bank organization chart, job descriptions, and listing of employees, consultants, and contractors.
- Assess compensation for reasonableness and identify potential abuses, with particular emphasis on upper management, shareholders, and recent changes in compensation.
- Protect and maintain failed bank personnel records.
- Continue the payment of wages, salaries, and benefits.
- Evaluate staffing level and salaries, and make precise recommendations to conservator or receiver.
- Assist function managers with employee issues, including hiring and firing personnel.
- Do not pay large or suspicious amounts until approved by the conservator or receiver, in consultation with legal.

### Functional Area Checklists

Functional area checklists follow the specific objectives for each function, as seen in the series of checklists at the end of this chapter. The functional checklists contain tasks related to both preintervention and intervention. Documentation on each checklist should include at a minimum:

- Name of bank
- Function title (for this checklist)
- Initial intervention date
- Functional manager responsible
- Individual assigned tasks
- Number of pages
- Subheading: Preintervention Planning
- Subheading: Priority Actions
- Subheading: Other Initial Intervention Actions
- Subheading: Other Routine Actions (in order of urgency and importance).<sup>29</sup>

<sup>29</sup> The “other routine actions” portion of the checklist can often be actions that are performed by the conservator’s or liquidator’s staff (e.g., completing the asset review sheet to estimate asset values) following the intervention period.

This checklist provides guidance for the function manager’s performance in the intervention. It serves as an ongoing status report for review by the bank intervention manager, function manager, and the conservator or receiver. Actions should be listed in order of importance. The following general instructions apply to all checklists for each functional area.

The checklist form is confidential. It must not be shown to bank employees or outside individuals, and must remain in the custody of the appropriate function manager at all times. Do not photocopy this document except to facilitate the bank intervention manager’s, conservator’s, or receiver’s review.

The checklist may be revised as required; however, the bank intervention manager, conservator, or receiver must approve any major revisions.

The checklists are designed to provide a tracking record of completed tasks assigned to specific intervention team members. Unusual circumstances of a particular bank failure may necessitate the addition of certain tasks to one or more of the checklists. Tasks should not be deleted; all tasks should be checked either “Yes,” “No,” “Pending,” or “N/A,” as appropriate.<sup>30</sup> Any response other than “Yes” or “N/A” must have an explanation in the “comments” section at the bottom, identified according to the appropriate task number. For internal control purposes, it is important that none of the checklist items be left blank. The comments section can also be used for follow-up items, or detail of unusual circumstances. Extra comments pages can be added as necessary. Note that there may be some duplication in the checklists, such as different function managers being charged with providing notice. These duplications can be managed prior to the intervention with a responsible party clearly assigned.

Each function manager provides completed checklists to the bank intervention manager before the function manager is released from the intervention. The function manager and bank intervention manager must sign the completed checklist for delivery to the conservator or receiver.

<sup>30</sup> For example, in jurisdictions where the bank liquidation will be conducted through commercial bankruptcy court, there will be no need to put so much emphasis on asset analysis beyond securing, inventorying, and balancing the accounts as required by law.

## ANNEX 3.1. FUNCTIONAL AREA CHECKLISTS

# CONFIDENTIAL

**Function Title:**     **BANK INTERVENTION MANAGER**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

### BANK INTERVENTION MANAGER CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	Obtain and review a copy of the information package and other relevant information.				
2	Verify and coordinate with the Function Managers the number and distribution of noncomputer generated reports and computer generated reports.				
3	Determine the type of business conducted at each location. Develop strategies and assign responsibilities for business lines.				
4	Select a code name for the intervention.				
5	Ensure lodging and meeting room arrangements have been made.				
6	Prepare “intervention packets” to be given to program areas and intervention team members. Include Organizational Chart, telephone and telefax numbers list, and Information Sheet.				
7	Obtain a copy of the preintervention IT analysis. Ensure that the IT Manager has determined the following: <ul style="list-style-type: none"> <li>• When do accruals cut off?</li> <li>• Can accruals be cut off as of close of business?</li> <li>• Will accruals be generated for both assets and liabilities?</li> <li>• Will system waive service charges?</li> <li>• Can statements on all deposit accounts be created?</li> <li>• Will the Data Center print checks?</li> <li>• Can holds be placed on accounts?</li> </ul>				

	<ul style="list-style-type: none"> <li>• Can reports be produced and delivered in a timely manner?</li> <li>• Can labels be printed?</li> <li>• How late can work be received at Data Center to allow for a final run that day?</li> <li>• Can the ATMs be deactivated?</li> <li>• How quickly can the Data Center provide multiple copies of reports?</li> <li>• Will the Data Center provide information for tax purposes?</li> </ul>				
8	Ensure that Security and Facilities are prepared to secure ATMs and night deposit boxes if locations are not purchased or if the Assuming Bank wants them closed.				
9	Conduct a “preintervention” meeting with the entire intervention team. Make sure everyone understands what their job will be, whom they will report to, and how their assignment fits into the intervention as a whole.				
10	<p>If applicable, contact the winning bidder, provide a copy of the Assuming Bank’s Preintervention Information and discuss:</p> <ul style="list-style-type: none"> <li>• The intervention process and weekend schedule.</li> <li>• Their responsibilities, particularly in regard to deposit account holds and referring questions from the media.</li> <li>• The importance of confidentiality until the intervention.</li> <li>• Obtain: <ul style="list-style-type: none"> <li>○ List of Assuming Bank’s personnel attending the intervention.</li> <li>○ Name and telephone number of the contact person with the Assuming Bank.</li> <li>○ Assuming Bank’s Board Resolutions identifying names and signatures of employees authorized to sign official receipts.</li> <li>○ Insurance binder covering the institution building, contents, and liability naming the Conservator/Receiver as additional insured as of institution intervention.</li> <li>○ Wire Instructions.</li> </ul> </li> </ul>				
11	Determine if payment of earned and unpaid payroll expenses of bank employees is in the best interest of the Conservatorship/Receivership and, if so, ensure payment is made prior to intervention.				
12	Obtain the failed bank employee roster and inquire among Function Managers of their need to use failed bank employees for intervention activities. If possible, select a temporary employment service contractor as the method to pay failed bank employees for their services during an extended intervention or post-intervention period. For small, short interventions, arrange with the Assuming Bank to pay failed bank employees, with reimbursement through Settlement.				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
1	Participate in a meeting with the failed bank employees. Distribute information sheets.				
2	Ensure Security or Facilities Manager promptly secures the wire equipment or transfers it to the Assuming Bank.				
3	Ensure a listing of intervention team personnel and instructions is provided to the switchboard operator.				
4	Verify the ATMs have been deactivated and the servicer has locked out automatic payments and overdrafts, if applicable.				

<b>Task No.</b>	<b>Description of task:</b>	<b>Yes</b>	<b>No</b>	<b>Pending</b>	<b>N/A</b>
5	Verify that cash is counted under dual control, reconciled, and receipted to the Assuming Bank, if applicable. If it is a payout, ensure that arrangements have been made to transport the cash and to deposit it into an account established in the name of the Receivership.				
6	Verify that sign in/out sheets for the intervention team, institution employees, and security guards are used.				
7	Establish work schedules or shifts and monitor hours worked and overtime allocated.				
8	Assign someone to begin compiling the documents for the Bank Intervention Managers' book. The assignee must assure that all reports, documents, and exit memoranda are received from Function Managers on a timely basis.				
9	Verify that copies of receipts with supporting documentation are placed in the appropriate files.				
10	Monitor progress of the Accounting team to ensure availability of wire amount by the deadline. Verify that the proper authorities have been notified of the wire amount and instructions.				
11	Verify that account holds are initiated promptly. Review procedures with the Asset and Deposit Operations Managers.				
12	Obtain and review excess deposit hold list from Deposit Operations Manager, if applicable.				
13	Verify with Facilities Manager that the failed bank premises are insured and copies of the binders are obtained.				
14	Approve the list and distribution of noncomputer generated reports.				
15	Verify with appropriate Function Managers that the following letters are prepared and sent: <ul style="list-style-type: none"> <li>• Notification of account holds (First business day).</li> <li>• Safekeeping items (Payoff only).</li> <li>• Safe Deposit Boxes (Payoff only).</li> <li>• Notice to Creditors.</li> <li>• Notification to Borrowers.</li> <li>• Notification to loan participants.</li> <li>• Notice to all correspondent Banks.</li> <li>• Loan and credit card servicers.</li> <li>• Trustees of securitizations serviced or originated by failed bank.</li> </ul>				
16	Conduct daily managers meetings to discuss status of intervention, personnel requirements, and solutions to any problems.				
17	Conduct a meeting with Receiver/Conservator, Legal, Settlement, and Accounting to review the P&A Agreement prior to meeting with the Assuming Bank. Review the Agreement tickler file for timely accomplishment of tasks through the intervention. Ensure that any outstanding issues are communicated to appropriate staff remaining on-site.				
18	Arrange and attend the Settlement Meeting with the Assuming Bank. Ensure the Assuming Bank is aware of all reporting deadlines.				
19	Arrange and attend Accounting Meeting with Assuming Bank. Verify Assuming Bank understands and agrees with how the assets they purchased will be valued.				



**CONFIDENTIAL****Function Title: Accounting<sup>1</sup>****Function Manager:** \_\_\_\_\_**Name of Bank:** \_\_\_\_\_**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

**ACCOUNTING CHECKLIST**

<b>Task No.</b>	<b>Description of task:</b>	<b>Yes</b>	<b>No</b>	<b>Pending</b>	<b>N/A</b>
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	Review the information package to estimate the number and composition of assets that the Receivership can expect to inherit.				
2	Review proposed transactional document (for example, P&A) for asset and liabilities splits with Assuming Bank, if applicable.				
3	Review bank’s financial reports.				
4	Determine the staffing required for the intervention.				
5	Determine the computer equipment/software, and the supplies required to perform the Asset intervention function.				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
6	Hold meeting of all function area employees, following outline of Annex 3.13.				
7	Obtain and inventory all existing financial reports.				
8	Identify unposted items. Investigate and post items if appropriate.				
9	Stop any unnecessary expenses, and target other expenses for reduction.				
10	Prepare a financial statement as of the intervention date or prior month-end. (See Annex 3.22 for minimal information required to reconcile general ledger line items)				
11	Prepare cash flow statement and cash flow projection.				

<sup>1</sup> Items 9, 10, and 11 can be eliminated from Receivership checklists.





# CONFIDENTIAL

**Function Title:**     **Asset Management<sup>1</sup>**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

## ASSET MANAGEMENT CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	Review the information package to estimate the number and composition of assets that the Receivership can expect to inherit.				
2	Review any Nontraditional Business Lines as to how they operate, special skills needed, and staffing requirements.				
3	Determine the staffing required for the intervention.				
4	Determine the computer equipment/software, and the supplies required to perform the Asset intervention function.				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
5	Hold meeting of all function area employees, following outline of Annex 3.13.				
6	Take physical control of all Notes, Loan folders, and Other Asset listings. Inventory immediately.				
7	Ensure that all asset-related transactions are processed and closed out as of date of institution intervention (for example, loan payments, payoffs).				
8	Identify all investment securities held by the failed institution at intervention.				

<sup>1</sup> Other than taking physical control of cash, loan notes, and other valuable assets and working with the accounting team to balance asset accounts to the general ledger, most of the duties under this function should be accomplished in the days and weeks following initial bank intervention.

9	Determine the location of all securities held by the failed institution at intervention. Check the institution's safekeeping vault, collateral files, and collateral vault, as well as outside counsel and safekeeping agents that may hold securities for the institution.				
10	Secure any securities that are held physically at the bank.				
11	Check whether the safekeeping reports agree with the securities listing provided by the institution, and confirm securities listing back to the general ledger.				
12	Determine which securities are pledged, hedged, restricted, sold with puts attached, or otherwise encumbered.				
13	Determine market values as of intervention for all securities held by the failed institution. If securities are pledged to secure any deposits (for example, public), provide market value information for those securities to the Deposit Operations Manager.				
14	Identify all outstanding Loans and Other Assets. Verify all balance sheet assets and commitments, including: <ul style="list-style-type: none"> <li>• Loans serviced by others (LSBOs).</li> <li>• Loans serviced for others (LSFOs).</li> <li>• Letters of Credit extended or confirmed by failed institution. These items must be reviewed on an individual basis to confirm continued funding or repudiation.</li> <li>• Unfunded loan commitments. These items must be reviewed on an individual basis to confirm continued funding or repudiation.</li> <li>• Participations (purchased and sold).</li> <li>• Collection and escrow contracts with institution customers.</li> <li>• Listing of Real Estate Owned.</li> </ul>				
15	Obtain the Asset computer reports needed and verify loan balances against General Ledger and any Subsidiary/Loan Ledger. <ul style="list-style-type: none"> <li>• Begin preparation of a pro forma balance sheet.</li> <li>• Fully document errors, reclassification of assets, off-balance-sheet items, and discovered assets.</li> </ul>				
16	Work with Deposit Operations team to prepare the Account holds list (for example, past due or nonperforming loans, director and officer, and so on).				
17	Verify documentation contained in asset files for: <ul style="list-style-type: none"> <li>• Signed note or other evidence of indebtedness</li> <li>• Recorded mortgage or other security instrument</li> <li>• Validity of loan</li> </ul> Prepare a <b>Document Exception List</b> , which should include missing notes, copies in lieu of the original notes (along with location of the original, if known), pledged notes and their locations, notes without matched loans on the trial balance, missing collateral, missing credit files, and so on.				
18	Obtain a copy of the governing legal documents (that is, P & A) and review the pertinent asset-related sections. Pay particular attention to and review with the Bank Intervention Manager the sections governing the split of assets, any related liabilities, and the put back provisions.				
19	Receipt purchased files, notes, and collateral to the Assuming Bank along with the appropriate exception lists.				
20	Obtain a listing of Overdrafts at intervention. For overdrafts retained by the Receiver, obtain the amount, cut-off date, statement, and copy of the items, including electronic charge-backs and advices increasing the overdraft. Coordinate with the Assuming Bank and Accounting.				

<b>Task No.</b>	<b>Description of task:</b>	<b>Yes</b>	<b>No</b>	<b>Pending</b>	<b>N/A</b>
21	Coordinate transfer of unfunded commitments, partially funded, and Letters of Credit to Assuming Bank with assistance of Receiver and Legal.				
	<b>Asset Management - Other Initial Actions:</b>				
22	Identify any agent loans and ensure that they are properly reflected on the books of the bank. Verify that appropriate donor groups have been notified of intervention (Annex 3.11).				
23	Separate assets by asset type and performance. Be alert to loan losses that are continually extended and appear to be current. Check if extensions include accrued interest.				
24	Identify loans within both 30 and 60 days of maturity. Interview loan officers and collect their working files.				
25	Contact the borrower on any loan that has not received a payment, been extended with the accrued interest added to the balance, or any delinquent loan. Attempt to verify that the loan is not fraudulent, and request repayment.				
26	Identify the following types of loans: <ul style="list-style-type: none"> <li>Loans in the application process.</li> <li>Loans that have been approved, but are not disbursed or not fully disbursed.</li> <li>Agent Loans that are not disbursed or not fully disbursed.</li> </ul> Prepare a plan for resolution of identified loans. Consider repudiation of partially funded loans that are not fully disbursed. Funding of any loan must be submitted to conservator or receiver for approval.				
27	Assist the Accounting Function Manager to identify and classify all loans and Other Assets. Reclassify items as necessary. Recommend changes to provision for loan losses.				
28	Identify any loans that are: <ul style="list-style-type: none"> <li>Related to bank management</li> <li>To major shareholders (owning 15% or more of the outstanding shares of the bank)</li> <li>Large loans or concentrations to one borrower (exceeding 300% of capital)</li> </ul>				
29	Identify loans that are related by borrower, guarantor, or collateralized with other loans.				
30	Identify any loans in litigation.				
31	Identify any bank subsidiaries, joint ventures, and/or Real Estate Investments. Determine whether there are loans from the bank to the subsidiary, the joint venture and all joint venture partners, or any other entity in which the institution has a financial interest. Ascertain whether any emergency actions are necessary. Begin analysis as to whether subsidiary should continue as going concern, be dissolved, or (in rare cases) abandoned.				
32	Assign someone to complete subsidiaries' Due Diligence Review and Business and Disposition Plan (Annex 3.23 and 3.24)				
33	Perform physical verification of any Possessory collateral (Stocks and Bonds, Jewelry and precious metals/stones, Currency and coin collections, Life Insurance policies, pledged Letters of Credit with expiration dates, pledged deposits, and so on).				

34	Prepare a schedule listing the prepaid accounts, identifying which, if any, will be passed to the Assuming Bank and which will remain with the Receivership. Complete Receivership files for the prepaid assets, including any insurance policies or any documentation supporting the entry on the general ledger.				
35	Ensure that sufficient underlying support of intangible assets such as accounts receivable, servicing rights, advances to affiliates, and so on, is obtained to prove their existence and their terms of repayment. Construct file(s) if none are located at failed bank.				
36	Ensure the Assuming Bank's servicing for Receivership assets is in place and contains a stipulated fee arrangement. Coordinate with Accounting, which has the primary responsibility for setting up and monitoring this postintervention function. <ol style="list-style-type: none"> <li>1. Review the legal intervention documents for ongoing servicing.</li> <li>2. Review how institution will process, document, and report expenditures and advances.</li> <li>3. Review how institution will oversee loans serviced by others (LSBOs) and service loans serviced for others (other than Receiver, LSFOs). Review how they will pay participants.</li> <li>4. Obtain copy of relevant manual reports and procedures of failed bank and determine which are necessary for the Assuming Bank's servicing of Receivership Loans.</li> <li>5. Coordinate with Accounting regarding proper procedures for check requests, satisfactions, and automatic payments.</li> </ol>				
37	Prepare a report for the Conservator or Receiver that provides a summary of the findings by asset type resulting from the asset review and analysis.				
	<b>Asset Management - Other Routine Actions</b>				
38	Estimate value of collateral for each loan and Other Asset. Use "Asset Review Sheet" (Annex 3.21) to estimate losses.				
39	Prepare and send letter to each borrower, guarantor, and participant informing them of the disposition of their loan and the address to which borrowers should send their payments (coordinate with Assuming Bank). Also, notify borrowers to stop or redirect any automated clearinghouse (ACH) payments.				
40	Begin the process of managing and collecting the bank's loan portfolio, and providing day-to-day loan administration services. Ensure that aggressive collection actions are being pursued, including court actions on defaults and nonperforming credits.				
41	Evaluate the adequacy of existing systems and procedures to protect the bank's interests. Identify operational deficiencies and implement improvements.				
42	Evaluate the adequacy of existing systems and procedures to protect the bank's interests. Identify operational deficiencies and implement improvements.				
43	Modify or initiate management reports to be submitted to the Conservator or Receiver on a regular basis and upon special request.				
44	Implement full compliance with applicable banking regulations for loan reporting.				
45	Identify Off-Balance-Sheet items. <ul style="list-style-type: none"> <li>• Obtain accounting records</li> <li>• Identify and inventory off-balance-sheet items</li> <li>• Determine the risk exposure</li> <li>• Develop plans for each identified item</li> <li>• Assess contingent liability and risk exposure, and prepare a report of findings</li> <li>• Make recommendations for resolution of items</li> </ul>				



# CONFIDENTIAL

**Function Title:**     **Cashier, Teller, and Vault Operations**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

## CASHIER, TELLER, AND VAULT OPERATIONS CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PRIORITY ACTIONS:</b>				
1	Hold meeting of all function area employees, following outline of Annex 3.13.				
2	Inventory cash of each teller drawer, vault cash, and any other cash area (Annex 3.20).				
3	Inventory cash-like items, which include traveler’s checks, money orders, checks, and other instruments of value that can be used instead of cash.				
4	Ensure that all cash is turned over to the proper authorities for transport to the central bank.				
	<b>Cashier, Teller, and Vault Operations - Other Routine Actions:</b>				
5	Discontinue teller operations as of the time of intervention.				
6	Provide a report to the Conservator or Receiver of any areas of concern that have been discovered.				

Date completed: \_\_\_\_\_

Signature: \_\_\_\_\_

Comments:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



# CONFIDENTIAL

**Function Title:**     **Branch Operations**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

## BRANCH OPERATIONS CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	Identify the number of branches and the types of activities offered at each branch, the Institution contact person and the Assuming Bank’s contact (if applicable) at each branch.				
2	For foreign branches, plan for differences in language spoken, time zones, and hours of operation. Coordinate with Legal Function Manager regarding differences between the banking and bankruptcy regulations and the ramifications.				
3	Determine the staffing requirements of each branch. Ensure enough personnel to handle depositor demand in the event of branch payoff.				
4	Instruct each branch manager to check in during the first hour of the intervention for status report and problems to be resolved.				
5	Obtain the address, directions to, phone number, and fax number of the branch. Obtain a copy of lease and landlord’s name and phone number, if available.				
6	If a representative of the Assuming Bank plans to attend the branch intervention, prepare a copy of the Closing Overview for his/her information. If he/she has not already received this information, provide a copy just prior to the intervention or upon his/her arrival and answer any questions.				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
7	Post the “Notice of Appointment of Conservator or Receiver” visibly on the front door. Hold meeting of all employees at each branch site following outline of Annex 3.13				



Task No.	Description of task:	Yes	No	Pending	N/A
8	Designate a bank employee(s) to answer the telephones and provide an appropriate answering statement (Annex 3.16). Refer calls from other government agencies to Receiver/Conservator.				
9	Secure branch site and designate only one entrance/exit to the branch. Ensure door and vault remain guarded.				
10	Inspect branch sites and evaluate physical facility. Assure that ALL keys to the premises, any bank-owned automobiles, as well as safe and/or vault combinations are turned over to the Branch Team Leader.				
11	Ascertain whether there is any unprocessed work (for example, new or un-booked loans, deposits, and so on) at the branch. If so, arrange for processing.				
12	Immediately gain physical control of wire transfer facilities. Contact wire transfer correspondents and notify of Receivership action (Annex 3.8). Change all authorizations.				
13	Secure, lock, and/or seal all night depositories and post notices on them. (Note: All night depositories must be emptied and the contents inventoried under dual control).				
14	Disable ATMs upon intervention unless specific provisions have been made to the contrary.				
15	Ascertain what assets are held at each branch or sub-branch. Asset storage facilities must be secured immediately.				
16	Take control of the cash and any other valuable documents (notes, negotiable collateral, safekeeping items, and other negotiable instruments) at these branches.				
17	Locate alarms, bait money, and cameras to avoid triggering accidentally. If appropriate, inform the alarm company that the alarms will not be set at the normal business time.				
18	Inventory cash of each teller drawer, vault cash, and any other cash area (Annex 3.20). Keep in mind that cash may be kept in other places, such as desk drawers, and so on.				
19	Inventory cash-like items, which include traveler's checks, money orders, checks, and other instruments of value that can be used instead of cash.				
20	Follow procedures to turn over cash and cash-like items to secured transport.				
21	Secure notes, negotiable collateral, safekeeping items, and other negotiable items by sealing them in the vault.				
22	Inspect branch sites and evaluate physical facility. Diplomatically search desk drawers, cabinets, and other storage areas for cash and unprocessed items. Include any cash discovered in cash count. Bring any unprocessed work back to main office. Note whether branch site is leased or owned. Provide a short description of the facility and contents, especially any particularly valuable assets				
23	Obtain copies of any leases and contracts relating to the particular branch and supply copies to the Branch Coordinator and Settlement agent. If leased premises will be abandoned, contact the Branch Coordinator for instructions regarding arrangements to be made with the landlord for later access and disposal of branch contents. If premises are to be abandoned, or related contracts not assumed, call the owners of rented copiers, fax machines, lobby plants, and so on, and arrange for their pickup.				



# CONFIDENTIAL

**Function Title:**     **Deposit Operations<sup>1</sup>**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

## DEPOSIT OPERATIONS CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	Perform a preliminary insurance determination according to governing deposit insurance law.				
2	Identify any politically sensitive depositors such as churches, charitable or religious organizations and public units unsecured, fully insured, and/or fully secured.				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
3	Immediately gain physical control of “SWIFT” terminals. Contact “SWIFT” correspondents and notify of Conservator or Receiver action (Annex 3.8). Change all authorizations.				
4	Hold meeting of all function area employees, following outline of Annex 3.13.				
5	Under direction of Deposit Insurance Agency Compensation Manager, work with IT Function Manager to stratify and group deposit accounts to calculate insured amounts in order to provide prompt payment of insured depositors. <sup>2</sup>				
6	Work with Accounting Function Manager to balance deposit accounts to the general ledger. Train employees on procedures.				

<sup>1</sup> In case of Receivership, the Deposit Insurance Agency Compensation Manager will be in charge of Deposit Operations, working with Function Managers in IT and Accounting with the highest priority to make insured deposit repayments. In such a case, Items 6, 9, and 10 can be eliminated from the checklist and other items’ priority may be altered.

<sup>2</sup> The IT Function Manager will assist in either using the failed bank’s existing system to make the stratification and calculations or download the failed bank’s data to the Deposit Insurance Agency’s insured deposit repayment software program.

7	Work with Legal and Asset Manager to place Account Holds, generally falling in three categories: (i) Deposit Insurance Holds – Placed on the uninsured deposit portion; (ii) Credit or Loan Holds – for delinquent loans or overdrafts; and (iii) Legal Holds – Accounts of failed bank Directors or Officers or in litigation.				
8	Ensure that notice letters are sent to depositors whose accounts have been held.				
9	Work with Legal and Asset Manager to offset customers' deposits to their past-due loans.				
10	Contact all correspondents (foreign and domestic) and ATM networks; notify of Conservator or Receiver action by Supervisory Authority (Annex 3.8). Change all authorizations.				
11	Develop a contingency plan for a run on deposits. Train employees on procedures.				
12	In the case of a liquidated payoff, ensure that teller lines are adequately staffed at main office and branches, depending on payout strategy.				
13	Coordinate with the security team regarding maximum number of customers at a time to allow inside premises.				
14	Arrange for private rooms or offices for counseling uninsured depositors.				
15	Obtain subsidiary ledgers for all deposit accounts. Balance to general ledger.				
16	Provide reports to the Assuming Bank and explain procedures for: (i) placing and releasing account holds (only Receiver or designee authorized to release account holds); (ii) unclaimed deposits and their ultimate return to the Deposit Insurance Agency or Supervisory Authority; (iii) mailing Notice to Depositors by the Assuming Bank; (iv) the Settlement Process; and establishing contact information.				
	<b>Deposit Operations - Other Routine Actions:</b>				
17	Obtain listing of deposit account holders and individual balances.				
18	Compile deposit account maturity analysis, and provide to accounting function and Conservator or Receiver for use in cash flow projections.				
19	Evaluate interest rate and terms on deposit accounts, and make recommendations for changes to Conservator or Receiver.				
20	Make written notifications as required by banking laws (Annex 3.11).				
21	Prepare deposit distribution schedules that show deposits according to priority of claim.				
22	Compile a listing of Creditor Claims (for example, General Trade Creditors, employees with accrued but unpaid salary vacation, and/or sick time, governmental units for unpaid taxes, assessments or levies, Letters of Credit beneficiaries, litigants, subordinated debt holders, and stockholders of the failed bank.				
23	Provide a report to the Conservator or Receiver of any areas of concern that have been discovered.				

Date completed: \_\_\_\_\_

Signature: \_\_\_\_\_

Comments:

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## CONFIDENTIAL

**Function Title:**     **Facilities and Security<sup>1</sup>**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

### FACILITIES CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	If needed, prepare a box of supplies to be sent to the intervention site. Depending upon the retail resources available at the intervention location, additional supplies may be obtained later.				
2	Ensure necessary forms and documents are loaded on laptop and a CD for back-up. Obtain printer for use at the hotel/failed bank.				
3	If applicable, begin travel arrangements by searching for hotel availability near the institution and checking airline schedules. Once the hotel is selected and a contract is negotiated, submit it to the Bank Intervention Manager for the approval process. Ask for a 24 hour cancellation clause. Also, arrange for a room for meeting space and storage of supplies/equipment.				
4	Prepare the intervention packets for distribution to the intervention team members. Include: Information Sheet, Organizational Chart, map with directions to the institution/hotel.				
5	As needed, arrange for intervention meetings with the team managers and/or entire intervention team.				
6	Review the information package and attend all preintervention meetings to determine the number of supplies, copiers, printers, and security officers needed to facilitate a smooth intervention.				
7	Determine if the failed bank’s existing facilities have the capacity to accommodate the intervention team. Arrange for additional work space if necessary (for example, hotel conference rooms).				
8	Meet with contracted Security Guard firm; provide instructions, determine locations and assignments.				

<sup>1</sup> Although Facilities and Security are included in the same team, the Security checklist has been separated for clarity and ease of operation.

<b>Task No.</b>	<b>Description of task:</b>	<b>Yes</b>	<b>No</b>	<b>Pending</b>	<b>N/A</b>
9	Review and revise the checklist, and obtain Bank Intervention Manager approval.				
10	Prepare agenda and speech for initial meeting with function area personnel (Annex 3.22).				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
11	Hold meeting of all function area employees, following outline of Annex 3.13.				
12	Depending upon the size of the institution or need, create a list of the intervention team members' office numbers and phone extensions at the institution for Receiver/Conservator, Bank Intervention Manager, and team member use. Find out if it is possible to place conference calls to branch managers.				
13	Provide telephone answering script to designated persons.				
14	Prepare letter of notification to vendors (Annex 3.11). Submit to Legal for approval.				
15	Assure that all appropriate legal notices are posted at all customer entrances, drive-up windows, and any ATMs.				
16	Prepare letter of notification to office tenants, if any (Annex 3.11).				
17	Prepare letter of notification to landlords and others with whom bank may have contracts (Annex 3.11).				
18	Coordinate with Branch Operations Manager and: <ul style="list-style-type: none"> <li>• Take control of all moveable assets, such as vehicles, furniture, fixtures, and equipment.</li> <li>• Prepare an inventory in order from largest to smallest item. Use an office map. All items over a predetermined size or value should be tagged and entered on the inventory list.</li> <li>• Valuable items or items that can be easily removed should be secured under control of Function Manager.</li> </ul>				
19	Coordinate with Information Technology Manager to secure and inventory all bank owned Computers, Laptops, Cell Phones and PDAs for disposition at the direction of the Bank Intervention Manager.				
20	Take physical control of all leases, contracts, and other legal documents pertaining to office facilities and other fixed assets. Inventory all items.				
21	Notify all holders of leases, contracts, and other pending items pertaining to fixed assets about change in management of bank (Annex 3.11).				
22	Collect, secure, and destroy all failed bank employee credit cards (including and especially executives'). Notify all Credit Card companies of the intervention and change in legal status. Close all accounts and request a cutoff statement as of the intervention date.				
	<b>Facilities – Medium Priority Activities:</b>				
23	Review major leases, contracts, and other pending items. Look for abuses, unreasonable rates, and terms or other conditions not in the bank's best interest. Postpone such payments and contract performance where possible. Refer to Legal function manager for opinion and recommendations for action. Possible actions include repudiation, performance, or renegotiations of terms.				

24	<p>Locate, inventory, secure, and if necessary arrange for destruction under dual control of all unissued “Official” items. Included are:</p> <ul style="list-style-type: none"> <li>• Cashier’s Checks</li> <li>• Expense Checks</li> <li>• Traveler’s Checks</li> <li>• Savings Bonds</li> <li>• Money Orders</li> <li>• Certificates of Deposit</li> <li>• All institution counter checks</li> <li>• Starter Kits and Gift Checks</li> </ul> <p>Note: Instruments issued by third parties and sold by the institution (for example, traveler’s checks) need to be processed as instructed by those third parties.</p>				
25	Obtain and inventory all institution owned safe deposit boxes. Receipt all items to Conservator, Receiver, or Assuming Bank.				
26	Review recent purchases, outstanding payables, and similar large items. Look for abuses. Assess all costs and outstanding expenses for reasonableness, especially insider deals and recent changes.				
	<b>Facilities – Lower Priority Activities:</b>				
27	Determine if all off-site storage areas have been identified and inventoried. A physical inventory with photos may be completed at the discretion of the Bank Intervention Manager.				
28	Collect all insurance policies and evaluate amounts and types. Determine the renewal or maturity dates. Ensure that premium payments are made to continue coverage if it is determined to be necessary coverage. <sup>2</sup>				
29	Notify all utility companies providing services to the bank and/or branch offices of the intervention and change in legal status. Order cutoff statements as of intervention date. Continue rent and utilities payments on all office facilities and other fixed assets. Develop a schedule of payment dates and amounts.				
30	Notify the Post Office of the intervention and change in legal status and appropriate change of addresses for the mail. If applicable, arrange with the Assuming Bank for dual control of mail collection and opening.				
31	Continue collection of rents on office space and apartments.				
32	Inspect and assess physical condition of real estate. Determine if repair or rehabilitation is necessary to preserve asset value. Present report to Conservator or Receiver.				
33	Develop a six-month budget for anticipated facilities expenses.				
34	Evaluate market value and marketability of bank real estate. Evaluate rents charged for bank real estate. Present findings to Conservator or Receiver.				
35	Provide a report to the Bank Intervention Manager on any areas of concern that have been discovered.				

Date completed: \_\_\_\_\_

Signature: \_\_\_\_\_

<sup>2</sup> Depending on the delegation of authority, the bank intervention manager, function manager, the conservator, or the receiver must approve payments over a certain amount. This must also be coordinated with the accounting function manager to assure that funds are available prior to any payments.





# CONFIDENTIAL

**Function Title:**     **Security**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

## SECURITY CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
	See Facilities checklist				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
1	Designate one entrance to the institution (and branches). Assign a security officer to this entrance and provide sign in/out sheets. Check officers and employees leaving the bank at intervention and for several days afterwards to ensure that no theft of bank property or records occurs. Inspect all briefcases, purses, bags, and so on, as they exit. Sign in/out procedures for bank employees and Supervisory Authority personnel may be replaced with nametags or other identification cards after the initial intervention takes place.				
2	Designate a Security Officer to be stationed at the entrance to the money vault and note file room or vault with a sign in/out sheet for all personnel entering and exiting these areas. The sign in/out sheets need to include which files were taken and returned. Coordinate this task with the Asset Manager.				
3	Asset storage facilities must be secured immediately. Put official seals on vault, cash drawers, note cabinets, and any storage areas containing official stamps, negotiable collateral, safekeeping items, other negotiable items (un-issued CDs, traveler’s checks, check stock, and so on, as applicable), and any other asset.				
4	Restrict access to noncustomer areas of bank. Access to noncustomer areas of bank must be restricted to approved employees. Do not allow senior officers and other bank employees in sensitive positions to enter their offices except when accompanied by an intervention team member.				



# CONFIDENTIAL

**Function Title:**     **Information Technology**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

## INFORMATION TECHNOLOGY CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	If possible, the IT Manager should visit the failing institution to help prepare data files, equipment, and information needed for the intervention. The Manager can use this opportunity to gather additional information and resolve unanswered questions where possible.				
2	Determine capability of stopping accruals, when to expect the download files, report generation capability, delivery logistics, and staffing.				
3	Determine the following: <ul style="list-style-type: none"> <li>• Does the bank do any loan servicing for other banks?</li> <li>• When do accruals cut off (for both loans and deposits)?</li> <li>• Can accruals be cut off as of close of business?</li> <li>• Will accruals be generated for both assets and liabilities?</li> <li>• Will system waive service charges?</li> <li>• Can statements on all deposit accounts be created?</li> <li>• Will the Data Center print checks?</li> <li>• Can holds be placed on accounts?</li> <li>• Can reports be produced and delivered in a timely manner?</li> <li>• Can labels be printed?</li> <li>• How late can work be received at Data Center to allow for a final run that day?</li> <li>• Can the ATMs be deactivated?</li> <li>• How quickly can the Data Center provide multiple copies of reports?</li> <li>• Will the Data Center provide information for tax purposes?</li> </ul> Brief the Bank Intervention Manager with results.				

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
4	Hold meeting of all function area employees, following outline of Annex 3.13.				
5	Coordinate with Security Manager. Physically secure computer systems, computer files, and other electronic records.				
6	Disable ATM and notify network as appropriate.				
7	Coordinate with Security Manager to arrange for courier services to the institution's branches and/or servicer if appropriate.				
8	Coordinate intervention night activities with servicer (for banks using an outside servicer). Coordinate with Accounting as to the time processing should begin. The system should be available if the Assuming Bank will be open for business the next day.				
9	Notify servicers and processors to continue, disable, or shut down necessary systems, as directed by the Bank Intervention Manager. These include ATMs, Wire connection, all modems, Credit/debit cards, Internet Providers, e-banking services, and couriers. Determine how electronic funds transfers processing will be handled.				
10	Initiate action with regard to the bank's Internet infrastructure to shut down the web site and all Internet activity or coordinate ongoing operation with the Assuming Bank.				
11	Ensure the request was made for the production of downloads and reports from the failed institution's IT management or servicer.				
12	Confirm the generation, conversion, and delivery of data downloads.				
13	Obtain backups on systems, email servers, and other computers identified by Legal for possible investigations.				
14	Implement the account holds plan. Coordinate with the Bank Intervention Manager as to who should have authorization to enter holds in the deposit account system (automate if possible).				
15	Create inventory of all computer equipment.				
16	Secure ALL personal computers, determine ownership, and review contents of hard drive to verify whether any bank data are contained on it.				
17	Identify and inventory software, programs, and systems in use.				
18	Create a backup copy of any electronic records as of the date of intervention.				
19	Prepare a list of users for each program and determine if any changes or limitations are needed. Make recommendations for changes to the Conservator or Receiver.				
20	Assess backup, archive system, and disaster recovery plan. Implement a satisfactory backup system.				
21	Review distribution procedures for computer-generated reports and make necessary changes to ensure proper and timely distribution.				
22	Work closely with Deposit Insurance Agency Compensation Manager, Bank Intervention Manager, and Function Managers to meet their needs for any computer generated information, including agreement on cut-off times for entries and report production.				



# CONFIDENTIAL

**Function Title:**     **Legal**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

## LEGAL CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	Review the bank inspection report.				
2	Meet with the members of the Receivership/liquidation team to review the strategy for the process.				
3	Review the legal authority of the regulating and supervisory entities to commence the process, withdraw the bank’s license, and designate a Conservator or Receiver, supporting the actions with legal foundations.				
4	For foreign branches, the banking and bankruptcy regulations of the country will take precedence and should be researched in advance. Arrange to secure the services of an experienced banking attorney in each country prior to the intervention, if necessary.				
5	Provide the Bank Intervention Manager with copies of applicable transaction documents once a bid has been accepted, if applicable.				
6	Prepare the Receivership Order as required by law.				
7	Review major contracts and agreements as requested by the Conservator/ Receiver or the Bank Intervention Manager.				
8	Review the following information and copy, if needed: <ul style="list-style-type: none"> <li>• Examination Reports.</li> <li>• Insurance policies, correspondence, and claims.</li> <li>• Criminal Referrals and Restitution Orders.</li> <li>• Audit Reports, Engagement Letters, and Correspondence.</li> <li>• Board of Directors Minutes.</li> <li>• Loan Approval, Audit, Investment, Asset/Liability Minutes.</li> <li>• Loan and Operating Policies.</li> <li>• Biographies of Directors, Officers, and key employees.</li> <li>• Classified and Insider loan files.</li> </ul>				

	<ul style="list-style-type: none"> <li>• Directors' Financial Statements.</li> <li>• Legal and litigation files, legal correspondence files.</li> <li>• Regulatory correspondence files.</li> <li>• Appraisal files and appraisal correspondence files.</li> <li>• Security files, correspondence.</li> <li>• Broker/Dealer, Consultant Files.</li> </ul>				
9	Identify and prepare the initial target list of Directors and Officers whose offices and electronic data are to be secured.				
10	Prepare all Public Notices as required by law (see Annexes 3.4 through 3.11).				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
11	Accompany the Conservator/Receiver, the Bank Intervention Manager, and the representative from the applicable Supervisory Authority when the notice of Receivership is served on the bank.				
12	Hold meeting of all function area employees, following outline of Annex 3.13.				
13	Make sure that all notices are posted and published in accordance with the law.				
	<b>Legal - Other Routine Actions:</b>				
14	Conduct inventory of desks, credenzas, file cabinets and closets, and so on, for key personnel. Look at Senior Officers' desks and files for any important documents.				
15	Conduct interviews with any bank personnel who are knowledgeable of possible fraud or other criminal activities by directors or officers.				
16	Provide counsel to the Deposit Insurance Agency Compensation Manager, Conservator, or Receiver on legal matters.				
17	Provide legal advice to Function Managers as directed by the Conservator or Receiver.				
18	On at least a daily basis, keep the Conservator/Receiver and the Bank Intervention Manager informed of the progress of the Legal Team, when the Legal Team expects to complete its work, and of any special issues that arise during the intervention. Attend all on-site Function Managers' meetings. Attend the Settlement Meeting with the Conservator/Receiver, the Bank Intervention Manager, and the Assuming Bank (where applicable).				
19	Review and provide comments with respect to notices to depositors and creditors to be published.				
20	Review and provide comments with respect to any notices to subordinated debt holders and/or shareholders.				
21	Review the Assuming Bank's proposed notice to depositors, as required by law or the applicable transaction documents, for accuracy and completeness.				
22	Obtain a copy of the Assuming Bank's press release, if any, and review for accuracy prior to publication.				
23	Provide notice to all the former institution counsel concerning the institution intervention.				



<b>Task No.</b>	<b>Description of task:</b>	<b>Yes</b>	<b>No</b>	<b>Pending</b>	<b>N/A</b>
24	Interview the failed bank’s counsel regarding pending matters (if possible).				
25	Provide the Deposit Operations Manager with the names and addresses of all former institution counsel so that claims notices may be sent.				
26	Provide the Deposit Operations Manager with the names and addresses of all litigants, and their counsel, so that claims notices may be sent.				
27	Obtain written status reports and case files from failed bank’s counsel as appropriate.				
28	Review existing litigation, obtain stays of litigation where appropriate, and provide recommendations for conclusion to Conservator or Receiver.				
29	Draft or provide formal review of all legal documents and other required documents.				
30	Provide advice on loan restructurings and other contractual issues.				
31	Provide oversight regarding contracted legal services, including recommendations to secure and release law firms, and the review of legal fees for reasonableness.				
32	Transfer legal files relating to Purchased Assets to the Assuming Bank.				
33	For foreclosures and pending debt to assets conversion, the Legal Adviser should consult with the Other Assets Manager and review the legal status of each item, such as other real estate. A review should also be made of any applicable insurance coverage to ensure the policy beneficiary is correct.				
34	Review personnel files for any staff that may be under a contractual arrangement and file a report with the Receiver regarding the broad terms of the contract.				
35	The Legal Adviser, in support of the Conservator or Receiver, should advise of the legal ramifications of significant planned personnel decisions.				
36	Prepare memoranda concerning legal aspects/opinions for contracts, leases, and maintenance agreements repudiation; loan participations purchased and sold; records assignment; owned and leased Institution Premises; Director and Officer Liability Insurance and Blanket Bond Policies; letters of credit; partially funded loan commitments; as well as subsidiaries and affiliates of the failed institution.				
37	Prepare memoranda for Deposit Operations Manager concerning account holds, deposit insurance determinations, offsets, statutes of limitation, and other issues.				
38	Provide a report to the Conservator or Receiver of any areas of concern that have been discovered.				

Date completed: \_\_\_\_\_

Signature: \_\_\_\_\_

Comments:

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# CONFIDENTIAL

**Function Title:**     **Personnel<sup>1</sup>**

**Function Manager:** \_\_\_\_\_

**Name of Bank:** \_\_\_\_\_

**Intervention Date:** \_\_\_\_\_

Date begun: \_\_\_\_\_

## PERSONNEL CHECKLIST

Task No.	Description of task:	Yes	No	Pending	N/A
	<b>Note: All items must be addressed, with one of the four boxes checked. All “No” and/or “Pending” answers must be explained in the comments section below.</b>				
	<b>PREINTERVENTION</b>				
1	Prepare sign in/out sheets for both intervention team and failed bank employees.				
2	Prepare timesheets for failed bank employees to use (unless theirs are acceptable).				
	<b>INTERVENTION</b>				
	<b>PRIORITY ACTIONS:</b>				
3	Hold meeting of all function area employees, following outline of Annex 3.13.				
4	Provide “Consent and Release” Form (Annex 3.10) to failed bank employees.				
5	Collect the completed “Code of Conduct” and Confidentiality Form (Annex 3.10) from all officers and employees.				
6	Obtain personnel records, including any special employment contracts, pending recruitment contracts, and so on. Maintain records in a secure location, and protect the information’s confidentiality.				
7	Obtain bank organization chart, job descriptions, and listing of employees and contractors/advisors. <ul style="list-style-type: none"> <li>• Compare charts to those gathered or created by Function Managers and distribute accurate chart to Function Managers as needed.</li> <li>• Maintain an accurate organization chart.</li> <li>• Maintain an organization chart of the staff of the Conservator or Receiver.</li> </ul>				

<sup>1</sup> Item 6 may be eliminated from Receivership checklist, as applicable.

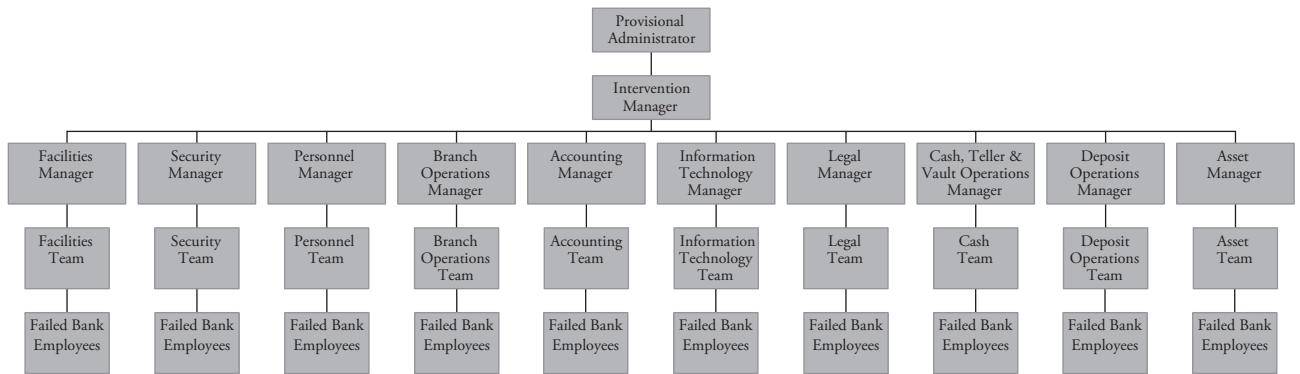


**ANNEX 3.2. SAMPLE PROBLEM BANK RESOLUTION ACTION PLAN**

1) DATE: \_\_\_\_\_

<b>1) Information to be collected from problem bank</b>	<b>Person in Charge</b>	<b>Deadline</b>	<b>Status of the Action</b>
Deposit accounts (number, sight/term, average balance)			
Specific information on household accounts (sight, term)			
Determine whether there are any direct deposits (if so, plan to make arrangements for these transactions to be routed to another bank)			
Gather all contact information on any ATM servicers the bank uses			
Network (number, location branches/sub branches, functions)			
Staffing per branch, per category			
Amount in cash in the branches			
Identify branches with: Notes (loans) Negotiable collateral Safekeeping items Safe deposit boxes Wire transfer capabilities			
Spread of portfolio: loans to households, loans to businesses, maturities, delinquencies			
Packages of performing loans for sale			
<b>2) Actions on problem bank</b>			
Meet with managing director and chairman to present the conclusions of the review; collect comments			
Order to stop all lending activities			
Order to collect as many loans as possible			
Order to send demand of repayment to all borrowers whose loans are in arrears			
Remove all cross deposit operations			
Send formal letter: if no formal commitment from investor to recapitalize, supervisory authority will take enforcement action			
Warn against any insider operations			
Forbid any cash withdrawal over _____ without prior approval of supervisory authority Monitor giro payment accounts			
<b>3) Actions from the supervisory authority (and deposit insurance agency, if applicable)</b>			
Find a receiver – must indemnify for nonnegligent acts			
Evaluate the number/amount of household sight deposits that could be paid back quickly			
Prepare “packages” of loans that could be sold quickly at book value (e.g., household loans, and so on)			

### ANNEX 3.3. INTERVENTION ORGANIZATIONAL CHART



Note: The intervention manager has fundamental responsibility for supervising all aspects of the intervention. The intervention manager turns over results of intervention to Conservator or Receiver.



## **ANNEX 3.5. NOTICE FOR REGISTRATION AT THE APPROPRIATE COURT**

\*\*Legal Department of \_\_\_\_\_ [insert appropriate legal citation and Regulatory Authority name here]



## ANNEX 3.6. DOOR NOTICE OF APPOINTMENT OF CONSERVATOR OR RECEIVER

### Notice of Appointment of Conservator or Receiver

Pursuant to \_\_\_\_\_ [authority] \_\_\_\_\_, the \_\_\_\_\_ [name of entity] \_\_\_\_\_,  
by order dated: \_\_\_\_\_, has appointed a Conservator or Receiver for \_\_\_\_\_ [name of bank] \_\_\_\_\_  
and taken possession of the bank on \_\_\_\_\_ [date] at \_\_\_\_\_ [time] \_\_\_\_\_, and shall assume responsibilities as it is provided in the law  
until further notice.

\_\_\_\_\_  
Authorized Regulatory Authority Official

\_\_\_\_\_  
[Date]

## ANNEX 3.7. NOTICE TO GENERAL DIRECTOR OF APPOINTMENT OF CONSERVATOR OR RECEIVER

To: General Director of \_\_\_\_\_ [name of bank]

Subject: Notice of Appointment of Conservator or Receiver

Dear Sir:

Pursuant to \_\_\_\_\_ [authority] hereby gives notice of the appointment of a Conservator or Receiver for \_\_\_\_\_ [name of bank] to manage and govern the bank starting on \_\_\_\_\_ [date] at \_\_\_\_\_ [time] until further notice, as it is provided by law.

The Regulatory authority has assessed that:

- 1) (Reason for appointment based on \_\_\_\_\_ [insert appropriate legal citation here] )
- 2) (Additional reasons from \_\_\_\_\_ [insert appropriate legal citation here] )
- 3) (Additional reasons from \_\_\_\_\_ [insert appropriate legal citation here] ).

Therefore, the Conservator or Receiver who has been named is \_\_\_\_\_ [name of Conservator or Receiver] .  
 He/she shall assume management-government responsibilities of \_\_\_\_\_ [name of bank] at \_\_\_\_\_ [time of order] in the offices of the \_\_\_\_\_ [name of bank] located at \_\_\_\_\_ [address of bank] .

The Conservator or Receiver shall have all the powers of directors, officers, and shareholders in accordance with the Regulatory authority's decision on his appointment.

\_\_\_\_\_  
 Authorized Regulatory Authority Official

Dated: \_\_\_\_\_

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## ANNEX 3.9. NOTICE TO BANK EMPLOYEES OF APPOINTMENT OF CONSERVATOR OR RECEIVER

To: All Officers and Employees  
\_\_\_\_\_ [Name of bank]

Subject: Notice of Appointment of Conservator or Receiver

Dear Sir/Madam:

Pursuant to [insert appropriate legal citation and Regulatory Authority name here] by order number: \_\_\_\_\_, dated \_\_\_\_\_.

The \_\_\_\_\_ [entity] hereby gives notice of the appointment of a Conservator or Receiver for \_\_\_\_\_ [name of bank] and is taking possession of the bank on the \_\_\_\_\_ (date) at \_\_\_\_\_ (hours), until further notice, as is provided by law.

The appointed Conservator or Receiver is \_\_\_\_\_ [name of Conservator or Receiver]. He/she shall assume management-governing responsibilities of \_\_\_\_\_ [name of failed bank] at [time of order] in the offices of \_\_\_\_\_ [name of failed bank] located at \_\_\_\_\_ [address of failed bank].

The Conservator or Receiver shall have all the powers of directors, officers, and shareholders in accordance with the Regulatory authority's decision on his appointment. All authorizations held by employees or officers of the bank are hereby revoked. The Regulatory authority must provide any change in writing to this notification.

\_\_\_\_\_  
Authorized Regulatory Authority Official

Dated: \_\_\_\_\_

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## ANNEX 3.10. EMPLOYEE CODE OF CONDUCT AND CONFIDENTIALITY AGREEMENT

### Regulatory Authority’s Code of Conduct for Bank Employees during Conservator or Receiver Status

Banks placed under a Conservator or Receiver must operate in an environment requiring special sensitivity on the part of all employees. Conservator or Receiver status frequently causes citizens to view the bank and its operations as more public than private. It is the Regulatory Authority’s policy that all of its business be conducted in accordance with the highest ethical standards. A Code of Conduct has been developed by the Regulatory Authority, which sets forth basic principles and guidelines to direct employees in the proper conduct of their business and personal affairs, as representatives of the bank during the Conservatorship or Receivership status.

The purpose of the Code of Conduct is to enable the conscientious employee to determine what conduct is expected, and to prevent improper employee conduct. Although it is not possible in such a code to cover every situation that may arise that would require judgment on the part of the employee, certain general policies apply:

- Employees must not use their position in the bank to enrich themselves or others at the expense of the bank and of its customers, or the Regulatory Authority;
- Employees shall preserve the confidentiality of the bank’s business and customer information;
- Employees shall make no false entries in the books and records or otherwise alter or manipulate the databases and systems of the bank for any reason;
- Employees shall be honest in dealing with the Regulatory Authority, shareholders, vendors, customers, potential acquirers, and citizens; however, private information should be kept confidential, and employees shall not be authorized to speak to the media regarding Conservator or Receivership matters;
- The use of bank funds or assets for any unlawful, improper, or private purpose is strictly prohibited;
- Employees and their immediate families are not to solicit, accept, or retain a personal benefit from any individual or organization that conducts or seeks to conduct business with the bank, or with which the bank seeks to do business, or that competes with the bank, or is known to be a potential acquirer of the bank or any assets of the bank.

Employees must understand that not only would failure to comply with this code violate Regulatory Authority policies, but could possibly provide grounds for liability on the part of, or criminal penalties against, the employee.

\*\*

I hereby acknowledge that I have received, read, and understand the Regulatory Authority Conservator or Receiver’s Employee Code of Conduct and agree to adhere to its provisions and standards.

I fully understand that it is incumbent upon me, as a condition of my employment, to fully adhere to this policy. I understand that I am subject to disciplinary action, which may include contract termination, if I violate the Regulatory Authority Conservator or Receiver’s Employee Code of Conduct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Title

### ANNEX 3.11. NOTICE TO SHAREHOLDERS, DEPOSITORS, BORROWERS, AND VENDORS OF APPOINTMENT OF CONSERVATOR OR RECEIVER

To: [Shareholder, Depositor, Borrower, or Vendor name and address]

From: [Regulatory Authority]

Date: \_\_\_\_\_

Subject: Appointment of Conservator or Receiver  
[Name of bank]

[Account Number or other Reference Number]

Pursuant to [insert appropriate legal citation and Regulatory Authority name here] by order number: \_\_\_\_\_, dated \_\_\_\_\_. The \_\_\_\_\_ [entity] has appointed a Conservator or Receiver for \_\_\_\_\_ [name of bank] and taken over the governing-managing operations of \_\_\_\_\_ [name of bank] as of [date of appointment] at [time of appointment].

Until notified otherwise in writing by the Regulatory Authority:

1. All existing obligations remain in full force and effect.
2. Future transactions through the account of \_\_\_\_\_ [name of bank] are to be authorized only by \_\_\_\_\_ [name of Conservator or Receiver] in his capacity as Conservator or Receiver.

Inquiries concerning assets and liabilities of \_\_\_\_\_ [name of bank] may be directed to \_\_\_\_\_ [name of Conservator or Receiver] at \_\_\_\_\_ [address of Conservator or Receiver].

\_\_\_\_\_  
Authorized Regulatory Authority Official

Dated: \_\_\_\_\_



## ANNEX 3.12. INITIAL INFORMATION

Following is important information that should be gathered by bank examiners prior to intervention. In the event of conservatorship, it should also be updated by the conservator for use in final bank resolution:

- Number of offices
  - Open
  - Not in operation
- Location of main offices and branch locations
  - Number of employees at each location
  - Records maintained on site (at each location)
  - Banking premises owned or leased
  - Recorded value
  - Other tenants
  - Information system – computerized or manual
- Location of all wire transfer machines and other sensitive items
- Loans
  - Number and value of loans at each location
  - Name and amount of major debtors
  - Insider lines (directors, officers, shareholders, affiliates)
  - Location of notes
  - Loan classifications
- Deposits
  - Number and value of deposits at each location
  - Name and amount of major depositors
  - Insider depositors (directors, officers, shareholders)
  - Distribution of depositors
  - Debtor/depositor relationships – offsets
- Borrowings – secured or unsecured
- Subsidiaries
- Trust Department or activities
- Ownership structure
- Enforcement actions pending
- Litigation
- Other – leases, etc.

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### **ANNEX 3.13. OUTLINE FOR INITIAL INTERVENED BANK EMPLOYEES MEETING**

Immediately after the formalities of the intervention, the bank intervention manager should call a meeting of all bank employees. This is a general outline to follow during this meeting, however, it should be modified to fit the local situation. Keep this meeting short and in control; questions and answers should be deferred until the function managers' meetings.

#### **Comments:**

Thank the employees for gathering. Announce that this will be a short meeting.

Make introductions (bank intervention manager, function managers, etc.).

Explain the supervisory authority's decision to intervene the bank and appoint a conservator or receiver under applicable law. Announce removal of former management and directors.

**Depending on the situation:** State that the supervisory authority is attempting to find a bank to take over the bank's business to avoid disrupting banking services to the community. Employees will be notified as soon as possible regarding the outcome of this important issue.

Cover basic rules and conditions, such as no contact with former management, prohibition of document destruction, and adherence to new lines of authority.

Stress the importance of intervention work during the weekend and ask for cooperation in working late tonight and over the weekend. Function managers will direct work in various functional areas. They will hold meetings as necessary to provide more detail regarding the essential work duties. Direct any questions to the function manager. If there are any problems dealing with the function managers (e.g. rudeness, insensitivity, etc.), please notify the bank intervention manager immediately.

Employees will be permitted to contact family regarding the need to work late this evening; but duration of call and information disclosed will be limited. If you have any scheduling conflict please see the bank intervention manager to discuss.

Do not talk to the media. Refer any contacts and questions from the media to the media spokesperson.

We will be preparing final financial statements for the bank, similar to year-end. Therefore, all work must be processed today regardless of the normal procedures. For example, monthly accrual entries should be made.

If any loan information and documentation is out of the credit files make sure that it is returned. All credit files and loan agreements should be in the normal secure storage space.

For the near future, all employees must sign in and out at the bank entrance and record their work hours.

Distribute the supervisory authority code of conduct for bank employees and require that each employee read and acknowledge it by signing the form. Any employee that will not agree should be immediately dismissed from the bank and escorted from the premises.

The cash function manager will direct tellers in balancing their work and completing cash count sheets and securing all the cash.

Desk inventory is a standard procedure for a bank intervention. Intervention team members have a duty to do this, so please do not be offended by this activity. Any nonbank owned personal items will not be bothered but you may be asked to place them elsewhere.

Reintroduce the conservator or receiver and the function managers.

Acknowledge distressing nature of event and express understanding. Recognize that it is natural for employees to have many questions regarding the event and function managers will be glad to answer them.

Thank the employees in advance for their cooperation and direct them to return to their work areas for further instructions from the function managers.

The conservator/receiver, bank intervention manager and the function managers should immediately leave the area to begin their intervention functions.

## ANNEX 3.14. SAMPLE PRESS RELEASES

### FDIC Approves the Assumption of the Insured Deposits of Bank of Ephraim, Ephraim, Utah

**FOR IMMEDIATE RELEASE**  
**PR-69-2004 (6-25-2004)**

**Media Contact:**  
**xxxxx (202) xxx-xxxx**

The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) today approved the assumption of the insured deposits of Bank of Ephraim, Ephraim, Utah, by Far West Bank, Provo, Utah.

The Bank of Ephraim, with total assets of approximately \$46.4 million, was closed today by the Utah Commissioner of Financial Institutions, and the FDIC was named receiver.

Far West Bank has agreed to assume approximately \$40.4 million of insured deposits of the failed bank. At the time of closure, Bank of Ephraim had approximately \$4.8 million in deposits in 125 accounts that exceeded the federal deposit insurance limit.

Three of the failed bank's four offices will reopen Monday as branches of Far West Bank. Deposit customers of Bank of Ephraim will automatically become depositors of the assuming bank. All depositors will continue to have immediate access to their insured funds.

The Hildale branch will not reopen. Customers of the Hildale branch may visit the Far West branch office at 308 West Tabernacle in St. George, Utah. Customers may also contact Far West Bank's customer service toll-free at 1-800-451-6465.

Customers with more than \$100,000 on deposit at the failed bank should contact the FDIC toll-free at 1-877-289-2088. Customer Service will be operational from Monday through Friday, 8 a.m. to 4 p.m., Mountain Time.

Far West Bank has agreed to pay the FDIC a premium of 7.51 percent of assumed deposits and purchased certain assets in the form of cash equivalents, securities, and loans secured by deposits.

The FDIC estimates the cost of this transaction to the Bank Insurance Fund will be \$13.8 million. Bank of Ephraim is the fourth failure of an FDIC-insured institution this year, and the first in Utah since Tracy-Collins Bank and Trust in December 1988.

Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. The FDIC insures deposits at the nation's 9,116 banks and savings associations and it promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars - insured financial institutions fund its operations.

FDIC press releases and other information are available on the Internet at [www.fdic.gov](http://www.fdic.gov) or contact the FDIC's Public Information Center (877-275-3342 or 202-416-6940).

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## **FDIC Approves Assumption of all the Deposits of Reliance Bank, White Plains, New York**

**FOR IMMEDIATE RELEASE**

**PR-24-2004 (3-19-2004)**

**Media Contact:**

**xxxxx (202) xxx-xxxx**

The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) has approved the assumption of all the deposits of Reliance Bank, White Plains, New York, by Union State Bank, Orangeburg, New York.

Reliance Bank, with approximately \$30.3 million in assets as of January 31, 2004, was closed today by the New York Superintendent of Banks, and the FDIC was named receiver. Reliance Bank's only banking office will reopen as a branch of Union State Bank. The drive-through window will re-open today from 3:30 p.m. to 5:00 p.m. Full-service operations will resume on Monday. Depositors of the failed bank will automatically become depositors of Union State Bank.

The failed bank had total deposits of \$28.0 million in about 1,100 accounts as of January 31, 2004. Union State Bank will pay the FDIC a premium of \$2.6 million for the right to assume those deposits and to purchase \$17.5 million of the failed bank's assets. The FDIC will retain the remaining \$12.8 million in assets for later disposition.

Customers with questions about today's transaction can contact the FDIC toll free at 1-888-206-4662. The toll-free number will be operational Monday through Friday, from 8:30 a.m. to 5:30 p.m. Eastern Standard Time.

The FDIC estimates the cost of this transaction to the Bank Insurance Fund (BIF) to be \$300,000. Reliance Bank is the third FDIC-insured bank to fail this year, and the first in New York since Golden City Commercial Bank, New York, New York, failed on December 10, 1999.

###

Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. The FDIC insures deposits at the nation's 9,182 banks and savings associations, and it promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars – insured financial institutions fund its operations.

FDIC press releases and other information are available on the Internet via the World Wide Web at [www.fdic.gov](http://www.fdic.gov) and may also be obtained through the FDIC's Public Information Center (877-275-3342 or 202-416-6940).

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## **FDIC Approves the Assumption of All the Deposits of Guaranty National Bank of Tallahassee, Tallahassee, Florida**

**FOR IMMEDIATE RELEASE**

**PR-21-2004 (3-12-2004)**

**Media Contact:**

**xxxxx (202) xxx-xxxx**

The Federal Deposit Insurance Corporation (FDIC) has approved the assumption of all the deposits of Guaranty National Bank of Tallahassee, Tallahassee, Florida, by Hancock Bank of Florida, Tallahassee, Florida, a newly chartered bank.

Guaranty National, with total assets of \$74.1 million as of December 31, 2003, was closed today by the Office of the Comptroller of the Currency, and the FDIC was named receiver.

The failed bank's five offices will reopen Monday as branches of Hancock Bank. Depositors of Guaranty National will automatically become depositors of Hancock Bank. At the time of closure, Guaranty National had total deposits of approximately \$66.9 million in 6,689 accounts.

A toll-free FDIC customer service line will be taking calls from bank customers this Saturday between 8:00 a.m. and 5:00 p.m. and Monday through Friday between 8:30 a.m. and 5:45 p.m. The number is 1-888-206-4662.

Information concerning the loans and other assets of the failed bank will be forthcoming. At present there is no estimate of any potential losses to the Bank and Savings Association Insurance Funds.

Guaranty National is the second bank to fail this year and the first in Florida since Net 1st National Bank, Boca Raton, was closed on March 1, 2002.

###

Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. The FDIC insures deposits at the nation's 9,182 banks and savings associations and it promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars – insured financial institutions fund its operations.

FDIC press releases and other information are available on the Internet at [www.fdic.gov](http://www.fdic.gov) or contact the FDIC's Public Information Center (877-275-3342 or 202-416-6940).

## **FDIC Sells Assets of the Former Guaranty National Bank of Tallahassee, Tallahassee, Florida**

**FOR IMMEDIATE RELEASE  
PR-23-2004 (3-16-2004)**

**Media Contact:  
xxxxx (202) xxx-xxxx**

Hancock Bank of Florida, Tallahassee, Florida, purchased approximately \$56.6 million of the assets of the former Guaranty National Bank of Tallahassee, Tallahassee, Florida, from the Federal Deposit Insurance Corporation (FDIC). Guaranty National was closed last Friday, March 12, by the Office of the Comptroller of the Currency, and the FDIC was named receiver.

Hancock Bank agreed to pay a premium of \$13.6 million for the right to purchase the assets of the failed bank and to assume \$66.9 million of Guaranty National's total deposits. Guaranty National had total assets of \$74.1 million as of December 31, 2003. The remaining assets of the former bank will be retained by the FDIC as receiver for later disposition.

The FDIC estimates that there will be no cost to the Bank Insurance Fund or the Savings Association Insurance Fund associated with the failure.

###

Congress created the Federal Deposit Insurance Corporation in 1933 to restore public confidence in the nation's banking system. The FDIC insures deposits at the nation's 9,182 banks and savings associations, and it promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed. The FDIC receives no federal tax dollars – insured financial institutions fund its operations.

FDIC press releases and other information are available on the Internet at [www.fdic.gov](http://www.fdic.gov) or contact the FDIC's Public Information Center (877-275-3342 or 202-416-6940).

## ANNEX 3.15. QUESTIONS AND ANSWERS FOR THE PRESS RELATED TO [FAILED BANK]

### 1) What has been decided by the supervisory authority?

The governing board of the supervisory authority, pursuant to the provisions of \_\_\_\_\_ [code or stipulation] of the banking law has decided the following:

- to revoke the banking license of [failed bank];
- to take possession of the bank through a receiver;
- to appoint a receiver;
- to dismiss the board members and the management (general manager and deputy general manager).

### 2) Why has the supervisory authority decided to close the bank?

The on-site review of \_\_\_\_\_ [failed bank], conducted by the supervisory authority teams, has shown that the present value of bank's assets no longer adequately covers its liabilities. \_\_\_\_\_ [Failed bank] has lost its capital and is insolvent. Despite the supervisory authority's demands, the governing board of \_\_\_\_\_ [failed bank] has not been able to increase the capital to the minimum requirement of \_\_\_\_\_ [amount]. Moreover, the governing board has not been able to comply with the supervisory authority's enforcement orders demanding actions to restore the financial situation of the institution.

Consequently, to protect the clients (the depositors) from any additional losses, the supervisory authority has decided to close \_\_\_\_\_ [failed bank] and to revoke its license.

For possible follow-up questions:

*a) Due to inappropriate credit decisions, as well as poor credit risk management, the credit portfolio of \_\_\_\_\_ [failed bank] is suffering from present and expected losses. Many loans in arrears are unpaid.*

*Moreover, \_\_\_\_\_ [failed bank] does not have sufficient earnings to provide the necessary reserves ("provisions") to cover the present and expected losses on its credit portfolio.*

*b) Credit risks are usual for a bank. All banks may, from time to time, suffer from losses, since some borrowers fail to repay their loans. Present or expected losses are to be covered by reserves ("provisions for nonperforming loans") taken from the bank earnings. All other banks have currently constituted such provisions.*

*In the case of \_\_\_\_\_ [failed bank], the level of provisions that would be necessary to cover nonperforming loans exceeds its current earnings and capital.*

*Consequently, to protect the depositors from any additional losses, the supervisory authority has decided to interrupt \_\_\_\_\_ [failed bank] activities and to revoke its license.*

### 3) Have there been abuses by the former governing board of \_\_\_\_\_ [failed bank] ?

Because there are or may be ongoing legal investigations, it is inappropriate to address this subject at present, except to point out that neither \_\_\_\_\_ [failed bank] board members nor \_\_\_\_\_ [failed bank] shareholders provided the institution with the necessary funding to cover the losses and reconstitute the capital.

### 4) What will happen to clients/depositors?

All depositors, in amounts not to exceed \_\_\_\_\_ [amount], will be entirely and promptly refunded by \_\_\_\_\_ [entity]. Consequently, about \_\_\_\_\_ [%] of depositors (clients) will be refunded during repayments. Other waves of repayment may be performed afterwards as soon as possible in line with the liquid assets collected by the receiver.

To make a claim, depositors should follow the procedures posted at the banking offices, broadcast over television and radio, and published on the deposit insurance agency's website.

Because of the expected volume of claims, the repayment process could last at least two or three weeks; however payment is to begin as soon as possible.

### 5) Would any depositors lose their funds?

Most of the small depositors will be immediately and entirely refunded. The \_\_\_\_\_ [entity] will perform payment, which should cover approximately \_\_\_\_\_ [%] of the depositors.

Further payments will be made by the receiver upon successful collection of \_\_\_\_\_ [failed bank] loans, and the selling of assets. All uninsured depositors will be paid in an equal manner.

Nevertheless, the very large deposits could be partially frozen. If the liquidation of the bank does not bring enough money to cover the remaining deposits, the largest depositors could possibly expect some losses.

\_\_\_\_\_ [Failed bank] shareholders will lose the value of their shares since shareholders are the last to be refunded in case of liquidation.

They could also lose their deposits if they have abused their position.

In case of additional questions:

*a) According to the regulation, all banks shall keep at any moment a liquidity reserve, part of which is kept safe in the supervisory authority accounts and part of which is kept in cash in the vaults of the institution.*

*b) The holders of safe deposit boxes in the vaults of \_\_\_\_\_ [failed bank] main office will not lose anything. They will be quickly allowed to have access to their safe deposit box by the receiver.*

### 6) What will happen to borrowers (loan clients)?

All the loans granted by [failed bank] should be paid back according to their maturity and the scheduled payment plan. Consequently borrowers should continue to pay their loans. The receiver will give the borrowers the necessary instructions.

The receiver will take immediate action against all the borrowers whose loans are in arrears. Any borrowers who were connected with the \_\_\_\_\_ [failed bank] failure will be prosecuted.

### 7) Would it have been possible to find a solution other than closing \_\_\_\_\_ [failed bank] ?

Ultimately shareholders and the board members are responsible to provide additional capital to cover the results of their poor management. The supervisory authority would have preferred this solution, but unfortunately, it did not happen, despite supervisory authority requests.

The \_\_\_\_\_ [failed bank] had no realistic solution to raise additional capital from a new partner or even to transfer the ownership of the bank to a solid and reliable investor. The attempts made by \_\_\_\_\_ [failed bank] were unsuccessful and unrealistic due to the very poor financial situation of the institution.

### 8) Who is a receiver?

A receiver is an expert who has a strong banking background and experience in dealing with problem banks. He will take control of the failed institution and manage it in the place of the dismissed governing board and management. He is appointed by the supervisory authority. He will act on behalf of the supervisory authority and under its supervision.

### 9) What will be the tasks of the receiver?

The receiver will have first to protect the assets of \_\_\_\_\_ [failed bank]. He has already closed the branches and their operations.

Then he will recover the loans based on their maturity.

He will sell the assets that can be sold, with a goal to maximize recovery and minimize expenses in order to make additional repayments to the remaining depositors and creditors. The receiver will take all the necessary legal actions against borrowers who are not paying back their pending loans. He will also take all the necessary legal actions against those who have abused their positions in order to obtain loans.

At the end of the process \_\_\_\_\_ [failed bank] will be liquidated.



The receiver will be helped by experts and staff members temporarily seconded by the supervisory authority. He will also be helped by staff members of \_\_\_\_\_ [failed bank] \_\_\_\_\_.

**10) What will happen to \_\_\_\_\_ [failed bank] \_\_\_\_\_ staff?**

Some of [failed bank] staff will be employed by the receiver. Others will be progressively dismissed or possibly be reemployed by other banks. Cooperative \_\_\_\_\_ [failed bank] \_\_\_\_\_ employees will receive up to \_\_\_\_\_ months severance pay.

**11) What could be the consequences of the closing of \_\_\_\_\_ [failed bank] \_\_\_\_\_ activities on the banking sector of \_\_\_\_\_ [territorial entity] \_\_\_\_\_?**

\_\_\_\_\_ [Failed bank] \_\_\_\_\_ is one of the smallest banking institutions in \_\_\_\_\_ [territorial entity] \_\_\_\_\_.

Its market share is around \_\_\_\_ % of the banking industry; \_\_\_\_ % of total deposits, \_\_\_\_ % of loans). The clients' accounts could be easily transferred to other institutions.

Consequently, the direct impact of the closure of \_\_\_\_\_ [failed bank] \_\_\_\_\_ is not considered significant for the banking industry as a whole.

Neither are the indirect effects of the closure of \_\_\_\_\_ [failed bank] \_\_\_\_\_, since all other banks are solvent and well liquid.

## ANNEX 3.16. TELEPHONE SCRIPT (LIQUIDATION)

All telephones are to be answered: “Deposit insurance agency (or other appointed receiver), as receiver for \_\_\_\_\_ [name of intervened bank] \_\_\_\_\_.”

[Listen to inquiry from caller]

“The \_\_\_\_\_ [name of intervened bank] \_\_\_\_\_ has been closed and the deposit insurance agency \_\_\_\_\_ [or other appointed receiver] \_\_\_\_\_ has been appointed receiver. Please pay attention to the local newspaper and other media concerning the future developments. All insured deposits up to \_\_\_\_\_ [amount] \_\_\_\_\_ are safe.”

- Limit responses to inquiries from customers to the prepared statement provided above.
- Calls to and from supervisory authority personnel are to be accepted.
- Calls from other government or regulatory agencies are to be referred to the bank intervention manager.
- All television, radio, and newspaper related calls are to be referred to the supervisory authority’s communication officer or the receiver.

### *Telephone Statement (Assuming Bank)*

Ask the assuming bank’s branch manager to provide a script for the receptionist and a list of assuming bank personnel phone numbers. Supply the manager with the supervisory authority’s communication officer telephone number and the receiver’s.

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## ANNEX 3.17. BANK INTERVENTION MANAGERS BOOK TABLE OF CONTENTS

### Index

[Bank Name]

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[City, State]

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Assuming Bank Authorized Signers  
 Assuming Bank Bid  
 Bank Employees – Authorization of Payment  
 Closing Information Sheet  
 Exit Memos/Checklists  
 Hotel Information  
 Failed Bank's Charter  
 Deposit Insurance Certificate  
 Maps  
 Official Receipts  
 Organizational Chart  
 Photographs  
 Press Release/Newspaper Articles  
 Resolution Action Plan – Preclosing  
 Resolution Action Plan – Postclosing  
 Transaction Recap  
 Web Site info for Bank  
 Wire Instructions  
 Miscellaneous Emails – Managers Meetings, Team Members Availability

Any Supplemental Books  
     Facilities Closing Book  
     Legal Closing Book  
 Assets Closing Book

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**ANNEX 3.18. INVENTORY BOOK OF ASSETS AND LIABILITIES**

	Item	Description	Source
1	Legal documents	Official signed legal documents; for example, appointment of receiver, bid package, purchase and assumption agreement, loan sale agreement, etc.	Closing attorney
2	Failed bank's financial statements	Final general ledger, final system trial balance, or final balance sheet	Accounting manager
3	Intervention financial statements	Final reconciled or confirmed account balance by pro forma account number	Accounting manager
4	Intervention financial statement for assuming bank	List of account balances transferred to the assuming bank	Accounting manager
5	Intervention financial statement for receiver	List of account balances transferred to receiver as receiver	Accounting manager
6	Accounting worksheet by account number	List of confirmed account balances transferred to receiver as receiver and to assuming bank	Accounting manager
7	Accounting adjustments by account number	Adjustments to general ledger accounts sorted by account number	Accounting manager
8	Cash basis adjustments to financial statements	Final reconciled or confirmed cash basis account balance	Accounting manager
9	Cash basis statement for receiver	Cash basis account balances transferred to receiver	Accounting manager
10	Cash basis worksheet by account	Confirmed cash basis general ledger accounts and balance to receiver	Accounting manager
11	Cash basis adjustments by number	Total adjustments to accounts by number	Accounting manager
12	Bank premises	Addresses of each location (bank letterhead)	Facilities manager
13	Securities inventory	Schedule of investments (pledged and unpledged)	Asset manager
14	Interbank accounts	Bank funds placed in other banks	Asset manager
15	Loan trial balance	Combined loan trial balance—include all loan types; commercial, installment, real estate, ag, student, auto, etc., for all locations	Asset manager
16	Loans sold to other banks	List of loans, balances, and other pertinent data	Asset manager
17	Overdrafts	List of overdrafts	Asset manager
18	Subsidiaries	List of subsidiaries	Asset manager
19	Loans assumed by receiver	List of the loans retained by receiver	Asset manager
20	Unfunded commitments retained by the receiver	List of unfunded commitments	Asset manager
21	Charged-off loans	Loans that were charged off by the failed bank	Asset manager
22	Owned real estate	Report of the real properties owned by the failed bank	Asset manager
23	Letters of credit	Letters of credit issued by the failed bank	Asset manager
24	Schedule of repossessed collateral	Repossessions on the books of the failed bank	Asset manager
25	Other assets, bank-owned vehicles, and prepaid expenses	Property and prepaid expenses of the failed bank	Asset manager
26	Participated loans	Participations bought and sold	Asset manager
27	Schedule of contracts and leases	Agreements and contracts entered into by the failed bank	Settlements, legal, asset manager/repudiations
28	Schedule of insurance	Insurance policies held by the failed bank	Settlements, legal investigations

	<b>Item</b>	<b>Description</b>	<b>Source</b>
29	Safe deposit boxes	List, if not transferred to acquiring bank	Facilities
30	Possessory collateral and safekeeping inventory	Printout of the items held by the bank for collateral and safekeeping	Asset manager
31	Account holds	All holds placed on depositor accounts	Deposit operations, legal, and assets
32	Stockholders list	Stockholder list, name, address, number shares	Asset manager, legal
33	Directors/officers/employees list	Bank director list, name, address, and title bank employee list	Personnel
34	First notification letter	Initial letter to debtors of the failed bank	Asset manager
35	Claims notice/legal publication	Letter to depositors and creditors; notice of newspaper publication	Deposit operations manager
36	Deposit liability register	List of all depositor accounts; demand, savings, time, etc.	Deposit operations manager
37	Press release	Press release issued to the media	Communications manager

**ANNEX 3.19. ESTIMATED LOSS IN ASSETS FORM**

Bank Name: \_\_\_\_\_

Date: \_\_\_\_\_

Account	Book Value	Estimated Value	Loss	Note
Cash				
Borrowings				
Securities				
Loans				
Fixed assets				
Other real estate				
Other assets:				
<input type="checkbox"/> Accrued interest				
<input type="checkbox"/> Prepaid expenses				
<input type="checkbox"/> Other				
<input type="checkbox"/> Other				
<input type="checkbox"/> Other				
TOTAL:				

Accompanying notes should include detailed schedules of asset breakdowns, as well as general background information and any other pertinent facts.

**Comments:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## ANNEX 3.20. CASH COUNT SHEETS

### I. CASH COUNT SHEET

BANK NAME \_\_\_\_\_

DATE \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_

TELLER NUMBER \_\_\_\_\_

CURRENCY:		COIN:	
Denomination	Amount	Denomination	Amount
100,000		1,000	
50,000		500	
20,000		200	
10,000		100	
5,000		50	
1,000		25	
		Total Coin:	
		Plus	
		Total Currency:	
Bait Money		Equals	
Mutilated Currency			
Other		Total Teller Cash	
Total Currency:			

\_\_\_\_\_  
Teller signature

\_\_\_\_\_  
Regulatory authority representative signature

(ATTACH ADDING MACHINE TAPE)

**II. CASH COUNT SHEET**

BANK NAME \_\_\_\_\_

DATE \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_

**III. VAULT**

CURRENCY:		COIN:	
Denomination	Amount	Denomination	Amount
100,000		1,000	
50,000		500	
20,000		200	
10,000		100	
5,000		50	
1,000		25	
		Total Coin:	
		plus	
		Total Currency:	
Bait Money		equals	
Mutilated Currency			
Other		Total Vault Cash	
Total Currency:			

\_\_\_\_\_  
Teller signature\_\_\_\_\_  
Regulatory authority representative signature

(ATTACH ADDING MACHINE TAPE)





**CASH COUNT SHEET**

BANK NAME \_\_\_\_\_

DATE \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_

**VII. RECAP**

CURRENCY:	Amount	COIN:	Amount
Teller #1		Teller #1	
Teller #2		Teller #2	
Teller #3		Teller #3	
Teller #4		Teller #4	
Teller #5		Teller #5	
Teller #6		Teller #6	
Teller #7		Teller #7	
Vault		Vault	
		Total Coin:	
		Plus	
Total Currency:		Total Currency:	
		Equals	
		Total Cash	

\_\_\_\_\_  
Teller signature

\_\_\_\_\_  
Regulatory authority representative signature

(ATTACH ADDING MACHINE TAPE)

**CASH COUNT SHEET - FOREIGN**

BANK NAME \_\_\_\_\_

DATE \_\_\_\_\_

BANK ADDRESS \_\_\_\_\_

CURRENCY TYPE \_\_\_\_\_

**VIII. RECAP-FOREIGN**

CURRENCY:		COIN:	
	Amount		Amount
Teller #1		Teller #1	
Teller #2		Teller #2	
Teller #3		Teller #3	
Teller #4		Teller #4	
Teller #5		Teller #5	
Teller #6		Teller #6	
Teller #7		Teller #7	
Vault		Vault	
		Total Coin:	
		Plus	
Total Currency:		Total Currency:	
		Equals	
		Total Foreign Cash	

\_\_\_\_\_  
Teller signature\_\_\_\_\_  
Regulatory authority representative signature

(ATTACH ADDING MACHINE TAPE)

### ANNEX 3.21. ASSET REVIEW SHEET

Bank Name: \_\_\_\_\_

Date: \_\_\_\_\_

Borrower:				Loan Number:		
				Asset Type:		
Current Balance	Original Date	Original Balance	Interest Rate	Maturity Date	Last Payment Date	Last Payment Made

*Collateral Description Including Guarantors:*

Appraised Value: \_\_\_\_\_

Financial Information and Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Repayment as a percentage of book value is estimated as follows:

1. Financial ability of debtor and/or guarantor/co-maker: \_\_\_\_\_ %
2. Collateral Value: \_\_\_\_\_ %
3. Other (describe in detail) \_\_\_\_\_ %

Estimated Gross Collection:  
 (Sum of above x Current Balance) \_\_\_\_\_ % x \_\_\_\_\_ = \_\_\_\_\_

Less: Conservator or Receiver Expense (if any)  
 (Expense Ratio x Estimated Gross Recovery) \_\_\_\_\_ % x \_\_\_\_\_ = \_\_\_\_\_

Time to Liquidate in months: \_\_\_\_\_

Present Value of Net Recovery: \_\_\_\_\_

ESTIMATED LOSS  
 (Current Balance less Present Value of Net Recovery): \_\_\_\_\_

## ANNEX 3.22. BANK ACCOUNT RECONCILIATION GUIDELINES

Reconciliation files should be created for all line-item general ledger accounts. Copies of the documentation mentioned below should be placed in the reconciliation file (original bank records should not be). At a minimum, the reconciliation file should contain:

- Copy of general ledger
- Copy of subsidiary ledger
- Supporting reconciliation documentation

All work papers and supporting documentation should be labeled as follows:

- Name and location of bank
- “As of” date
- Description (name) of general ledger account
- Title of work paper, with sequential coding (“1, 2, 3...” or “A, B, C...”) to tie in with the summary reconciliation form
- Name and signature of person completing the work paper

### ASSETS

Cash – verify by physically counting the currency, under dual control, using standardized cash count forms.

Cash Equivalents – verify by physically confirming the items, under dual control, listing and recapitulating on standardized forms.

Deposits at Central Bank, commercial banks, or other – request verification statement for the “as of” date. Direct verification of SWIFT or other wire transfer accounts via official payment system should also be conducted.

Short Term Loans – if automated, inventory note instruments to trial balance and reconcile any outstanding items to general ledger. For manual systems, run adding machine tapes on the notes and reconcile any outstanding items to general ledger. Spot check interest accruals, payments, etc.

Short Term Securities – check purchase advice for initial booking amount and perform amortization or accretion as needed to confirm to general ledger. For securities physically held by the bank, inventory instruments and check purchase price to initial booking of the asset. If securities are held by a third party, request safekeeping advice for confirmation.

Other Securities – check purchase advice for initial booking amount and perform amortization or accretion to confirm to general ledger. For those physically held by the bank, inventory instruments and compare purchase price to initial booking of the asset. If securities are held by a third party, request safekeeping advice for confirmation.

Other assets – locate and confirm documentation that supports the general ledger amounts. (For example, prepaid insurance would require a copy of the policy that indicates period covered and amount paid; office supplies would require copies of receipts, along with a spot check of the remaining inventory on hand.)

Long Term Loans – if automated, inventory note instruments to trial balance, reconcile any outstanding items to general ledger. For manual systems, run adding machine tapes on the notes and reconcile any outstanding items to general ledger. Spot check interest accruals, payments, etc.

Long Term Securities – check purchase advice for initial booking amount and perform amortization or accretion as needed to confirm to general ledger. For those physically held by the bank, inventory instruments and check purchase price to initial booking of the asset. If securities are held by a third party, request safekeeping advice for confirmation.

Investment in Shares – confirm actual shares held, get copies of latest financial statements of the concern.



Fixed Assets – for owned property, verify deeds, improvements, confirm purchase price and depreciation schedule. For leased property, analyze lease, any leasehold improvements, and payment terms. For equipment, compare receipts to initial booking amount, analyze depreciation schedule.

Non-Business Assets – subsidiary listing, proof of ownership (similar to assets above, depending on nature of asset).

## **LIABILITIES**

Sight Deposits – if automated, compare subsidiary trial balance to general ledger. If manual, run adding machine tape on ledger cards or deposit contracts (whatever represents the current balance of the deposit liability). Reconcile any outstanding items.

Short Term Borrowings from Central Bank – review borrowing agreements, balance supporting documentation to general ledger.

Short Term Deposits - if automated, compare subsidiary trial balance to general ledger. If manual, run adding machine tape on ledger cards or deposit contracts (whatever represents the current balance of the deposit liability). Reconcile any outstanding items.

Short Term Borrowings (commercial banks or other) – review borrowing agreements, balance supporting documentation to general ledger.

### **Other Liabilities:**

Loan Loss Reserve – review internal and supervisory classifications in relation to proper charges. Review recoveries from charged-off loans.

Loans – if automated, inventory note instruments to trial balance, reconcile any outstanding items to general ledger. For manual systems, run adding machine tapes on the notes and reconcile any outstanding items to general ledger. Spot check interest accruals, payments, etc.

Long Term Borrowings from Central Bank – review borrowing agreements, balance supporting documentation to general ledger.

Long Term Deposits – If automated, compare subsidiary trial balance to general ledger. If manual, run adding machine tape on ledger cards or deposit contracts (whatever represents the current balance of the deposit liability). Reconcile any outstanding items.

Long Term Borrowings (commercial banks or other) – review borrowing agreements, balance supporting documentation to general ledger.

General Reserves – review internal and supervisory classifications in relation to proper charges. Review recoveries from charged-off loans.

Subordinated Debt – review subsidiary records, reconcile to general ledger.

Non-Business Liabilities – subsidiary listing, proof of liability (similar to liabilities above, depending on nature of liability).

Accounts Payable – review files for validity (contracts, invoices, etc.) and proper amortization.

Founders Capital – review any changes in capital (newly issued stock, etc.).

Reserves and Profits Retained – copy of latest financial statement.

Undistributed Profits – review income and expense statements for entries to Undistributed Profits. Review charges to reserves and dividends paid.

Current Profit (Loss) – copy of latest financial statement.

**ANNEX 3.23. SUBSIDIARY DUE DILIGENCE REVIEW CHECKLIST<sup>1</sup>**

Office: \_\_\_\_\_ Date: \_\_\_\_\_

Prepared by: \_\_\_\_\_ Phone: \_\_\_\_\_

**A. SUBSIDIARY STRUCTURE**

Name of subsidiary: \_\_\_\_\_

Street address: \_\_\_\_\_

Nature of business: \_\_\_\_\_

Percent of ownership: \_\_\_\_\_ By: \_\_\_\_\_ [Receiver of other subsidiary name]

Outside Managing Partner: \_\_\_\_\_

Tier level to receivership: \_\_\_\_\_ 1<sup>st</sup> \_\_\_\_\_ 2<sup>nd</sup> \_\_\_\_\_ 3<sup>rd</sup> \_\_\_\_\_ Other

List other tiers:

Date incorporated: \_\_\_\_\_ Place incorporated: \_\_\_\_\_

Status of subsidiary (if known):

\_\_\_\_\_ Shell, no assets/liabilities

\_\_\_\_\_ Ongoing concern

\_\_\_\_\_ Possible bankruptcy

\_\_\_\_\_ Standing with the country  
(Good, Not Good, Suspended, Dissolved)

\_\_\_\_\_ Dissolved by country \_\_\_\_\_ Date dissolved: \_\_\_\_\_

List the countries in which the subsidiary is authorized/licensed to do business:

\_\_\_\_\_  
\_\_\_\_\_

Date of last country filing: \_\_\_\_\_

(Obtain a copy of report filed.)

Number of shares: Authorized: \_\_\_\_\_ Issued: \_\_\_\_\_ Outstanding: \_\_\_\_\_

Publicly traded? \_\_\_\_\_ Yes \_\_\_\_\_ No

If no, number of shareholders: \_\_\_\_\_

Are there statutory capital requirements? \_\_\_\_\_ Yes (describe below) \_\_\_\_\_ No

Are these requirements met? \_\_\_\_\_ Yes \_\_\_\_\_ No

Majority shareholders:

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Percentage of ownership: \_\_\_\_\_

Minority shareholders:

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Percentage of ownership: \_\_\_\_\_

Date of last Annual Meeting: \_\_\_\_\_

Date of next Annual Meeting (per bylaws or articles): \_\_\_\_\_

Date of last Annual Report: \_\_\_\_\_

<sup>1</sup> Adapted from *Subsidiary Manual* (Federal Deposit Insurance Corporation, Washington, 2004).

Date of next Annual Report: \_\_\_\_\_

Registered Agent's name and address: \_\_\_\_\_

Contact Name/Phone Number: \_\_\_\_\_

Directors and officers:

Name: \_\_\_\_\_ Position: \_\_\_\_\_ Relationship to institution: \_\_\_\_\_

Date of last Board meeting: \_\_\_\_\_

Date of next Board meeting (per bylaws or articles): \_\_\_\_\_

Number required per bylaws: Directors \_\_\_\_\_ Officers: \_\_\_\_\_

Outside directors and officers needed? \_\_\_\_\_ Yes \_\_\_\_\_ No

Have current directors and officers resigned? \_\_\_\_\_ Yes \_\_\_\_\_ No

Key employees of the subsidiary corporation:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Phone number: \_\_\_\_\_

## B. BUSINESS INFORMATION

Industry: \_\_\_\_\_ Financial \_\_\_\_\_ Service \_\_\_\_\_ Mineral production \_\_\_\_\_ Real estate \_\_\_\_\_ Retail \_\_\_\_\_ Manufacturing \_\_\_\_\_ Other (identify) \_\_\_\_\_

If real estate: \_\_\_\_\_ Commercial \_\_\_\_\_ Residential development \_\_\_\_\_ Single family \_\_\_\_\_ Multi-family \_\_\_\_\_ Other \_\_\_\_\_  
Where can the following be located? (Documents should clearly distinguish each subsidiary from another and from the institution.)

Original corporate documents: \_\_\_\_\_

Minutes book: \_\_\_\_\_

Asset files: \_\_\_\_\_

Credit files: \_\_\_\_\_

Legal files: \_\_\_\_\_

Working files: \_\_\_\_\_

Where are the operating records held? \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact person/phone number: \_\_\_\_\_

### 1. LEGAL ISSUES

Counsel for the subsidiary corporation at time of closing:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact person/phone number: \_\_\_\_\_

Present Counsel for the subsidiary corporation: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact person/phone number: \_\_\_\_\_

Any known or threatened litigation: \_\_\_\_\_

Any known or suspected environmental problems (based upon review of the asset files, the Environmental Review Worksheet, and if applicable, completed environmental studies): \_\_\_\_\_

Are internal controls established to prevent possible conflicts of interest? \_\_\_\_ Yes \_\_\_\_ No

Other legal issues: \_\_\_\_\_

## 2. BUSINESS ISSUES

Any known contractual obligations (including, but not limited to, employment contracts, employee benefit plans, consulting agreements, leases, etc.): \_\_\_\_\_

1. Financial obligations (specify if related party or third party): \_\_\_\_\_

2. Service obligations (specify if related party or third party): \_\_\_\_\_

Does the subsidiary provide/receive services to/from the institution or other subsidiaries? \_\_\_\_ Yes \_\_\_\_ No

Is there a written contract for these services? \_\_\_\_ Yes \_\_\_\_ No

Is there compensation? \_\_\_\_ Yes \_\_\_\_ No

Does subsidiary service loans? \_\_\_\_ Yes \_\_\_\_ No

For whom: \_\_\_\_ Failed Institution \_\_\_\_ Itself \_\_\_\_ Others (Attach list if needed)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Contact person: \_\_\_\_\_

Will this arrangement continue: \_\_\_\_ Yes \_\_\_\_ No

Is there a property manager? \_\_\_\_ Yes \_\_\_\_ No

Term of present contract: through \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Contact person: \_\_\_\_\_

Does property manager have operating account? \_\_\_\_ Yes \_\_\_\_ No

Bank name: \_\_\_\_\_

Amount: \_\_\_\_\_ as of \_\_\_\_\_

Type of general funding arrangement between subsidiary and property manager: \_\_\_\_\_

Narrative of significant activities (note whether activities have been approved by the Board of Directors): \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PREPARE THE ATTACHED ASSET SUMMARY (ATTACHMENT A) AND LIABILITY SUMMARY (ATTACHMENT B) FOR EACH LIABILITY AND NON-CASH ASSET OF THE SUBSIDIARY. ATTACH A COPY OF THE LEGAL DUE DILIGENCE\CHECKLIST (ATTACHMENT C)**

**C. FINANCIAL INFORMATION**

**1. ACCOUNTING ISSUES**

Basis of accounting: \_\_\_\_\_ Cash \_\_\_\_\_ Accrual  
Are accounting records maintained separately? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, on what type of system are records maintained?  
\_\_\_\_\_ PC \_\_\_\_\_ Manual \_\_\_\_\_ Mainframe  
Software package used: \_\_\_\_\_  
Most recent financial statements: dated as of \_\_\_\_\_  
Assets: \_\_\_\_\_ Liabilities: \_\_\_\_\_ Net worth: \_\_\_\_\_  
CPA firm: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
Contact person: \_\_\_\_\_  
Has subsidiary reported on consolidated basis with parent? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Date of last report: \_\_\_\_\_

Does subsidiary have deposit accounts? \_\_\_\_\_ Yes \_\_\_\_\_ No  
(Include any account related to employee benefits plans.)  
Where are deposit accounts?  
\_\_\_\_\_ Failed Institution Account holds placed? \_\_\_\_\_ Yes \_\_\_\_\_ No  
\_\_\_\_\_ External Institutions Letter to correspondent bank? \_\_\_\_\_ Yes \_\_\_\_\_ No  
Bank Name: \_\_\_\_\_ A/C # (and name on account): \_\_\_\_\_  
Amount: \_\_\_\_\_

Is there a financial interrelationship to the failed institution or another subsidiary?  
(Specify if there are written borrowing agreements.)  
\_\_\_\_\_ Failed institution \_\_\_\_\_ Subsidiary \_\_\_\_\_ No

Due to failed institution:  
\_\_\_\_\_  
Due from failed institution:  
\_\_\_\_\_

Due to other subsidiaries (list names and amounts):  
\_\_\_\_\_  
\_\_\_\_\_

Due to other subsidiaries (list names and amounts):  
\_\_\_\_\_  
\_\_\_\_\_

Debt guarantees (specify who is guarantor and for what debt):  
\_\_\_\_\_

Are there any other liabilities of the parent that affect the subsidiary?  
\_\_\_\_\_

Are there any investments in any Joint Ventures or Partnerships? if so, specify percent (%) owned.  
Secure copies of agreements.  
\_\_\_\_\_

Has proof of claim been filed against corporation for:

Excess deposits  General trade  Other  No

Will the receiver need to fund the subsidiary?  Yes  No

Who will continue to maintain the financial books and records?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Who will continue to maintain the nonfinancial books and records?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Recommendation for follow-up visitation:

Quarterly  Yearly  Other  None

## 2. TAX ISSUES

(SEE SUBSIDIARY TAX CLOSING PROGRAM WORKSHEET [ATTACHMENT D], WHICH IS COMPLETED BY THE RECEIVERSHIP TAX REPRESENTATIVE)

Tax identification number: \_\_\_\_\_

Date of last return: Federal: \_\_\_\_\_ State: \_\_\_\_\_

Was return consolidated?  Yes  No

Has final return been filed?  Yes  No

Who is responsible for tax returns? \_\_\_\_\_

Payroll tax servicer:

Contract continued?  Yes  No

Owned Real Estate Taxes: \_\_\_\_\_

Property: \_\_\_\_\_

Copies of Billing and Assessments: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact person: \_\_\_\_\_



Need	Have	Comments
_____	_____	_____ 21. Loan documents with remaining balances, showing allocation between principal and interest and history.
_____	_____	_____ 22. Notes and mortgage payable documents, including an amortization schedule that agrees with the balance sheet.
_____	_____	_____ 23. Rent records for the previous years.
_____	_____	_____ 24. Property manager reports from the beginning of the year through the date of closing, including the reconciliation of any bank accounts maintained by the property managers.
_____	_____	_____ 25. Memorandum from Legal regarding pending litigation and other legal costs of representing the subsidiary.
_____	_____	_____ 26. Audit reports (including bank examiner reports and annual reports).
_____	_____	_____ 27. Documentation on any employee benefit plans.
_____	_____	_____ 28. Analysis of goodwill and the necessity of preserving it.
_____	_____	_____ 29. Analysis of subsidiary's ability to manage debts and remain viable.
_____	_____	_____ 30. Other: _____

**ATTACHMENT A**

**SUBSIDIARY CHECKLIST  
ASSET SUMMARY**

(COMPLETE FOR EACH NON-CASH ASSET OF THE SUBSIDIARY)

ASSET DESCRIPTION (IF OWNED REAL ESTATE, INCLUDE ADDRESS):

SUBSIDIARY OWNERSHIP %: \_\_\_\_\_% ANY RELATED OWNERSHIP INTEREST(S): \_\_\_\_\_YES \_\_\_\_\_NO  
TO WHOM/%: \_\_\_\_\_

BOOK VALUE: \_\_\_\_\_

APPRAISER, VALUE, AND DATE OF LAST APPRAISAL(S), IF APPLICABLE: \_\_\_\_\_

ENVIRONMENTAL REVIEW NEEDED/COMPLETED? \_\_\_\_\_YES \_\_\_\_\_NO

ENVIRONMENTAL REVIEW CONDUCTED BY (INCLUDE DATE): \_\_\_\_\_

DESCRIBE ANY KNOWN ENVIRONMENTAL PROBLEMS: \_\_\_\_\_

DESCRIBE ANY CONTINGENT LIABILITIES ASSOCIATED WITH THIS ASSET: \_\_\_\_\_

DESCRIBE ANY CONFLICTS OF INTEREST ASSOCIATED WITH THIS ASSET: \_\_\_\_\_



ADEQUATE INSURANCE? \_\_\_\_ YES \_\_\_\_ NO

INSURANCE CARRIER(S), IF APPLICABLE: \_\_\_\_\_

DESCRIBE ANY ANTICIPATED FUNDING REQUIREMENTS: \_\_\_\_\_

ANTICIPATED ANNUAL INCOME/LOSS: \_\_\_\_\_

IF PARTNERSHIP, IS IT ADEQUATELY CAPITALIZED (DESCRIBE): \_\_\_\_\_

OTHER PARTNERS (USE ADDITIONAL SHEET IF NECESSARY): \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PERCENT OWNERSHIP: \_\_\_\_%

LIMITED PARTNER OR GENERAL PARTNER? \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PERCENT OWNERSHIP: \_\_\_\_%

LIMITED PARTNER OR GENERAL PARTNER? \_\_\_\_\_

ANY REASON THE BANKRUPTCY ADMINISTRATOR SHOULD NOT TAKE POSSESSION OF THIS ASSET?

RECOMMENDED METHOD OF DISPOSITION (E.G., SALE, UPSTREAM, ETC.):

OTHER: \_\_\_\_\_

**ATTACHMENT B**

**SUBSIDIARY CHECKLIST  
LIABILITY SUMMARY**

(COMPLETE FOR EACH LIABILITY OF THE SUBSIDIARY)

DESCRIPTION OF LIABILITY (INCLUDE OWNERSHIP PERCENTAGE, WHETHER IT IS CONTINGENT, TO WHOM IT IS OWED, AND REPAYMENT TERMS, INCLUDING INTEREST RATE, PAYMENT AMOUNTS AND DATES DUE, MATURITY DATE, ETC.):

BOOK VALUE OF LIABILITY: \_\_\_\_\_

CREDITOR ADDRESS: \_\_\_\_\_

CREDITOR CONTACT NAME/TELEPHONE NUMBER: \_\_\_\_\_

WHEN DUE: \_\_\_\_\_

INVOLVED AFFILIATES: \_\_\_\_\_

OTHER: \_\_\_\_\_

**ATTACHMENT C****LEGAL DUE DILIGENCE CHECKLIST**

This checklist is designed to be used in conjunction with the Subsidiary Due Diligence Review Checklist and contains supplemental information necessary for the evaluation of subsidiaries. In preparing the information required by this Legal Due Diligence Checklist, the due diligence examiner should exercise caution to preserve any applicable privileges available to protect information from discovery by an adverse party.

In addition to completing the following items, the due diligence examiner should collect attorney reports and opinions prepared for the board of directors and officers, as well as responses to inquiries by auditors or regulators. All legal correspondence relating to material contingent liabilities should also be collected. In addition, a list of outside counsel and the matters they worked on should be prepared by the due diligence examiner, and outside counsel files should be kept either with such counsel or in a central location in the event access to such files is required. These materials (with the exception of the outside counsel files) should be attached to this portion of the Subsidiary Review Checklist.

This checklist is not intended to serve as a substitute for a legal review of the documentation of the subsidiary, but is intended merely as a summary of important documentation and issues. Attorneys will still need to do their own independent review of the documentation to confirm the information provided herein and to discover additional information that may be necessary to provide due diligence review with a memorandum about the subsidiary's pending or threatened litigation, risks relating to securities transactions of the subsidiary, and an estimate of legal costs associated with representation of the subsidiary by counsel. Further, attorneys should be familiar with and able to discuss all legal liabilities and contingent legal liabilities in order to aid in the formation of an effective business and dissolution plan.

If an outside due diligence contractor is not used to gather the information required by this Legal Due Diligence Checklist, the appropriate representative of the Legal Department, in consultation with the Subsidiary Account Officer, should prepare the information required herein.

**Part 1 Equity and Debt Interests in Subsidiary**

Identify any outstanding equity or debt securities issued by the subsidiary, including date of issue, title of issue, original principal amount of obligation, amount outstanding, interest rate, conversion to equity feature, if any, redemption features, if any, liquidation preferences, if any, and date of maturity (including summary of any early termination provision).

Identify and describe any special equity interest not identified in the Subsidiary Due Diligence Checklist, such as warrants, options, first refusal or sale rights or other restrictive covenants, voting rights agreements, or other shareholders agreement.

With respect to any publicly traded securities issued by the subsidiary, list the name and address of stock exchange, if applicable, and the transfer agent.

**Part 2 Guaranties, Security Interests, Pledges, and Letters of Credit**

Identify and describe any guaranties, surety arrangements or security interests, pledges, etc., that are obligations of or granted by the subsidiary (attach agreements, if available).

Identify and describe letter of credit arrangements to which subsidiary is party (attach documentation).

**Part 3 Equity[Partnership, Joint Venture] and Debt Interests in Other Subsidiaries (to the Extent not Previously Identified in the Subsidiary Due Diligence Review Checklist)**

With respect to each such interest, provide the following information:

Name: \_\_\_\_\_

% Interest (including bonds and debentures): \_\_\_\_\_

Relationships (to Subsidiary): \_\_\_\_\_

Nature of Interest or Asset: \_\_\_\_\_

[With respect to partnership or joint venture interest, has subsidiary taken actions that would either breach applicable agreements, or create additional liabilities (assume general partner liabilities, etc.)? Attach documentation if available.]

With respect to any debt interest, is such debt documented, legally enforceable, and collectible? \_\_\_\_\_

Identify any negative tax implications of forgiven or unenforceable debt: \_\_\_\_\_

Identify any special jurisdictional requirements: \_\_\_\_\_

#### **Part 4 Regulatory Review and Compliance**

With respect to filing by the subsidiary (including informational filings, permits, and licenses) provide the following information (attach copies if available):

Type: \_\_\_\_\_ Date/Date of Next Filing: \_\_\_\_\_ Brief Description: \_\_\_\_\_

Is the subsidiary under audit (or other review) by a governmental agency or body (describe)? \_\_\_\_\_

Provide a copy and a brief description of any current governmental inquiries or complaint letters.

Determine whether the law requires the corporation to maintain its existence and/or a specified capital position for a given period of time due to its operations.

#### **Part 5 Assets (Generally) (in Addition to the Information Required by the Subsidiary Due Diligence Review Checklist)**

Review any prior asset sales; review representations and warranties and or indemnifications given by the subsidiary.

Review sales contracts for assets currently subject to such contracts.

Review any nominee agreements.

##### ***Loan Assets***

Identify any participant interests in loans (and attach any agreements regulating the rights of the participants).

Review the terms of all unfunded or partially funded loan commitments.

Identify and attach any loan servicing agreements.

##### ***Real Property Assets***

Identify titleholder and all lien holders (order preliminary title report).

Identify real property tax liability (including penalties and special assessments).

Identify and review all real (and to the extent applicable, personal) property leases.

Review in-house asset files to identify environmental hazards and special resources that may exist and ensure that environmental checklists are prepared.

#### **Part 6 Employment Issues**

Identify and describe any employment or consulting agreements (attach copies if available).

Identify and summarize any collective bargaining or other agreements (attach copies if available).

Identify and describe any special severance arrangements for subsidiary employees (attach copies if available).

Identify and describe any employee benefit plans of the subsidiary or in which employees of the subsidiary are eligible to participate (attach copies if available).

Identify and attach any officers or directors indemnification agreements.

Identify and describe any current, pending, or threatened liabilities relating to any of the above.

### **Part 7 Corporate Veil Issues**

Are all service and asset transfers between the parent and the subsidiary specified in “arm’s length” written agreements?

Is subsidiary paid and/or reimbursed for services rendered and expenses incurred on behalf of parent (and vice/versa)?

Who is paying subsidiary creditors?

Have all actions taken by subsidiary been documented and approved by the required levels of corporate authority (describe any deviation)?

Are subsidiary borrowings from the parent secured?

Are there any conflicts in the legal representation of the subsidiary and the legal representation of the receiver?

Does the subsidiary have any claims against the receiver?

Review all “insider” transactions.

Does the subsidiary use its own letterhead in correspondence?

Do the subsidiary and the parent have common directors and officers?

### **Part 8 Bankruptcy Issues**

Is subsidiary insolvent?

If the answer to the preceding questions is yes, has the subsidiary taken any actions that could be deemed to be preferential of fraudulent transfers (describe and provide documentation from the sale if available)?

Is subsidiary the debtor in a bankruptcy proceeding?

Filing Date: \_\_\_\_\_ Voluntary: \_\_\_\_\_ Involuntary: \_\_\_\_\_

Describe the proceeding (including pleadings and status, other documentation if available, including plan).

Does subsidiary have a claim or other interest as a creditor in a bankruptcy proceeding?

### **Part 9 Litigation Issues (in Addition to Those Set Forth in the Subsidiary Due Diligence Review Checklist)**

For each litigation matter, including administrative proceedings (or threatened litigation matters), identify the following:

- a. The amount and nature of the claim;
- b. The court in which such litigation is filed, the date filed, and the attorney for the opposing parties;
- c. The date on which any responsive pleadings are due or were filed;
- d. A summary of the pleadings and the status of the case;
- e. A summary of any settlement negotiations and any settlement agreement (including consent decrees and administrative consent orders);

- f. List of proposed witnesses, if available;
- g. Probability of success;
- h. A summary of litigation strategy, including counterclaims, if available;
- i. Outside counsel involvement, if any, and the source of payment for the subsidiary's legal bills.
- j. Estimated cost to complete;
- k. Expected recovery; and
- l. Estimated time to completion.

**Part 10 Insurance Issues**

Identify and describe each insurance policy carried by the subsidiary, including any casualty or property insurance, product liability, etc. Include current premium status, next payment date, carrier, policy number, and a description of any unusual provisions in such policy (large deductible, restrictions on recovery, etc.). Provide copies of the policies, if available.

**Part 11 Corporate Documentation**

Review minutes and board of directors resolution of subsidiary and identify any items that do not appear to be in the ordinary course of business (include in your description the date enacted, whether the directors voting on the resolution were validly elected, the presence of a quorum, etc.). Attach a copy of all minutes and resolutions.

Review the stock register of subsidiary and determine that the ownership interests set forth therein match those set forth in the Subsidiary Due Diligence Checklist, and that the number of issued and outstanding shares matches what is set forth in the register. Describe any discrepancies.

Review the minutes relating to the election of the current board of directors and determine whether such individuals were validly elected.

**ATTACHMENT D**

**SUBSIDIARY TAX CLOSING PROGRAM WORKSHEET**

Name of Subsidiary: \_\_\_\_\_

Type of Affiliate (Corporation or Partnership): \_\_\_\_\_

Percentage Owned by Parent: \_\_\_\_\_

If Parent Not Failed Financial Inst., Give Name: \_\_\_\_\_

Address of Subsidiary: \_\_\_\_\_

\_\_\_\_\_

Inception Date: \_\_\_\_\_

Financial Institution: \_\_\_\_\_

Date Closed: \_\_\_\_\_

Prepared By: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**A. Introductory Narrative**

Describe in general what type of business the subsidiary engaged in:

## 1. Determine whether the subsidiary is an active entity.

Does the subsidiary generate income from operations?  
(rents, fees, commissions, etc.)

Yes  No  N/A

Does the subsidiary have employees?

Yes  No  N/A

Is the subsidiary independently managed?

Yes  No  N/A

If owned real estate, is there an outside property manager?

Yes  No  N/A

For accounting and tax information, contact:

Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

**Is the subsidiary a partner in a partnership?**

Yes  No  N/A

*If Yes,*

Name of Partnership \_\_\_\_\_

Federal Tax Identification Number \_\_\_\_\_

Address of Partnership \_\_\_\_\_

## ANNEX 3.24. BUSINESS AND DISPOSITION PLAN<sup>1</sup>

<b>I. OVERVIEW</b>	The purpose of the business and disposition plan is to set forth the factors that must be considered in liquidating a subsidiary and recommending a general strategy for disposition.
Purpose and Overview	
<b>Policy statement</b>	<b>The Business and Disposition Plan (Plan), in memorandum format, is to be completed for each subsidiary as soon as practicable after completion of the due diligence review.</b>
	<b>For the Bank Resolution Authority to maximize recovery from its investment in a subsidiary, an evaluation must be undertaken to determine the appropriate method of resolving a subsidiary: voluntary dissolution, asset liquidation, involuntary dissolution (abandonment), sale of the ongoing business, or a combination of these strategies. The Plan must include a recommended strategy (or combination of strategies) for the disposition of the subsidiary, as well as an estimated disposition or dissolution date.</b>
<b>What should go in the Plan</b>	The Plan should include information gathered, analyzed, and organized during the due diligence examination into the following key areas:
	<ul style="list-style-type: none"> <li>• Organization Structure and Status</li> <li>• Financial Analysis and Tax Issues</li> <li>• Management Quality</li> <li>• Conflicts of Interest</li> <li>• Maintaining Separate Corporate Identity</li> <li>• Legal Issues</li> <li>• Operational Commitments</li> <li>• Special considerations</li> <li>• Disposition Strategy and Date</li> <li>• Pro Forma Budgets</li> </ul>
<b>Hiring outside contractors</b>	Depending on the financial complexity of the subsidiary, it may be appropriate to use outside contractors to prepare tax returns, financial statements, and other corporate filings, as well as valuation performed on the corporation, its assets, or its stock if necessary. Any recommendations to hire outside contractors should be explained and included in the Plan.
<b>Completed Plans</b>	Once the Plan has been completed in its entirety, it should be forwarded for approval; however, if some issues are not resolvable, then an explanation should be attached to the Plan.
<b>Approving the Plan</b>	As per delegational authority (see Exhibit I).
<b>The approved Plan</b>	The approved Plan should be the sole documents used by the assigned Subsidiary Account Officer to operate and dispose of the subsidiary. The Plan should be reviewed and amended or updated as appropriate, at least every twelve months, and more frequently if events occur that necessitate change. It should be noted that an annual or more frequent update to the Plan is most important for operating subsidiaries. Inactive subsidiaries with no assets and liabilities, or passive real estate holding subsidiaries, may require little or no updating. If circumstances dictate a needed action that deviates from the Plan a proposal to amend the Plan should be submitted for approval.

<sup>1</sup> Adapted from *Subsidiary Manual* (Federal Deposit Insurance Corporation, Washington, 2004).

## Preparing the Plan

**Organizational structure/status** The initial step in preparing the Plan is to analyze the subsidiary's relationship with the parent and determine if it is currently in "good standing" and paying its expenses and debts. The information gathered for the Subsidiary Structure section of the Subsidiary Due Diligence Review Checklist should be referred to when preparing this section of the Plan. Subsidiary Account Officers are also encouraged to address any other areas that may be unique to a particular subsidiary. The Legal Department representative should be consulted during these analyses.

## Appointing officers and directors

In many cases, officers and directors will resign when the Bank Resolution Authority becomes involved in a subsidiary. Under these circumstances, the Bank Resolution Authority should be prepared to vote its shares for the election or appointment of outside parties or Bank Resolution Authority employees to protect its interest. The Legal Department representative is to be consulted before any action is taken.

- Determine whether changes in the composition of the board of directors or changes in management are necessary. If so, have the Legal Department representative research any possible negative implications from the change and prepare the necessary resignation or disengagement letter.
- Assess the indemnification needs of new board members or officers. Compare/contrast the current indemnification policy of the subsidiary with those needs.
- Determine whether Bank Resolution Authority personnel should be appointed to the board of directors.
- Determine whether board-approved policies and procedures have been established for all major phases of the subsidiary's operations.
- Determine whether internal controls have been established for all major phases of the subsidiary's operations.
- Review the existing bylaws with the Legal Department representative and determine whether adoption of the standardized bylaws is applicable. Verify that controls are in place to ensure compliance with bylaws.

## Conflicts of interest

A conflict of interest arises when a director (or employee in the case of a Bank Resolution Authority employee serving as a director) has a financial interest in a matter before the board.

- Determine if any transaction and relationships constitute conflicts of interest.
- Determine if transactions between the subsidiary and outside parties have received board review and approval.
- Determine if internal controls have been established to prevent conflicts of interest.

## II. LEGAL ISSUES

Legal issues, such as pending or threatened litigation, or regulatory noncompliance, should be identified and discussed in the Plan. The Legal Department representative should be consulted when there are unanswered questions or significant inconsistencies are noted relating to a subsidiary's affairs. This section should contain:

- The current status of both offensive and defensive litigation, including how the cases are styled, their venue, the parties named to the action, a summary of any motions filed, the name and address of legal counsel representing the subsidiary, and the likelihood of prevailing in the case.
- The legal fees incurred and paid to date, as well as projected legal fees.
- The name and address of any corporate counsel retained to prepare corporate documents and provide legal advice on matters pertaining to the operation of the subsidiary.
- A list of pending or threatened legal actions with a summary of the merits of the case, defenses, likelihood of outcome, etc.
- A list of any current or threatened administrative proceedings or hearings with state or federal regulatory bodies, including a summary of the facts about such proceedings and an estimate of the possible outcomes.

Before submitting the Plan for approval, the Legal Department representative must be given an opportunity to review the entire plan and make any needed adjustments to this section.



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**Operational commitments**

The Plan should identify and discuss any operational commitments assumed by the subsidiary. These commitments can take such forms as employment contracts, real estate and equipment leases, and group insurance and pension fund plans, etc. They also can pose some of the most difficult issues to quantify and resolve. The risk of creating new liabilities is significant if these operational commitments are improperly handled.

To the greatest extent possible, this section of the Plan should discuss the salient facts and considerations upon which the subsidiary's directors (typically Bank Resolution Authority employees) will rely when making decisions relating to the commitments. Legal analysis supporting the Plan should be cited or referenced.

The extremely sensitive nature of many of these issues, especially those related to employment and benefits, requires that they be thoroughly analyzed, understood, and documented. Thus, claims can be prevented or resolved more easily if a subsidiary's commitments have been thoroughly reviewed and adequately documented.

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**Special considerations**

Finally, the Plan should address any special considerations that have the potential to affect materially not only a subsidiary's value, but the choice of disposition strategy as well.

These factors, when they arise, can mean the difference between solvency and bankruptcy, or may result in the collection of less than the highest economic value when a subsidiary is sold. Consequently, to the extent they do arise, these considerations must be factored in and weighted appropriately in the process of determining the best disposition strategy.

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# Conservatorship Operations<sup>1</sup>

Most banking laws empower the supervisory authority to appoint a conservator or receiver for a problem bank.<sup>2</sup> Moreover, the banking law usually provides that the conservator will assume the powers of the officers, directors, and shareholders of the bank to make decisions or take actions, but not their economic rights.<sup>3</sup> This chapter is concerned with conservatorship and can provide the basis for instructions (rules, policies, and procedures) that the supervisory authority gives the conservator.

Conservatorship is a form of temporary management and control of a problem bank, with the conservator taking over all the powers of the bank's shareholders, directors, and officers (Box 4.1).<sup>4</sup> The conservator's primary objectives are to preserve and conserve the bank's assets and attempt to return the bank to a sound and solvent condition, including protecting its depositors until the bank is resolved. Conservatorship can also be an effective method to deal with management problems (e.g., fraud), or to control a bank while organizing a resolution plan (in this instance a conservatorship is similar to a bridge bank).

This chapter presumes that the bank will continue operating during conservatorship, although in a restricted manner. Depending on public confidence levels, however, it may be necessary to further restrict operations, such as imposing a partial deposit freeze. A partial deposit freeze would enable depositors access to funds in an amount sufficient to provide for normal living expenses. Businesses that have operating

or payroll accounts at the bank may have different (higher) thresholds of deposit withdrawal.<sup>5</sup>

In conjunction with the primary objectives to preserve and conserve the bank's assets and attempt to return it to a sound and solvent condition, a conservator should look to improve operations and focus on the bottom line. Such actions include the following:

- Establish control and oversight of the bank's operations, including stopping or preventing unsafe or unsound business activities of the bank, and correcting legal and regulatory violations.
- Evaluate the bank's condition and evaluate all assets to realistically identify losses.<sup>6</sup>
- Promote confidence of customers and employees and maintain customer service.
- Ensure that the institution is operated in a safe and sound manner by minimizing losses, limiting growth, eliminating speculative activities, and terminating waste, fraud, and insider abuse.
- Determine what claims are outstanding against the bank (including contingent liabilities).
- Develop a detailed bank resolution plan for the supervisory authority.

The conservator will face many management decisions shortly after the intervention. Because the primary objective is to protect depositors and preserve the bank's assets, one of the most crucial decisions is which activities the bank will continue to operate. This decision depends primarily on liquidity and the resources for continued liquidity funding. The conservator must decide whether the bank will:

- Continue core operations (e.g., currency transactions, transfer services, and limited or no lending)

<sup>1</sup> An earlier version of this chapter was published in David C. Parker, *Provisional Administration - FBA* (U.S. Agency for International Development, Washington, 2000).

<sup>2</sup> Other terms identify the period in which a supervisory authority assumes responsibility for managing the affairs of a bank (e.g., provisional administration, special control, rescue bank, etc.). For consistency, the term conservatorship is used throughout.

<sup>3</sup> Banking laws regarding this subject differ from jurisdiction to jurisdiction; for example, some jurisdictions do not require that banks in conservatorship meet normal capital requirements. The supervisory authority should, however, retain some degree of oversight to assure that the conservatorship is operating within proper guidelines.

<sup>4</sup> Note that some jurisdictions do not grant such sweeping powers to a conservator.

<sup>5</sup> The authorities should obtain legal advice regarding any adverse legal implications for such an action (e.g., does such a deposit freeze represent a violation of capital controls rules in the European Union?).

<sup>6</sup> Experience shows that problem banks' assets are generally worse than estimated by the supervisory authority. Frequently, those banks that are considered possible candidates for rehabilitation have far greater losses than estimated. Therefore a key function for the conservator is to do an in-depth asset valuation to adjust for more realistic valuations.

**Box 4.1. Placing a Bank in Conservatorship**

Takeover of a bank can take place with the full cooperation of the existing owners and management or can be imposed against their will.

When existing owners and management accept that the best option to maintain the value of the bank is for the supervisory authority to assume control and find a solution, it normally should be sufficient if the supervisory authority appoints a conservator, who will determine which of the bank's senior staff to retain and which to replace.

When existing owners and management have explicitly opposed the supervisory intervention, or if there is a possibility that confusion or a temporary lack of full internal controls might

provide an opportunity for owners or staff of the bank personally to benefit through asset stripping or destruction of records, the supervisory authority needs to take physical as well as legal control of the bank. In addition to removing the board and replacing existing management and other key persons, the supervisory authority needs to secure the bank's premises and moveable assets.<sup>1</sup> In such situations, the conservator's team should follow the bank intervention procedures detailed in Chapter 3.

<sup>1</sup> Michael Andrews and Mats Josefsson, "What Happens after Supervisory Intervention?" in *Bank Restructuring and Resolution* (Washington, 2006), p. 147.

- Cease or curtail commercial operations
- Engage in "neutral activities" only (deposits on the books prior to conservatorship are blocked; new money can flow in and out).<sup>7</sup>

The topics discussed in this chapter are equally applicable whether operations are continued, deposits and liabilities blocked, or in a hybrid situation where "neutral activities" are permitted. Basically, whether operational or not, the bank should exercise good governance, including the responsibility to abide by safe and sound banking policies, secure all assets, and maintain effective accounting and internal control policies. A conservator should base his or her decisions on the best interests of depositors and creditors.

Note as well that many of the policies and procedures detailed in this chapter can be applied to other bank resolution techniques. With slight changes in emphasis, these policies and procedures can be applied effectively in "bridge" or "nationalized" bank situations.

Whether a bank is placed in conservatorship or receivership, there are certain basic operating procedures and policies that must be observed. For example, though most banks have adequate management information, auditing, reporting, and filing systems, the conservator or receiver must ensure that these systems meet minimal standards, at least. Most of these concerns are more fully discussed in Chapters 6 and 7.

## OPERATIONS AND POLICIES

The conservator should stabilize the operations of the failed bank by developing cost-effective operating plans to manage the bank's problems. All activities of the failed bank must be in accordance with any delegations of authority issued by the supervisory authority (see Chapter 7 for a detailed discussion of delegations of authority).

The conservator should immediately implement an overall "no growth" policy. He or she should review the failed bank's

operating policies (e.g., loan and investment policies, etc.) and, in the resolution plan (discussed below), identify, recommend, and implement any necessary changes.

A conservator can help maximize available cash by delaying spending on projects with long-term returns (including upgrades to information technology systems, advertising, and other discretionary costs). However, most successful operations will involve large personnel cuts (salaries and bonuses) and a significantly smaller operational scope.

The conservator should thoroughly review the failed bank's operations to identify abuses, inefficiencies, and activities that increase its risk profile. He or she should deal with problem areas as soon as practicable. However, major or serious actions must comply with delegated authority of the supervisory authority and be supported by a legal opinion. Examples include:

- Termination of employment
- Repudiation of contracts
- Sale or closing of branches and subsidiaries
- Major asset sales.

Some typical examples of actions that the conservator may take include the following:<sup>8</sup>

- Sell assets and purchase liabilities of the bank as may be necessary to conserve its value.
- Repudiate or simply add to the contracts concluded by the bank or unilaterally amend them, including changes of rates, tariffs, and duration of validity.
- Issue orders concerning dismissal, demotion, or temporary removal from a position, or the distribution of responsibilities between the bank's employees.
- Sign any contracts and documents and accept liabilities in the name of the bank.
- Lodge claims in the name and interests of the bank, and represent the interests of the bank in court.
- Suspend payment of any kind to officers, directors, and shareholders of the bank.

<sup>7</sup> This option is strongly discouraged, except when necessary during systemic crises. If normal or core operations lead to depositor runs on the bank, then it should probably cease daily operations or be placed directly into receivership.

<sup>8</sup> On appointing a conservator, the supervisory authority should consider allowing him to delegate limited decision-making authority to others.

## IMMEDIATE CONCERNS

Immediately after appointment, the conservator should initiate a thorough review and analysis of the failed bank's condition. This process should include an analysis of:

- Examination and audit reports
- All correspondence with the supervisory authority
- Monthly financial statements for the past year (or more, as necessary)
- Files on major assets (especially problem assets)
- Off-balance-sheet activities
- Interviews with bank employees and supervisory authority examiners.

Generally accepted bank accounting principles should be used to determine if accounting for transactions has been appropriate.

During the first few days after the intervention, the conservator must immediately evaluate and report on several time-sensitive issues.

**Liquidity.** Thoroughly analyze the funding situation. Develop plans to liquidate assets and reduce volatile or high-cost funding. Evaluate whether to maintain credit lines and correspondent banking relationships of the failed bank.

**Public confidence.** Managing the release of information to the public is as important as managing the bank's financial positions and cash flow. The public's perception of a bank's condition, and thereby the safety of customer deposits, can change quickly because of negative news (whether substantiated or rumored) about the soundness of a bank's condition. Customer reaction, which is difficult to predict, will influence needs for on hand liquidity and access to contingency sources. The conservator and supervisory authority should have effective processes in place to monitor and react to the contraction of deposits and other funding.

The potential high visibility and volatility of an intervention in a problem bank requires sensitivity in all public relations matters. Positive communication with customers and news media is critical to maintaining a core deposit base. The conservator is responsible for responding to routine questions about the specific institution. Comments should follow the pattern of the press release distributed at the time of the intervention.

The conservator should not comment to the press or public on specific actions, loans, deposits, or relationships of the institution unless specifically advised to do so by the supervisory authority. The appropriate public information officer should handle broader questions on the supervisory authority's policies and procedures. Media and public relations are discussed in detail in Chapter 1.

No other employee of the institution should make any statement to the press. Of course, as part of ongoing business, employees must discuss loans, deposits, or other customer relationship matters. These discussions with customers or borrowers must be limited to the business matters at hand.

**Assets needing special attention.** Assets such as securities, interest rate swaps, foreign exchange operations, subsidiaries, unfunded loan commitments, collateralized obligations, and loans serviced for others may require assistance from specialists to coordinate management and/or disposition. Prompt attention to these and other problem assets can help prevent (further) deterioration.

**Repudiation of contracts.** The conservator should analyze all contracts for the possibility of repudiation. Onerous contracts may be broken to relieve operational crises. Even deposit contracts paying very high interest can be repudiated.

## ONGOING OPERATIONS

This section presents areas for conservator action following the initial assessment of the bank's condition. The conservator must be flexible and adaptable to unique situations when prioritizing these activities. One of the most important functions is to maintain effective accounting and internal control systems. If the bank is deficient in these areas, the conservator can use the guidelines in Chapter 6.

In certain large and/or complex banks, the conservator may want to create committees, such as a credit review committee or an operations committee, to aid in the decision-making process. The committee structure should be well defined, with a specific mandate spelled out by the conservator. The meetings should have regular agendas, minutes, and clear-cut decisions. Committees are valuable both as communications vehicles and for on-the-job training purposes. Committees should not be allowed to deteriorate into discussion groups or vehicles for delay, however. Committee decisions at the institutional level are advisory to the conservator, who has the final decision-making authority.

The conservator:

- Oversees the daily management of the bank, observing prudent banking practices
- Approves schedules for achieving objectives as proposed by department managers
- Requests, collects, reviews, and evaluates reports submitted by department managers
- Distributes administrative information to department managers.

The conservator should review past external audits to determine if the recommendations regarding asset write-downs and internal controls were performed. Post-intervention, internal control audits can replace external audit procedures. Internal audit personnel may provide a wealth of knowledge to the conservator regarding strengths and weaknesses within the failed bank and may be capable of assisting in asset reviews and fraud investigation.

The conservator must also ensure that the conservatorship's operations comply with the audit principles detailed in Chapter 6.

## Resolution Plan

This section discusses the resolution plan, which outlines specific plans for the management and final resolution of the bank, consistent with the supervisory authority's objectives.

The supervisory authority should require the conservator to present a detailed written resolution plan within 60 days of appointment.<sup>9</sup> This report must address the following options and recommend the most viable:

- Restoring the bank to compliance with the requirements of the law and regulations of the supervisory authority, including an increase in the bank's capital to the minimum level required within the time set forth in the plan
- Selling the bank as a going concern
- Merger or acquisition of one bank with another
- Assisted transactions, such as selling any part of the assets and purchasing liabilities of the bank (e.g., using "good" assets and deposit insurance agency advances to fund transfer of insured deposits to another bank)
- A liquidated payout.

The report should address the current financial condition and future prospects of the bank. Analytical documentation, including pro forma financial statements and the basis for the forecasts, should be maintained to provide support for the plan. The assumptions should include the realistic evaluation of debt collection, interest rates, asset recovery rates, holding costs, allocation reserves, contingent liabilities, and other appropriate data. Maximizing return to depositors and other creditors is paramount.<sup>10</sup>

To support the recommendation, the conservator's report should show a comparative analysis with a priority weighting for each alternative resolution method. The conservator's report can recommend combinations of resolution forms (with detailed clarification), if appropriate.

The plan should include a narrative description and the conservator's personal evaluation of the principal elements of the bank. The conservator should describe all actions planned for the day-to-day management of the institution. It is important that the plan include description and analysis of the bank's branch network, accounting systems, and data processing systems, as well as any relationships with computer servicing companies, accounting or auditing firms, law firms, or subsidiaries, affiliates, or other related entities.

<sup>9</sup> The period for completion of the resolution plan can vary among banking laws; however, 60 days is considered a reasonable time frame depending on the size and complexity of the bank.

<sup>10</sup> Note that bank rehabilitation/restructuring is not addressed in-depth. There are several books and publications regarding bank restructuring; however, most deal with the issue as regards a systemic crisis, which is not the focus of this manual. Ad hoc bank restructuring is difficult and expensive; if tried, the authorities should follow the same basic operating procedures detailed in this chapter, along with meeting the criteria for open bank assistance, as discussed in Chapter 5.

The plan should include a balance sheet as of the date of intervention and projections of the financial effect of the changes it proposes. It should include an evaluation of the assets owned by the bank, particularly large, complex assets and insider transactions. The conservator should set forth a strategy for collecting or resolving such assets, including alternative methods, and outline potential problems.

The plan should recognize the present asset and liability structure of the failed bank. It should contain recommendations for change where risks can be significantly reduced, meaningful cost reductions can be achieved, or franchise value can be increased. Plans to restructure the balance sheet should be identified and explained in detail.

It is also important that the plan include an analysis of the deposit base as contingency planning for a possible payout, in the event liquidation is the only reasonable resolution option. The conservator should aspire to fair treatment of each depositor and creditor according to the specified legal priority.

In conjunction with the plan, the conservator should develop specific operating objectives. Components of these objectives include tasks to be completed, project completion dates, and the person responsible for completing the tasks. An operating budget should be prepared that will help accomplish the goals and objectives of the overall plan.

### Operating Budget

An operating budget covering the first 12 months of operations should accompany the plan. The conservator should review historical profit-and-loss statements and all compensation arrangements with an objective to reduce costs. The conservator should identify and eliminate operating expenses that are no longer necessary, or control them via downsizing.

It should be recognized that, although reductions in spending where appropriate are desirable, in some cases justifiable increases in spending might sometimes be necessary to accomplish the goals of the plan. Once the initial budget has been submitted and approved, budgets should be revised and submitted on a quarterly basis to the supervisory authority.

### Staffing

Another portion of the plan should outline the bank's staffing needs. The conservator's objective is to maintain the viability of the bank and franchise value for resolution. Staffing requirements should include sufficient personnel to assure adequate servicing for performing loans, aggressive pursuit of problem assets, and regular customer service. In addition, competent personnel will be needed to:

- Maintain the financial accounting and information technology systems of the bank
- Prepare for the orderly disposition of liabilities, especially deposits
- Analyze the asset structure of the bank by categories and individual asset, securing assets and determining their value.

The staffing plan should include an organizational chart showing all the principal officers and complete staffing levels. Payroll information for all personnel and a description of any special or contractual arrangements must also be included. Each function area of the institution should be analyzed, and staffing levels over the life of the conservatorship period should be projected. Particular emphasis needs to be placed on the need for any specialized expertise to accomplish the actions included in the plan. Of major importance is the maintenance of the financial and support functions of the institution, especially accounting and information technology. The successful completion of the conservatorship will be heavily dependent on these areas.

The plan, together with the operating budget and the staffing plan, forms the conservator's evaluation of the institution and other important information to the supervisory authority. Approval of the plan does not necessarily constitute approval of all the individual actions that may be included in it. Each specific action must be presented in a timely manner, detailed in case memorandum format for approval at the proper level of delegated authority.

Often, the provisions of a banking law will be very broad and give the conservator great power within the constraints of the delegations of authority granted by the supervisory authority. Common limitations to these authorities should include a requirement that the conservator seek prior approval from the supervisory authority for actions that:

- Exceed a specific amount
- Involve former officers, directors, employees, shareholders, or other related parties of the institution
- Involve the payout of deposits.

Questions may arise concerning the governing laws that are applicable to institutions in conservatorship. It is particularly important in managing the institutions that legal advice be sought and followed when making major decisions.

### *Preparation for Final Resolution*

To facilitate the final resolution, the conservator should prepare material for a potential sale. The conservator should direct bank staff to prepare a bid package to use to market the institution. The bid package is designed to provide potential acquirers enough information to allow them to evaluate whether the bank fits as an acquisition target. Bid package preparation and format is discussed in Chapter 5.

Additionally, the conservator may have to devote resources to assist the supervisory authority in an asset valuation review. This involves reviewing a sample of each type of asset in order to derive a value for the bank's assets. This is also discussed in Chapter 5. Under no circumstances should a former loan officer be allowed to review and assign value to a loan he or she has extended.

Finally, the conservator should maintain a list of banks and investor groups that have expressed interest in a possible

acquisition. Often this can be a valuable addition to the database of potential acquirers solicited by the supervisory authority.

### **Asset Management**

The conservator's primary focus regarding assets is to conserve their value. The first step is to inventory all assets to identify and assess their value. The conservator must assure effective servicing for performing assets. Prompt and continuing attention will help prevent further deterioration and maximize recovery. Special attention regarding collection (e.g., restructurings, workouts, etc.) should be given to distressed assets. The conservator should develop a strategy for collecting or resolving such assets, including alternative methods, and outline potential problems. All assets and liabilities (booked and unbooked) should be identified and evaluated as soon as practicable.

An important responsibility of the conservator is the creation of a map of related debtors, indicating their respective companies, as well as the asset and liability accounts involved, associated collateral, and persons or representatives through which the presumed "fraud" of the directors and/or managers of the institution placed in conservatorship has been conducted, so that the legal and financial scam used for personal gain to the detriment of the bank will be absolutely clear.<sup>11</sup>

### *Lending*

Any new lending should be avoided to the extent possible. Review all outstanding lending commitments with a bias toward cancellation, unless business and legal considerations strongly indicate otherwise. The conservator is responsible for making or recommending the business decision to cancel or continue any lending commitment. Implement aggressive collection practices immediately, especially with regard to past due or matured obligations. Inform all debtors that the terms of all debt agreements remain in force and that they are expected to comply with them.

### *Mark-to-Market Evaluation*

Realistic market values are developed for assets by marking them to market (determining a realistic value based on present market conditions) and assigning appropriate loss reserves. Sell assets if possible, and develop other asset disposition alternatives for the remainder. Any intangible assets documented at previous supervisory examinations should be charged off promptly. Nonperforming tangible assets should be reduced to market value through charges to reserves using contra accounts.

<sup>11</sup> Fernando de Mergelina, *The Resolution Process for a Bank in Crisis and the Operating Manuals for that Process. Operating Manual No. 1: Conducting a Bank Receivership* (Inter-American Development Bank, Washington, 2004), p. 19.

“Workout” efforts can help reduce the volume of problem assets. A workout program can usually offer a greater chance for recovery than other alternatives such as foreclosure or litigation. If a borrower cannot pay the full amount of the debt, another cost-effective option is a compromise settlement. Often, potential litigation costs may be substantial, so it may be wiser to reach a settlement for repayment of less than the full amount.

Performing these tasks will require substantial judgment. Management of the supervisory authority should be available to advise as necessary. Some common problem areas found during asset review include those caused by:

- Management’s lack of sound lending policies or sound credit judgment
- Overlending
- Failure to establish or enforce repayment agreements
- Incomplete credit information
- Overemphasis on loan income
- Self-dealing, including loans in another name for the benefit of ownership interests
- Technical incompetence, manifested by management’s inability to obtain and evaluate credit information and put together a sound loan package
- Lack of supervision (whether active management supervision or oversight of board and senior management)
- Competition among banks resulting in “growth at any cost” policy.

### *Insider Relationships and Abusive Transactions*

As soon as possible after intervention, the conservator should:

- Identify any individuals who are classified as insiders and examine their relationships with the institution.
- Detail any existing relationships or transactions and describe the provisions of any existing arrangements, including compensation or consulting contracts.
- Identify and block any insider deposits (and repudiate if appropriate).
- Where sufficient basis exists, prepare and forward a criminal referral to the appropriate authorities (e.g., financial police). (Note: Conservators should not forward criminal referrals to any entity other than the appropriate authorities without prior approval of the supervisory authority.)

All insider transactions should be carefully reviewed, including loan commitments. Terminate any questionable or abusive arrangements as soon as legally possible. Immediately refer any evidence of suspected criminal activity to supervisory authority management to assist in making notifications to the appropriate authorities. If possible, block insider transactions such as:

- Transfers to defraud creditors
- Preferential payments in anticipation of intervention

- Excessive compensation and benefits
- Abusive service contracts
- “Golden parachute” arrangements.

The conservator must notify the supervisory authority in a confidential memorandum of any known abusive transactions involving insider relationships. Suspected activity should also be brought to the attention of the supervisory authority even if documented proof of inappropriate activity is not immediately available.

### *Safe Deposit Boxes*

Notify safe deposit box holders of the bank status and provide access as normal. If this is not feasible, the conservator can establish an access schedule. The conservator should allow access and removal of items from the boxes by properly authorized lessees of the boxes, except for insiders. Any release of valuables or other contents of the boxes to insiders should be quid pro quo or not at all until all insider matters have been satisfactorily resolved. These proceeds may well add value to the bank’s assets or be included in any settlements involving insiders.

### *Safekeeping Items and Possessory Collateral*

Safekeeping items should be treated in a similar fashion, and the conservator should exercise maximum discretion in the release of such assets. Depending on value and/or circumstances, the conservator should prepare a case memorandum to ensure that a complete record of the decision to release the valuables is made and retained.

Possessory collateral items should be inventoried and remain in the possession of the bank under secure conditions. They should only be released in conjunction with the payment or settlement of the obligation for which they were pledged.

### **Funding**

The conservator must manage assets, liabilities, and off-balance-sheet cash flows. Funding matters should be reviewed with the goal of reducing costs. Cost reduction is largely dependent on the downsizing efforts as discussed below. Specific attention should be given to eliminating the use of noncore, higher-cost funding. The bank should not pay higher interest on core deposits than local market rates. Weigh any potential deposit contract repudiation against a correlated effect on franchise value.

### *Deposit Review*

One of the most important responsibilities of the conservator is to analyze the deposit liabilities of the institution. Components of the bank’s deposit strategy include funding needs, asset restructuring goals, and interest rates. The conservator must constantly monitor the stability of the deposit situation in relation to the institution’s liquidity. During liquidity crises, the conservator should work closely with

the legal division regarding blocking of deposits or other liabilities.<sup>12</sup> Deposit accounts earning excessively high interest rates should be reviewed for repudiation according to the law, and the conservator should make recommendations concerning these accounts accordingly.

In addition to an evaluation of deposits and other sensitive liabilities, conservators must also assess the liquidity of the bank's assets and the effectiveness of associated policies and procedures. The increased reliance on market funding sources at the expense of core deposits poses significant risks and challenges. Institutional or wholesale fund providers and other market-based sources are significantly more price and credit sensitive than retail customers. Institutional customers are more likely to exercise market discipline and are simply less willing to provide funds to banks facing real or perceived financial difficulties. Additionally, reliance on market funding sources makes banks more susceptible to general or regional economic conditions. If not managed properly, market-based funding may be merely a more volatile and expensive source of liquidity, if available at all. Increased interest expense associated with wholesale funding may have a great effect on bank net interest margins.

A strong positive correlation exists between real or perceived asset quality problems and liquidity problems. Market confidence in a given bank's financial condition is a critical element in assessing liquidity risk, especially for those institutions reliant on wholesale market funding sources. It should come as no surprise, therefore, that liquidity crises at individual institutions generally occur after marketplace awareness of existing or expected erosion in asset quality, earnings, and capital.

### Liquidity Risk Management<sup>13</sup>

Conservators must be disciplined and effective liquidity risk managers. For these purposes, liquidity is defined as the ability to obtain cash for operations when needed, at a reasonable cost. The critical component in evaluating a given bank's susceptibility to liquidity risk is market confidence in the entity's overall financial condition and reputation.

There are two distinct discretionary tools for liquidity management—a funds flow analysis (FFA) and a contingency funding plan (CFP). The FFA depicts a bank's historical sources and uses of funding and provides a general sense of funding activity and trends. The CFP is a forward-looking document that projects sources and uses of funding under alternative scenarios, when adverse circumstances exist for both the bank as well as the capital markets.

The FFA and CFP should be tailored to the specific institution. Furthermore, if the bank already produces the

information contained in those reports, but in another format, that information should be used rather than imposing a separate format. In any case, the conservator must obtain the information necessary to monitor and manage liquidity.

### Funds Flow Analysis

Annex 4.1 is an example of an FFA from the Office of the Comptroller of the Currency. Conservators can monitor liquidity by completing a similar FFA. The analysis should be tailored to ensure that significant balance sheet items are incorporated clearly. Because most banks centrally manage their liquidity risk and positions, these analyses typically reflect the condition of the consolidated organization. The reporting format used should allow conservators to distinguish bank from nonbank assets and liabilities.

Specific items that should be reported in the FFA can vary depending on the size of the bank and the structure of its activities. For example, a smaller bank that does not have foreign deposits should tailor the report to reflect its particular liabilities. Moreover, absolute accuracy is not required as a trade-off to obtaining the information promptly. Error tolerance levels can be established, monitored, and controlled. Often, data obtained through peripheral systems, rather than general ledger systems, are acceptable. The funds flow definitions included in Annex 4.1 are intended as a guide, but the bank should provide additional details to ensure accurate interpretation by all users.

### Contingency Funding Plan

Annex 4.2 is an example of a CFP from the Office of the Comptroller of the Currency. A CFP helps ensure that a conservatorship can manage fluctuations in liquidity prudently and efficiently. The plan is an extension of ongoing liquidity management objectives that follow:

- Maintenance of an appropriate amount of liquid assets
- Measurements and projection of funding requirements during various scenarios
- Management of access to contingency funding sources.

The degree and sophistication of a CFP should be commensurate with the bank's complexity, risk exposure, activities, products, and organizational structure. Conservators should analyze the CFP to ensure that the bank can control daily liquidity risk. The CFP should show that the bank could obtain sources of funds to cover its uses, and document the sources in preferred order.

Conservators should manage implementation of the CFP and regularly reassess the underlying assumptions in the CFP. If the actual funding events are different from the bank's projections, the conservator should revise the contingency plans.

If the CFP projects that there may be more uses of funds than sources in a near-term scenario, the conservator should

<sup>12</sup> As mentioned earlier, blocking deposits is strongly discouraged, unless it is an insider deposit, or related to a loan.

<sup>13</sup> Portions of this section are summarized from Comptroller of the Currency, Administrator of National Banks, *Problem Bank Identification, Rehabilitation and Resolution* (Washington, January 2001).



reduce the imbalance immediately. The bank has some basic options to reduce the imbalance:

- Reduce assets that require funding (e.g., the loan portfolio).
- Replace credit-sensitive liabilities (e.g., public funds or other deposits that exceed \$100,000) with more stable, credit-insensitive funding, such as term retail deposits.
- Lengthen the duration of liabilities.

There are many ways to manage liabilities and assets, though these are somewhat limited in a conservatorship. Retail deposits can be attracted by increasing the yields offered or by accessing the broker market consistent with the requirements of any brokered deposits regulation.<sup>14</sup> It may be possible to manage assets by using marketable securities to enter into a repurchase agreement. The conservator can also suspend new loan originations or manage loan renewals.

Conservators should address liquidity concerns in their regular reports. Those reports should include information on the adequacy of short-term asset positions and contingency sources relative to short-term liabilities and erosion trends. It also should provide information on the longer-term liquidity position and prospects. This will include cash flow projections depicting the estimated volume and timing of funds flows and the effect of offsetting liquidity enhancement programs, such as asset sales.<sup>15</sup>

## Downsizing

Orderly downsizing through liquidation of assets and other restructuring efforts is another major focus of the conservator. Growth is not the proper management objective of a bank in conservatorship. Try to reduce or work out nonperforming assets but avoid “fire sales” or asset “dumping.” As in all conservatorship operations matters, follow prudent, safe, and sound banking practices.

The conservator should develop asset disposition strategies to ensure effective marketing practices and efficient transition for ongoing collection activities. Aggressive asset collection procedures will doubly benefit the bank by providing liquidity while downsizing.

Consolidate or close unprofitable or redundant branches. Review foreign branches in particular for sale or closure. The conservator should work with the supervisory authority’s legal department to comply with any regulatory requirements regarding notification or approval prior to any action regarding branch closures.

As part of the downsizing and risk reduction goals, the securities portfolio should be carefully reviewed and reported

to the supervisory authority. Securities that pose significant interest rate or credit risk should be identified for special attention. Reducing such risks should be part of operational plans for liquidity and funding.

## Personnel Concerns and Consulting Agreements

The conservator should organize the institution’s personnel around the work needs, recognizing the strengths and knowledge of the individuals involved. The conservator should establish goals to:

- Minimize adverse public reaction
- Reduce risk
- Reduce cost
- Increase franchise value.

The conservator should analyze the bank’s basic functional areas and if they are deficient, reorganize around the function areas as outlined in Chapter 3. Those functional areas are:

- Facilities
- Security
- Personnel
- Branch operations
- Accounting
- Information technology
- Legal
- Cash, teller, and vault operations
- Deposit operations
- Asset management (loans, other items, off-balance-sheet items).

Although it is not necessary to organize all conservatorship operations according to this listing of functional areas, it will be helpful in providing organizational consistency during the conservatorship process. Conservators may use their judgment in organizing the bank, but must ensure that each functional area is completely dealt with if its organization is different from that described.

Staffing problems commonly arise in banks that have been intervened. The conservator should make solving staffing problems a high priority because properly trained personnel are critical to accomplishing the necessary work. These problem areas should be addressed early after intervention and actions taken for their remedy. The conservator should work closely with the legal department, especially in matters such as terminating employment or initiating part-time employment relationships with the employees of the bank.

To the extent legally practicable, the conservator should terminate onerous employment, severance, consulting, or other compensation contracts. It is important that the conservator meet with the bank employees immediately after intervention to discuss the policy and operational procedures that are to be followed during the conservatorship period.

<sup>14</sup> As mentioned above, however, the bank should not pay higher interest on core deposits than local market rates.

<sup>15</sup> Summarized from Comptroller of the Currency, Administrator of National Banks, *Problem Bank Identification, Rehabilitation and Resolution* (Washington, January 2001).

### *Contracting*

To the extent that contractors will be used, the conservator should work with the supervisory authority to develop contracting procedures to ensure a competitive basis and avoid unnecessary extra costs. Contracting procedures must comply with at least the spirit of the following standards:

- Maximize the price of such sale or disposition, consistent with the goal of protection of depositors and other creditors of the bank.
- Ensure fair competition among potential purchasers or merger partners.
- Prohibit any kind of discrimination in the solicitation and consideration of offers.

These standards are equally applicable when dealing with contractors. Nondiscriminatory solicitations of offers and fair competition among potential contractors lead to competitive bidding. Competitive bidding in turn results in lower expenses, which effectively maximizes recoveries.

### **Files**

The conservator is responsible for the organization and maintenance of the files and documents of the conservatorships. These files should include all documentation prepared before and during the intervention and all documents, including case memoranda, reflecting any decisions or actions taken during the conservatorship period.

The conservator is also responsible for the retention and security of the files of the institution as he or she found them at intervention. Proper filing procedures for a conservatorship operation are detailed in Chapter 6.

### **Termination of Conservatorship**

The powers of the conservator end at the discretion of the supervisory authority, generally upon final resolution, whether private, assisted, or a liquidation. The supervisory authority usually ceases control of the bank at this time.

## ANNEX 4.1. FUNDS FLOW ANALYSIS

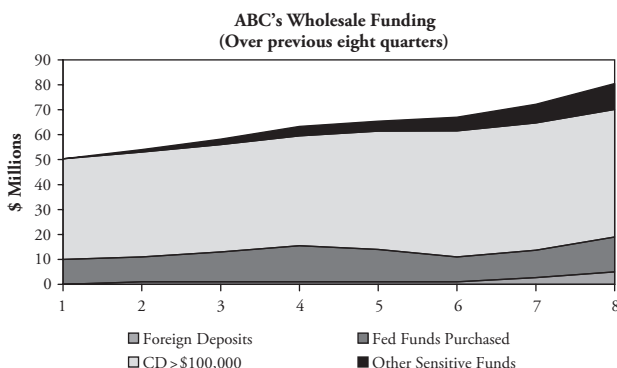
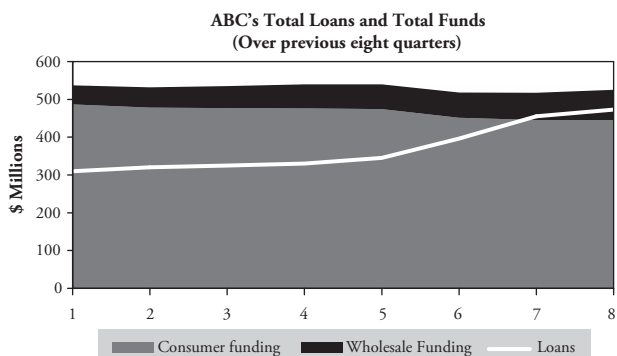
### FUNDS FLOW ANALYSIS OF THE ABC BANK (CONSOLIDATED COMPANY) FOR SELECTED ASSETS AND CREDIT SENSITIVE LIABILITIES \$Thousands

Quarter	Bank Assets				Bank Liabilities						Parent NonBank Assets	NonBank Liabilities
	1	2	3	4	5	6	7	8	9	10	11	12
	Required Reserve balance	Total loans and leases	Free Securities	Money market assets	Demand Deposit Accounts Net of float	Consumer Deposits	Fed Funds Purchased	CDs > \$100,000	Foreign Deposits	Other Sensitive Funds/Dep	Short-term Assets	Short-term Liabilities
1	5,000	310,000	70,000	7,500	98,000	389,000	10,000	40,350	0	0	10,000	8,500
2	5,000	320,000	68,000	7,500	94,000	384,000	10,000	42,000	1,000	1,000	10,000	8,500
3	5,200	325,000	68,500	6,800	94,000	383,000	12,000	43,000	1,000	2,200	10,000	8,500
4	5,100	330,000	67,500	5,500	92,400	384,000	14,500	44,000	1,000	3,800	10,000	8,500
5	5,000	345,000	68,000	5,000	90,400	383,900	13,000	47,400	1,000	4,000	10,000	8,500
6	4,800	396,000	23,200	5,000	74,000	377,000	10,000	50,500	1,000	5,500	10,000	8,500
7	5,100	455,500	19,000	4,000	75,300	370,000	11,000	51,000	2,700	7,500	6,000	4,500
8	3,900	473,000	12,500	2,000	80,000	365,000	14,000	51,100	5,000	10,400	4,500	3,000
Change from previous period	-1,200	17,500	-6,500	-2,000	4,700	-5,000	3,000	100	2,300	2,900	-1,500	-1,500

	Loans	Consumer funding	Wholesale Funding
1	310,000	487,000	50,350
2	320,000	478,000	54,000
3	325,000	477,000	58,200
4	330,000	476,400	63,300
5	345,000	474,300	65,400
6	396,000	451,000	67,000
7	455,500	445,300	72,200
8	473,000	445,000	80,500

	Foreign Deposits	Fed Funds Purchased	CD > \$100,000	Other Sensitive Funds
1	0	10,000	40,350	0
2	1,000	10,000	42,000	1,000
3	1,000	12,000	43,000	2,200
4	1,000	14,500	44,000	3,800
5	1,000	13,000	47,400	4,000
6	1,000	10,000	50,500	5,500
7	2,700	11,000	51,000	7,500
8	5,000	14,000	51,100	10,400

Sources and Uses - Quarter 7 to Quarter 8		
Sources	Uses	
Fed Res Bank Balance	Loans and Leases	17,500
Free Securities	Consumer Deposits	5,000
Money Market Accounts		22,500
Demand Deposit Accounts		
Federal Funds Purchased		
CDs		
Foreign Deposits		
Other Loans		
		22,700



Source: Comptroller of the Currency, Administrator of National Banks, *Problem Bank Identification, Rehabilitation and Resolution* (Washington, January 2001).  
Note: Sources and uses do not balance on this schedule since it purposely includes only balance sheet line items likely to affect liquidity. Longer term assets/liabilities, such as fixed assets and other liabilities, which usually have little impact on liquidity, are excluded in order to focus on meaningful cash flows. The out of balance condition can be monitored and controlled, and if significant should be researched. This process allows for more timely availability and presentation of data.

## FUNDS FLOW ANALYSIS SAMPLE LINE ITEM DEFINITIONS

Most of the line item definitions can be modified by the bank to clarify individual bank reports, but there are certain exceptions, as noted.

### Bank Assets

**(Note: Include ONLY bank balances, NOT nonbank subsidiaries)**

#### (1) *Required Reserve Balance at Central Bank*

The sum of Required Reserves due from bank balances.

#### (2) *Total Loans and Leases*

The sum of gross loans plus other real estate owned.

#### (3) *Free Securities*

This term is strictly limited to securities meeting the following characteristics: Salable securities held, securities available for pledging, un-pledged securities in transit, and assets securitized. These securities are not encumbered in any way, and are of sufficient unit/transaction size and credit quality to be repurchased or sold in the market at will. Book value rather than market value is acceptable.

An accurate number for “free securities” is not typically available from the general ledger. Management’s judgment is required to arrive at a representative figure in accordance with the definition provided. Various methods may be used, but should be subject to periodic testing to ensure reasonable accuracy.

#### (4) *Money Market Assets*

This term is limited strictly to the following instruments held externally in non-affiliated banks. No variance in the definition of “money market assets” is allowed. Additional columns may be added, if necessary, to provide an accurate portrayal of other liquid assets.

- Interbank accounts – due from, both overnight and term (do not include repos)
- Negotiable CDs purchased
- Foreign deposits placed, both overnight and term (euro-dollars and other foreign currency)

### Bank Liabilities

**(Note: Include ONLY bank balances, NOT nonbank subsidiaries)**

#### (5) *Demand Deposit Account Net of Float*

Total demand deposit ledger balances, net of due from banks-deferred, due from Central Bank-deferred, and “other” cash items, such as items in process.

#### (6) *Consumer Deposits*

Separate consumer accounts, which exceed \$100 million, if significant. The line (does not include DDA, which is reported separately) should reflect consumer deposits, such as:

- NOW accounts
- Money market checking accounts
- Non-transaction accounts, interest or noninterest bearing
- CDs < \$100,000 (net of public funds)
- Passbook savings
- Money market savings
- IRA and Keogh accounts

#### (7) *Interbank Accounts — Overnight*

The sum due to other bank, as principal on an overnight basis.

*(8) Interbank Accounts — Term*

The sum due to other bank, principal for a term longer than overnight.

*(9) Foreign Deposits — Overnight*

All euro-dollars and foreign currency accepted as foreign branch liabilities on an overnight basis. Report retail deposits separate from wholesale or professional funds providers if significant.

*(10) Foreign Deposits — Term*

All euro-dollars and foreign currency accepted as foreign branch deposits for a term longer than overnight. Report retail deposits separate from wholesale or professional funds providers, if significant.

*(11) CDs > \$100,000*

Total balance of jumbo CDs (net of investment agreements and public funds). This category could include deposit notes, or other similar liabilities, if they are in excess of \$100,000. Include the entire deposit if it is greater than \$100,000, but not deposits that are less than or equal to \$100,000, if possible, based on management information system availability. Note: For potential erosion estimates, it is best to assume that an entire deposit which exceeds \$100,000 will leave the bank rather than the amount in excess that of \$100,000. However, for identification of uninsured deposits for FDIC purposes, only the amount of each deposit exceeding \$100,000 is technically uninsured.

*(12) Other Sensitive Funds/Deposits*

Total of all funding sources that may exhibit unusual credit sensitivity that are not already defined.

*(13) Treasury, Tax, and Loan*

The sum of the Treasury, tax, and loan balances.

*(14) Central Bank Window*

Total borrowings from the central bank.

## **Nonbank Assets (Parent)**

*(15) Short-Term Internal Investments*

Foreign deposits placed (from parent's perspective).

Other short-term liquid assets Note: Typically, these parent company assets are placed in affiliated bank liability accounts, such as foreign deposits taken, and therefore also are reflected on the bank's asset side — presumably in money market assets. An understanding of how these funds flow from the parent to affiliate and back is critical in an analysis of the funds flow analysis report to avoid double counting. It must be assumed that the bank's liabilities to the parent will have priority on the bank's liquid assets. Therefore, for analysis purposes they must be subtracted from the money market asset number for an assessment of bank level liquidity.

*(16) Short-Term External Assets*

Cash, foreign deposits placed, other short-term liquid assets. Note: Ensure that these assets are not carried in the "consolidated" funds flow analysis money market assets figure (4). They represent liquid assets the parent maintains outside of its own corporation and are available to the parent over the listed total money market assets figure in the funds flow analysis report.

## **Nonbank Liabilities (Parent)**

*(17) Commercial Paper, etc.*

Total commercial paper issued by the parent company or subsidiary, master notes, and any other short-term liability, including term debt or debt payments that are approaching maturity.

**ANNEX 4.2. CONTINGENCY FUNDING PLAN SUMMARY**

(Sample format, tailor as appropriate)

POTENTIAL FUNDING EROSION

	CURRENT	1	2	3	4	5
<u>LARGE FUND PROVIDERS (from list)</u>	BALANCE	B/C	C	C/D	D	D/E
FED FUNDS	_____	_____	_____	_____	_____	_____
CDs	_____	_____	_____	_____	_____	_____
EURO TAKINGS / FOREIGN DEPOSITS	_____	_____	_____	_____	_____	_____
COMMERCIAL PAPER	_____	_____	_____	_____	_____	_____
SUBTOTAL	_____	_____	_____	_____	_____	_____
<u>OTHER UNINSURED FUND PROVIDERS</u>						
FED FUNDS	_____	_____	_____	_____	_____	_____
CDs	_____	_____	_____	_____	_____	_____
EURO TAKINGS / FOREIGN DEPOSITS	_____	_____	_____	_____	_____	_____
COMMERCIAL PAPER	_____	_____	_____	_____	_____	_____
DEMAND DEPOSIT ACCOUNTS	_____	_____	_____	_____	_____	_____
“CONSUMER” MONEY MARKET DEPOSIT ACCOUNTS, SAVINGS, ETC.	_____	_____	_____	_____	_____	_____
TOTAL UNINSURED FUNDS						
INSURED FUNDS						
TOTAL FUNDING BASE						
<u>OFF-BALANCE-SHEET FUNDING REQUIREMENTS</u>						
LETTERS OF CREDIT	_____	_____	_____	_____	_____	_____
LOAN COMMITMENTS	_____	_____	_____	_____	_____	_____
SECURITIZATIONS (AMORTIZING)	_____	_____	_____	_____	_____	_____
OPTIONS	_____	_____	_____	_____	_____	_____
TOTAL OFF-BALANCE-SHEET ITEMS						
TOTAL POTENTIAL FUNDING EROSION	_____	_____	_____	_____	_____	_____

**SOURCES OF FUNDS TO MEET DEMANDS**(WHICH MAY OR MAY NOT BE UTILIZED, DEPENDING ON NEED)  
(ASSUMING NEEDED AS SOON AS POSSIBLE)

	IMMEDIATE	30 DAYS	60 DAYS	90 DAYS	180+ DAYS
SURPLUS MONEY MARKET ASSETS	_____	_____	_____	_____	_____
FREE SECURITIES	_____	_____	_____	_____	_____
ASSET SALES / SECURITIZATION	_____	_____	_____	_____	_____
CREDIT CARDS, AUTOs, COLLATERAL AS MORTGAGE OBLIGATIONS, ETC.	_____	_____	_____	_____	_____
LOAN ATTRITION	_____	_____	_____	_____	_____
TOTAL INTERNAL SOURCES	_____	_____	_____	_____	_____
ESTIMATED LINE CAPACITY TO BORROW IN MARKET		_____	_____	_____	_____
BROKERED FUNDS CAPACITY		_____	_____	_____	_____
DISCOUNT WINDOW COLLATERAL “BORROWING VALUE”		_____	_____	_____	_____

Source: Comptroller of the Currency, Administrator of National Banks, *Problem Bank Identification, Rehabilitation and Resolution* (Washington, January 2001).

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# Final Resolution

To avoid financial disruption to a local community or other adverse economic implications, a bank resolution should be completed promptly. Officials from the supervisory authority and the deposit insurance agency (DIA) (and the conservator, as applicable) should work together to accomplish a smooth resolution in order to make prompt insured deposit repayment and maintain public confidence in the banking system. Note that any resolution method chosen will be more effective with early planning and preparation.

There are three broad categories for problem bank resolution:

1. Private solutions (e.g., recapitalization, sale of bank shares, merger, etc.)
2. Assisted transactions (e.g., purchase and assumption transaction)
3. Liquidated payout.

Bank resolution through private solutions is the responsibility of management and shareholders. In theory, the supervisory authority should have encouraged these solutions prior to any intervention. It should be noted that recapitalization in an attempt to rehabilitate a bank is extremely difficult in an emerging market (and can sometimes exacerbate the losses incurred by the bank's depositors, creditors, and shareholders). Similarly, attempting to negotiate a merger with an existing bank is time-consuming and may extend the losses already incurred by the failing bank.<sup>1</sup>

A liquidated payout is the most extreme form of problem bank resolution, and the least desirable. It can be time-consuming and labor-intensive and can remove banking offices from communities. Therefore, the most practical approach is to focus on assisted transactions (i.e., the sale of the whole bank or parts of the bank). This option is facilitated by use of a purchase and assumption (P&A) agreement as an efficient method of problem bank resolution that also provides prompt

payment to insured depositors.<sup>2</sup> Some jurisdictions provide for financial assistance to ailing banks; however, this is strongly discouraged, except during systemic crises (see Box 5.1).

Generally, banking laws provide that, when corrective measures have failed, the supervisory authority (via a conservator or receiver) may carry out this task with all powers, authority, and ownership rights of the officers, directors, and shareholders of the bank.

Usually it is provided that a conservator or receiver may:

- Sell all or substantially all, or any part, of the assets and redeem liabilities of the bank
- Merge the bank with another bank or sell the bank to an acquirer, subject to the supervisory authority's approval
- In the event it is ultimately determined that the bank cannot be rescued, liquidate the bank and decide the validity of, and pay claims against, it.

In carrying out this responsibility, the supervisory authority should conduct the sale or merger of a bank in a manner that will:

- Maximize the price of such sale or disposition, consistent with the goal of depositor and creditor protection
- Ensure fair competition among potential purchasers or merger partners
- Prohibit any kind of discrimination in the solicitation and consideration of offers
- Ensure that the acquirer, merger partner, or combined bank is a strong bank, majority-owned and controlled by private owners.

<sup>2</sup> The Federal Deposit Insurance Corporation (FDIC) frequently enters into P&A transactions that involve an assumption of all deposits, or more than the insured deposit amount. In countries with specific, limited deposit insurance, such transactions should generally be avoided because they can establish a bad precedent of de facto blanket coverage for depositors, consequently weakening the DIA. During systemic crises, it may be appropriate to use such a transaction; however, the DIA should not be involved in funding coverage of all deposits. For purposes of this manual, the P&A transaction contemplates a transfer of insured deposits only, and so is used interchangeably with the insured deposit transfer. Note that in countries with depositor preference, using the P&A transaction to cover uninsured deposits may be appropriate, but only in cases where there are adequate "good" assets to cover all deposits.

<sup>1</sup> Local situations vary, but bank rehabilitation or restructuring is generally feasible. There are several books and publications on bank restructuring from both ad hoc and systemic crisis perspectives, so the subject is not discussed at length in this manual.



### Box 5.1. Open Bank Assistance

Direct capital injections, purchases of financial institutions' stocks, direct loans, or placement of deposits from the government or deposit insurance agency (DIA) represent a direct subsidy to recipient financial institutions. These types of financial assistance are commonly referred to as open bank assistance (OBA) and are strongly discouraged except in systemic crises.

Any bank resolution method should be subject to the "least costly" form of resolution. OBA is seldom the least costly form of resolution. On paper, a business plan may look like the least costly form of resolution, but the reality is that business plans from problem banks are usually speculative and optimistic. Bank losses are virtually always greater than those identified by bank examiners, and the resolution cost is bound to be greater than originally thought. At best, the outcome is uncertain.

A bank's management and stockholders are responsible for its success or failure, and they bear the responsibility for rehabilitation, including raising additional capital. The fact that shareholders, presumably motivated by the potential loss of their investment, will not or cannot recapitalize the bank is a good indication that the expected return is insufficient. If recapitalizing a troubled bank is a good investment, then the market will provide that capital injection. If a bank cannot attract private investments, then it is probably not a sound investment. If a bank has been unsuccessful in rehabilitation efforts, then it is unlikely that it will ultimately survive.

Providing OBA to a troubled bank, therefore, is a poor financial decision ("pouring good money after bad"), and will likely result in further financial losses. OBA increases moral hazard. If ailing banks know that OBA is readily available, they could use the funds to engage in ever more risky activities ("gambling for resurrection"), which will significantly increase a DIA's risk exposure and likely losses, potentially damaging financial sector stability. Additionally, if a DIA has the legal authority to provide financial assistance to troubled banks, political pressure could compel such an injection into an ailing bank when it would not do so on its own decision.

DIA's in particular should not offer financial assistance to problem banks. Deposit insurance is to protect depositors, not prevent bank failures. In a normal market economy, banks should be allowed to fail. Insolvent banks should be closed. Using deposit insurance funds for OBA contradicts the mandate of an explicit, limited deposit insurance scheme, since it involves protection of uninsured depositors and other creditors.

OBA should only be considered during systemic crises and then should be led and guaranteed by the government, not the DIA. OBA can confuse the role of the safety net participants. For example, the central bank, not the DIA, should provide lender-of-last-

resort functions. If a DIA is to support troubled banks, it should do so only on the request, and with the guaranty, of the government.

To avoid the possibility of supporting ailing banks in inappropriate circumstances, any financial assistance should be required, at a minimum, to meet the following conditions, as determined by the DIA and Supervisory Authority:

- **Least cost.** The DIA must establish that the assistance is the least costly resolution method (i.e., liquidated payout, other negotiated assistance transactions, such as a purchase and assumption agreement or insured deposit transfer). In most cases, bank closing proposals are less costly to the insurance fund. Requiring the least costly method to resolve an ailing bank should provide greater incentives for an insured bank's shareholders and large creditors to impose more discipline on management to operate safely and soundly, thus helping to reduce moral hazard. In systemic crises, however, the authorities may not have the time to analyze or implement a least costly solution.
- **Management competence.** The DIA should either require new management or ensure that the bank's management is competent, has complied with all applicable laws, rules, and supervisory directives and orders, and has never engaged in any insider dealings, speculative practices, or other abusive activity.
- **Injection of private capital.** If at all possible, new or existing shareholders must be required to inject significant matching funds to the institution to assure that the risk of the bank's potential failure is not borne entirely by the DIA.
- **No benefit to former shareholders.** The DIA must ensure that the ailing bank's ownership interest is eliminated entirely or diluted to a nominal amount (in proportion to private capital injection). A major criticism of OBA is that shareholders of failing institutions can benefit from the assistance provided by the public funds.
- **Exit strategy.** Open bank assistance must require a legitimate business plan that elaborates that the assistance will restore the bank to profitability and result in full repayment within a reasonable time frame and include a satisfactory rate of return. Executive compensation should be limited and dividend payments should be suspended until the financial support is repaid.

Any financial assistance to an ailing bank must be properly monitored and conditioned by the supervisory authority (and DIA, if applicable). Strict oversight will be essential if the DIA provides OBA. At the very least, the bank should still be considered under special supervision to ensure safe and sound practices.

When resolving problem banks, the supervisory authority must avoid individually negotiated deals with banks or other investors. Frequently, there is little assurance of adequate capitalization for individually negotiated deals, and they can be more difficult to analyze.

A P&A agreement should be a standardized contract setting forth the conditions of a bank resolution to all interested parties.<sup>3</sup> This provides for a level playing field where all parties realize that there will be no preferential treatment

for any possible investor (as long as they have or will have a bank license and adequate capitalization). Competition among potential acquirers will be enhanced when they are assured of fair and equitable treatment for all.

The resolution method that comes closest to duplicating a free market process will generate the best economic outcome for all involved. Ideally, the method will:

- Maximize the number of bidders
- Permit several options of transaction structures
- Give accurate and ample information to the extent possible
- Allow adequate time for due diligence.

<sup>3</sup> An example of the FDIC's Purchase and Assumption Agreement is included as the Appendix to this manual.

A P&A transaction provides that a financially healthier bank will purchase certain “good” assets and pay the purchase price through an assumption of insured deposit liabilities.<sup>4</sup> This approach represents a more expedient method of resolving a failed bank because it can be accomplished quickly (usually over a weekend), and has the potential to maintain banking services in underserved communities. Additionally, when there are several potential bidders, the failed bank’s franchise value can be captured, to the benefit of the creditors, reducing the final cost of the failure.<sup>5</sup> Using assets in a P&A transaction to fund deposits has two added benefits: first, keeping assets in the private sector; and second, reducing the financial outlay that a DIA must provide to repay insured deposits.

This chapter presents a systematic marketing strategy of an efficient standardized resolution process for failing banks.<sup>6</sup> The resolution process involves valuing a bank, marketing it, soliciting and accepting bids for its sale, and working with an acquirer through the closing process (or liquidation, if there is no acquirer).

Of course, it will not always be possible to follow all the recommended procedures due to time constraints, confidentiality concerns, or conflicting bankruptcy legislation,<sup>7</sup> to name a few. The bank resolution methods described may have to be modified and steps skipped in order to accomplish a successful resolution and payment of insured depositors. Annex 5.1 is an illustration of the FDIC’s resolution timeline.<sup>8</sup>

## RESOLUTION PREPARATION

When a problem bank is dealt with swiftly, asset and franchise values are preserved, generating maximum return. This makes the failing bank more desirable to potential acquirers and lowers the ultimate cost of resolution. Resolution preparation involves:

- Compiling initial information about the bank
- Asset valuation
- Completion of a financial information package (bid package)
- Marketing meeting logistics.

<sup>4</sup> As mentioned previously, in jurisdictions with depositor preference (where depositors have a higher priority of claim than other creditors), uninsured deposits may also be transferred, depending on the level of “good” assets to fund them. DIA funds should not be used to fund uninsured depositor repayment.

<sup>5</sup> Steven A. Seelig, “Techniques of Bank Resolution,” in *Bank Restructuring and Resolution* (International Monetary Fund, Washington, 2006), p. 109.

<sup>6</sup> Note that, in cases of large, complicated, and/or systemic problem banks, the supervisory authority and/or DIA may want to consider hiring an experienced bank sales advisor to assist in the marketing process.

<sup>7</sup> The difficulties of conducting a bank liquidation via commercial bankruptcy court are discussed in Chapter 1.

<sup>8</sup> Federal Deposit Insurance Corporation, *Resolutions Handbook* (Washington, 1998).

Regardless of whether the bank is operating or closed, experienced and qualified personnel should complete the asset valuation. If the bank is in conservatorship, bank staff can prepare the bid package, under the direction of the conservator.

## Initial Information

While the assets are being valued and the bid package is being completed, a marketing specialist should work very closely with the conservator to gather preliminary information regarding the bank. The conservator should be prepared to provide such logistical and financial summary information as follows:<sup>9</sup>

- Bank premises and owned property (location and number of main offices and branches—those that are open, those not in operation; number of employees at each location; records maintained on-site at each location; banking premises owned or leased; recorded value; other tenants; information system—computerized or manual)
- Number and value of loans at each location (name and amount of major debtors; insider lines, e.g., directors, officers, shareholders, affiliates; location of notes; loan classifications)
- Deposits (number and value of deposits at each location; name and amount of major depositors; insider depositors, e.g., directors, officers, shareholders; distribution of depositors; debtor/depositor relationships for potential offsets)<sup>10</sup>
- Borrowings—secured or unsecured
- Subsidiaries
- Contingent liabilities
- Trust department activities
- Ownership structure
- Enforcement actions pending
- Litigation
- Other—leases, contracts, etc.

This preliminary information will give the marketing specialist an idea of the condition of the bank and will likely affect the decision as to the type of transaction to offer. A more comprehensive information package (discussed below) will be prepared for potential acquirers’ review.

## Asset Valuation

The supervisory authority staff or other experts should estimate the worth of a bank’s assets using valuation models. Because time is of the essence, there is not enough time to appraise every asset, so the models will provide statistical sampling. They can divide the assets into categories, identify a

<sup>9</sup> If the bank is not in conservatorship, marketing specialists should work with supervisory authority examiners to compile the information.

<sup>10</sup> Depending on local law.

sample, and carefully review the assets to establish a liquidation value for each asset.

The liquidation value is derived from the future cash flows and the expenses likely to be incurred during the collection of the asset. Adjustments can be made to discount future cash flows and to account for liquidation expenses. The loss factor that results from that estimate is then applied to the category from which the sample was taken.

When all categories are sampled and evaluated, the loss factors are aggregated and extrapolated to the bank as a whole. This computation will produce a loss factor, or cost of liquidation, which will be used in assessing bids from potential acquirers.

## Bid Package

The bid package should build on the initial information and include detailed data on the amounts and types of assets and liabilities that the failing bank holds. The information may vary from bank to bank, depending on the business strategy as reflected in the asset and liability structure. Some of the more important information contained in the bid package includes:

- Demographic information, including market area, population, history of bank, customer type, competition.
- Schedules that represent the book value of items that comprise the bank's balance sheet:
  - Cash and equivalents—due from banks spread by bank name, term, and interest rates.
  - Investment securities—separated by marketability, and listed by name, term, and interest rates.
  - Loans—summary reports by type (commercial, real estate, installment, credit cards, etc.), concentrations of credits, maturity, interest rate, etc., including accrued interest receivable. Provide separate reports for local currency and each foreign exchange currency used.
  - Fixed assets—location of bank premises, including branches, appraisals (if available), terms of leases and leasehold improvements (as applicable), computer and other equipment, furniture and fixtures, and applicable insurance coverage.
  - Distribution of ATM machines, itemizing the number of operations per day and per location, and the mean volume per transaction.
  - Other real estate—individually listed by name, location, book value, and appraised value (if available).
  - Subsidiaries—name, type, purpose, and status (active or dormant).
  - Other assets—detailed listing.
  - Deposit base—summary reports reflecting cost of deposits, by type (demand, savings, time) and

maturity, including accrued interest payable. Detailed listing of individual deposits, concentrations, and number of debit cards. Provide separate reports for local currency and each foreign currency used.

- Borrowings—identified by name, term, and interest rates.
- Guaranties—identified by name and other details (including obligations regarding term, interest rates, etc.).
- Other liabilities—detailed listing.
- Contingent liabilities.
- Capital accounts—include recent income and expense statement.
- Detailed description of the data processing (topology, applications, conceptualization).
  - Description of the communications map.
  - Description of the security modules (redundant files, backups, etc.).
  - If the data processing is outsourced, it will be necessary to include the contract, with any negotiations under way, as well as the terms and scope of the service so acquired.
- Employees—short biographies of key management personnel, unusual situations (golden parachutes, onerous employment contract obligations), chart of all employees (titles, number, capabilities, training and salaries, if possible).
- Contracts—detailed listing of all contracts, whether the bank is party as provider or receiver of goods or services.
- Litigation—detail of pending court cases, including a legal opinion estimating the outcome and foreseeable consequences for the bank.

Both the asset valuation and the bid package are proprietary and strictly confidential. Although the bid package will be provided to potential acquirers, the asset valuation will not.

## Marketing Presentation Logistics

The marketing specialist should estimate the necessary time for completion of the asset valuation and the bid package, so that a marketing presentation can be scheduled. Prepare confidentiality agreements for all potential acquirers who will be invited. (Both these subjects are discussed in greater detail below.)

Based on the marketing specialist's time frame estimates, a date, time, and place for the marketing presentation must be established. If the supervisory authority has appropriate accommodations, it is simply a matter of reserving the space and maintaining confidentiality. If not, a neutral site should be selected, such as a hotel conference room.

## MARKETING STRATEGY

Once the information mentioned above has been compiled, the marketing specialist can begin determination of the best

transaction form to offer potential acquirers. Some factors that affect the marketing strategy are:

- Asset and liability composition of the failing bank
- Competitive and economic conditions of the bank's market area
- Prior resolution experience in the same market
- Other relevant information (such as potential fraud at the bank).

Some of the questions that must be answered to determine the appropriate form of the transaction are:

- Will the bank be sold whole or in parts?
- What types or categories of assets will be offered?
- How should the assets be packaged?
- How should the assets be priced?

### Least-Cost Analysis

Some jurisdictions require that the resolution method be the least costly of any other resolution method. Resolution alternatives are evaluated on a net present value basis, using a reasonable discount rate, to determine the least costly resolution.

The least-cost analysis is generally defined as the calculation to determine the problem bank resolution method that is the least costly to a deposit insurance fund (or government budget) of all possible means of resolving the failed bank. Some factors that can influence the least-cost analysis include the difference between assets and liabilities book values, levels of insured deposits, premium paid by an acquirer, and losses on contingent claims.

A typical formula to calculate least cost is:  $(\text{Loss on assets} - \text{equity capital} - \text{unsecured creditors' loss}) \times (\text{insured deposits} / \text{total deposits})$ .

A P&A is a transaction in which a healthy bank (the acquirer) purchases some or all of the assets of a failed bank and assumes the insured deposits. To gain entry to a new market or to increase market share, an acquirer will often pay a premium for this transaction. When the amount of insured deposits assumed exceeds the value of the premium plus assets purchased, an acquirer may receive assistance. Some benefits of a P&A transaction include:

- Customers suffer no loss in service
- Acquiring bank can increase market share
- Usually less expensive than a payoff
- Depending on transaction, can keep assets in the private sector
- P&A transaction with put options on assets allows acquirer to perform due diligence after transaction (although this "cherry-picking" often leads an acquirer to neglect servicing questionable assets).<sup>11</sup>

The P&A transaction, whether used to transfer insured deposits and selected assets to an assuming bank or to a "bridge" bank managed by the government until an assuming bank is found, employs the instant use of the failed bank's assets to offset the liabilities transferred.

Under the P&A concept, certain assets and insured deposits of the failed bank are transferred to an assuming bank at book value. In this way, the assets of the failed bank help offset the deposit liabilities transferred to the assuming bank, thus reducing the impact on the deposit insurance fund (if there are not enough "good" assets to balance the amount of insured deposits, the DIA must advance the cash to balance the transaction—assets must equal liabilities). The real cost of not employing a P&A transaction can be devastating to a deposit insurance reserve fund.

Although there are several variations of the P&A transaction used around the world, the concept is very simple. The objective is to include as many assets as possible in the transaction while ensuring that they are of adequate quality so as to not jeopardize any deal or create a problem bank situation with an acquirer. Table 5.1 illustrates the various forms of assets and liabilities with regard to a P&A.

Some examples of the forms a P&A transaction can take are:

- **Whole bank.** Where a liquidating supervisory authority or the government pays an acquirer to take virtually all assets and liabilities of a failed bank (negative bid).
- **Clean bank.** Some good assets are sold to an acquirer that also assumes insured deposit liabilities. There are many variations of the asset sale. It can include put-back rights, exclusive asset purchase options, and representations and warranties. Of these, the exclusive asset purchase option, or "cherry pick," is probably the simplest. The liquidator, or receiver, may lack funds to pay for assets put back, and asset quality is usually insufficient to justify representations and warranties.
- **Deposit transfer.** An acquirer assumes insured deposits and acts as paying agent for the DIA. Few assets are transferred other than the cash needed to cover the transferred deposits.

Tables 5.2 and 5.3 are two pro forma illustrations of the impact of a P&A transaction on a problem bank's balance sheet. Both begin with an original balance sheet, which is then adjusted for loss in the bank's loan portfolio, and concludes with the split of assets and liabilities. In the first example (Table 5.2), the split is between the assuming bank and the receivership; in the second example (Table 5.3), the split is between a newly created "bridge" bank (temporarily owned and operated by the government) and the receivership.

A bridge bank allows greater flexibility in that either insured or all depositors can be protected (Box 5.2). Other creditors may be protected as well, depending on governmental decision. A great benefit of a bridge bank is that the contingent liabilities (e.g., unfunded loan commitments, letters of credit, litigation, unknown liabilities, etc.) can be

<sup>11</sup> Federal Deposit Insurance Corporation, *Resolutions Handbook* (Washington, 1998). Typically the period for "put-backs" runs 60 days.

**TABLE 5.1**  
**Summary of a Typical Purchase and Assumption Transaction**

<b>Assets</b>	
Cash	Passes to acquirer at book value. <sup>1</sup>
Due from banks	Passes to acquirer at book value.
Investment securities	Can be sold to acquirer at market value, depending on quality and marketability.
Loans	Can be sold to acquirer, depending on quality. For example, loans completely secured by deposits, performing installment and residential mortgage loans may pass, while commercial and nonperforming loans of any type usually do not pass. Homogenous loans may be pooled and sold as part of the transaction or to other investors. Any accrued interest receivable will either pass or stay with the respective pool.
Fixed assets	The purchase and assumption (P&A) transaction can provide the acquirer an exclusive option to purchase owned or assume leased bank premises. These will pass at appraised value or an assignment of lease terms as applicable.
Other real estate owned	Sometimes the acquirer will have an exclusive option to purchase other real estate owned at appraised value.
Other assets	Some may be offered as an option, others may be excluded entirely.
<b>Liabilities</b>	
Deposits	Insured deposits are assumed by the acquirer according to the P&A. Any accrued interest payable on insured deposits passes to the acquirer. <sup>2</sup>
Borrowings	Usually does not pass to acquirer.
Guaranties	Usually does not pass to acquirer.
Other liabilities	Usually does not pass to acquirer unless it is related to an asset the acquirer has purchased or an obligation the acquirer has assumed.
Capital	Under no circumstances does any capital account pass.
<b>Additional Stipulations</b>	
The acquirer must usually continue banking business at the location for a specified period of time.	
The acquirer must usually manage the failed bank's safe deposit business.	
The acquirer must provide notice to claimants (and obligors as applicable).	
The acquirer must usually perform certain specific actions related to assets purchased (e.g., loans in litigation, bankruptcy, participations, etc.).	

<sup>1</sup> Depending on the bank insolvency regime, some cash may be needed to fund receivership operations until asset liquidation generates enough working capital. Most bankruptcy regimes (commercial or special) stipulate that receivership operating expenses have the highest claim priority.

<sup>2</sup> See footnote 2 in this chapter.

left behind in the receivership, along with selected other liabilities, and the government will bear none of those liabilities.

There is no “one size fits all” answer when choosing a resolution transaction, but a P&A transaction is a versatile vehicle to fit many situations. The proper vehicle for a failing bank resolution can help avoid disruption of orderly economic activity such as:

- Loss of a bank in an isolated area
- Severe reduction in credit availability for an industry or region
- Considerable government ownership of a failed bank's assets.

An in-depth analysis of asset quality is the primary factor in the type of transaction planned. It is more cost-effective and less disruptive to sell as many assets as possible through the P&A transaction. Often this fact will justify selling the assets at a discount from book value. An acquirer's reluctance to pay reasonable value for assets should not lead to a “fire sale” mentality, however.

The basic P&A transaction is adaptable to change. For example, where there is a very large failing bank, it may be advisable to market it branch by branch (or in clusters) in order to maximize potential bidders (Box 5.3). The provisions of the P&A transaction should be accommodating enough to return the greatest value for the failed bank. When liquid assets are sufficient to cover payment of insured deposits, a good strategy may be to offer a P&A transaction with an exclusive option to purchase certain assets. This will give an acquirer enough time for asset review to determine which ones meet its criteria. Purchase of additional assets may fund payment of all or part of uninsured deposits and other creditors, and will quickly return assets to the private sector.

Another alternative is to pass assets at book value initially and then provide for third-party valuation after the fact. The government and the assuming bank can each hire an independent auditing firm to value the assets and negotiate from the two results. If there is more than a 10 percent variation between the two reports, a third can be ordered.

**TABLE 5.2****Assuming Bank Purchase and Assumption Example: Failed Bank—Original Balance Sheet**

<b>Assets</b>		<b>Liabilities</b>	
Cash and bank deposits	154	Deposits	800
Investments	185	Borrowings	70
Loans	710	Other liabilities	110
Fixed assets	25	Subordinated debt	10
Investment in subsidiaries	5	Capital	110
Other assets	21		
<b>Total</b>	<b>1,100</b>		<b>1,100</b>

**Failed Bank - Original Balance Sheet - Adjusted for Loss**

<b>Assets</b>		<b>Liabilities</b>	
Cash and bank deposits	154	Deposits	800
Investments	185	Borrowings	70
Loans*	410	Other liabilities	110
Fixed assets	25	Subordinated debt	10
Investment in subsidiaries	5	Capital**	-190
Other assets	21		
<b>Total</b>	<b>800</b>		<b>800</b>

\* – Loss of 300 in Loans.

\*\* – Charged loss results in insolvency.

**"Split" - Assuming Bank**

<b>Assets</b>		<b>Liabilities</b>	
Cash and bank deposits	154	Insured deposits	550
"Good" Investments	85	Borrowings	
"Good" loans	200	Other liabilities**	20
Other assets*	5		
<b>Subtotal</b>	<b>444</b>		<b>570</b>
Cash from deposit insurance agency	126		
<b>Total</b>	<b>570</b>		<b>570</b>

\* – Accrued interest on "good" loans.

\*\* – Accrued interest on insured deposits.

**"Split" - Receivership**

<b>Assets</b>		<b>Claims</b>	
Investments	100	Uninsured deposits	250
Loans	210	Borrowings	70
Fixed assets	25	Other liabilities	90
Investment in subsidiaries	5	Subordinated debt	10
Other assets	16	Capital	110
<b>Total</b>	<b>356</b>		<b>530</b>

**TABLE 5.3****"Bridge" Bank Purchase and Assumption Example: Failed Bank—Original Balance Sheet**

<b>Assets</b>		<b>Liabilities</b>	
Cash and bank deposits	154	Deposits	800
Investments	185	Borrowings	70
Loans	710	Other liabilities	110
Fixed assets	25	Subordinated debt	10
Investment in subsidiaries	5	Capital	110
Other assets	21		
<b>Total</b>	<b>1,100</b>		<b>1,100</b>

**Failed Bank - Original Balance Sheet - Adjusted for Loss**

<b>Assets</b>		<b>Liabilities</b>	
Cash and bank deposits	154	Deposits	800
Investments	185	Borrowings	70
Loans*	410	Other liabilities	110
Fixed assets	25	Subordinated debt	10
Investment in subsidiaries	5	Capital**	-190
Other assets	21		
<b>Total</b>	<b>800</b>		<b>800</b>

\* – Loss of 300 in Loans.

\*\* – Charged loss results in insolvency.

**"Split" - "Bridge" Bank**

<b>Assets</b>		<b>Liabilities</b>	
Cash and bank deposits	154	Deposits	800
"Good" Investments	85		
"Good" loans	200	Other liabilities**	20
Other assets*	5		
Fixed assets	25		
Subtotal	469		
Cash from deposit insurance agency or state	351		
<b>Total</b>	<b>820</b>		<b>820</b>

\* – Accrued interest on "good" loans.

\*\* – Accrued interest on insured deposits.

(Contingent liabilities (e.g., unfunded loan commitments, letters of credit, litigation, etc. left in receivership)).

**"Split" - Receivership**

<b>Assets</b>		<b>Claims</b>	
Investments	100		
Loans	210	Borrowings	70
Investment in subsidiaries	5	Other liabilities	90
Other assets	16	Subordinated debt	10
		Capital	110
<b>Total</b>	<b>631</b>		<b>280</b>

### Box 5.2. “Bridge” Banks and Nationalization

A bridge bank is a temporary financial institution established to receive the deposits and good assets of one or several failed institutions.<sup>1</sup> A bridge bank is a type of purchase and assumption (P&A) agreement where the government (or the restructuring agency) itself temporarily acts as the acquirer until the time that the institution is ready for a sale. The bridge bank may be allowed to undertake all or only some banking business, such as providing new credit and rolling over existing credit. Bad assets are liquidated or transferred to an asset management company. If it is expected that

<sup>1</sup> Generally in a P&A agreement, only insured deposits transfer to an assuming bank. In a bridge bank situation, however, insured-only or all deposits may be transferred, depending on potential systemic impact.

the bridge bank will be sold quickly to a solvent bank, the government may opt not to inject any capital in the bank, which makes the bridge bank arrangement potentially a cheap arrangement for the government.

Nationalization of a failing bank means that the government becomes the (main) owner of the insolvent bank and recapitalizes it. The use of the term here is different from the more traditional nationalization, which refers to a situation wherein the government which takes over a solvent bank. In a systemic crisis, the government's aim is usually to own the bank temporarily and to seek to privatize it at an early date.<sup>2</sup>

<sup>2</sup> Edward J. Frydl and Marc Quintyn, “The Benefits and Costs of Intervening in Banking Crises” in *Bank Restructuring and Resolution* (International Monetary Fund, Washington, 2006), pp. 32–33.

### Box 5.3. Branch Breakups<sup>1</sup>

There may be instances where a bank has so many branch offices that it may not be feasible for a single institution to acquire it. If such is the case, the supervisory authority may want to consider a “branch breakup” (i.e., offering branch offices individually, or in clusters, to multiple bidders). Following are some pros and cons of branch breakups:

<sup>1</sup> Federal Deposit Insurance Corporation, *Resolutions Handbook* (Washington, 1998).

#### Pros:

- Provides for more potential bidders (especially smaller banks), which may increase the premiums received
- Increases the resolutions options available to the bidders.

#### Cons:

- Information technology and conversion costs are usually higher
- A quick and smooth transaction is more difficult
- One acquirer must be the “lead” acquirer (an often onerous role), in processing and allocating transactions and costs.

Some branches may be undesirable, resulting in liquidated payoff.

Preferred failing bank resolution methods are those that help prevent adverse economic results. Their goals are to:

- Preserve franchise values
- Maximize private ownership of assets
- Minimize government ownership of assets
- Preserve (or help create) competitive markets.

If none of the above options prove feasible, then it will be necessary to perform a liquidated payout to insured depositors. During such a situation, it is critical to avoid public gatherings and lines at the failed bank's offices, as this may result in contagion and possible systemic risk. One solution to this problem is to mail checks to insured depositors. If this option is selected, then it must be highly publicized in all media sources.

Another viable option is to make insured deposit payment via electronic transfers to another bank (Box 5.4). Upon bank failure, depositors should be clearly instructed that they should open an account at another bank, which will transmit the information to the DIA for verification and payment via electronic transfer. Depositors should be notified via a press release to printed media, public service announcements on television, and flyers distributed at every failed bank location.

Other banks should be notified of the process as soon as possible following the bank closing and requested to waive any bank account opening fees they may normally charge. Electronic depositor transfer forms (Annex 5.2) and nonconfidential depositor information should be provided to the other banks for more efficient processing. DIA personnel will review and verify the deposit information, and make deposit transfers as appropriate.

## LEGAL DOCUMENTS

There are several standardized documents for a P&A transaction. Supervisory authority attorneys will need to review them to ensure compliance with applicable legislation. Briefly, the documents include:

- **Confidentiality agreement.** This must be signed by any bank or investor group that is interested in receiving any information regarding the pending transaction. Confidentiality is paramount in order to maintain public confidence and limit competitive abuse (Annex 5.3).<sup>12</sup>

<sup>12</sup> Annexes 5.3–5.5 are examples of official FDIC documents, as provided to the author.



**Box 5.4. Paying Insured Deposits via Electronic Transfers to Another Bank**

- Upon bank failure, depositors should be clearly notified of the deposit claim process via:
  - Press release to print media
  - Public service announcements on television
  - Notices posted and flyers distributed at every failed bank location.
- Other banks should be notified of the process as soon as possible following the bank closing and requested to waive any bank account opening fees they may normally charge.
- Depositors should be clearly instructed that they should open an account at another bank (or, in the case of an existing account, request that information be provided to the deposit insurance agency - DIA).
- Electronic depositor transfer forms (Annex 5.2) and nonconfidential depositor information should be provided to the other banks for more efficient processing.
- The other bank will transmit the information to the DIA for verification and payment via electronic transfer.
- DIA personnel will review and verify the deposit information, and make deposit transfers as appropriate.

- **P&A agreement.** The P&A deposit agreement identifies the deposits, terms, and conditions under which they are to be assumed. It also comprises the terms and conditions of any assets to be sold as part of a problem bank resolution. Additionally, in all these agreements, the acquirer is indemnified for any actions of the failing bank prior to failure, unless expressly assumed. (This is not a monetary indemnification, but a legal redirection of claims to the receiver.)
- **Interim asset servicing agreement.** This agreement requires an acquirer to responsibly service specific assets for a certain period. This can apply in cases where the acquirer has an exclusive purchase option on assets, or when the liquidating supervisory authority lacks personnel to service their assets.
- **Escrow agreement.** This provides an opportunity to consummate a P&A transaction in advance of the scheduled bank closing. It assures both parties that commitments will be honored (Annex 5.4).
- **Bid agreement form.** A legal document and form that commits the potential acquirer to abide by the restrictions of the resolution process and pay the amount specified (Annex 5.5).

**POTENTIAL ACQUIRERS**

A P&A transaction is an excellent opportunity for an acquiring bank to either increase market share or expand into areas where the acquirer does not have a presence. Paying a premium for deposits and options on banking premises is much more cost-effective than obtaining premises and soliciting deposits on a de novo basis. (In the United States, estimates are that the acquirers in these types of transactions retain approximately 70 percent of deposits.)<sup>13</sup>

Additionally, the efficiency of the P&A transaction limits financial disruption to a community, maintaining public confidence and stability in the banking system, which should

<sup>13</sup> In many countries, banks do not seem to recognize this opportunity; occasionally it is necessary to pay a fee to an agent bank to make repayment of deposits on behalf of the DIA or supervisory authority.

be a mutual goal of every organization involved in the banking sector.

In many cases, it may be prudent to maintain a database of approved banks and investors that are interested in establishing bank operations in the country. When evaluating investor groups for approval, the supervisory authority must consider, among other factors:

- The length of time required for licensing a new bank
- Whether the investor group can raise sufficient capital
- Whether the investor group can provide competent management.

The supervisory authority must be confident that those parties on the list are strong enough to acquire a failed bank and sustain profitable operations. The supervisory authority should keep track of any seriously interested bank or investor group and provide that information to the marketing specialist.

A marketing specialist should confidentially work with the supervisory authority and contact all strong, healthy banks in the country to solicit their interest in acquiring the failing bank. Additionally, again with the supervisory authority, the specialist should solicit the interest of foreign banks attempting to obtain licenses in the country. Another method to elicit interest is to run general advertisements in international trade journals (especially in the specific region) announcing these opportunities (Annex 5.6); however, confidentiality and the adverse impact on the banking system must be considered in relation to such an act.

**MARKETING PRESENTATION**

After potential acquirers have been identified they should be contacted and invited to a marketing presentation. Registration forms and confidentiality agreements should be mailed or faxed to the potential acquirer. Neither of these forms should identify the failing bank under consideration. Potential acquirers should return a copy of each of the forms. This will guide the marketing specialist in prepar-

ing the appropriate number of information packages. The potential acquirers should retain the original forms and present them as their admission tickets to the marketing presentation.<sup>14</sup>

Before the meeting, the marketing specialist should ensure that logistical requirements of the meeting are met. There should be adequate numbers of chairs and tables. Any audio-visual equipment (e.g., microphones, overhead or slide projectors, personal computers for PowerPoint presentation, etc.) should be tested. The marketing specialist should also have a rehearsed, standardized script in order to assure a professional presentation.

A registration table, staffed by adequate supervisory authority personnel, should be set up near the entrance of the meeting room. Supervisory authority personnel should screen persons seeking entry. The confidentiality of the proceedings must continually be stressed. Only approved potential acquirers (with properly completed registration forms and confidentiality agreements) should be allowed in. Members of the press must not be allowed to attend.

At registration, an information package consisting of financial data, legal documents, transaction description, and other material should be provided to each potential acquirer. (More than one representative from a potential acquirer may attend the presentation, but only one package should be provided.)

The marketing specialist should cover the following topics:

- **Financial data on the bank.** This should consist of applicable portions of the bid package discussed above redacted of any confidential information.
- **P&A transaction summary.** Provide a sample pro forma balance sheet, clearly marked “for reference purposes only,” that demonstrates the financial effects of the transaction. It should show the effect of the required assets to be purchased and deposits to be assumed. Optional asset purchase opportunities can be on other schedules.
- **Legal summary.** A supervisory authority attorney should make a short presentation describing the nature of the transactional documents and be available to address legal issues.
- **Regulatory requirements.** Briefly describe the capital and other requirements of a new or enlarged bank.
- **Due diligence scheduling.** Potential acquirers should have the opportunity to go on-site and examine the relevant records of the failing bank. Depending on the nature of the proposed transaction and the size of the failing bank, this could range from one day to one week or more. The marketing specialist should provide contact information for due diligence scheduling.
- **Bid process.** The bid agreement form, provided in the package of materials, spells out the legally bind-

ing process for bid acceptance. The marketing specialist should estimate the time needed for due diligence and establish tentative dates for bid acceptance and closing of the transaction.

The marketing specialist should clearly advise potential acquirers that they are not to discuss the bank failure or the impending transaction with any failed bank employee, bank vendors, lessors, attorneys, or accountants prior to the actual closing of the transaction. Any such communication is a violation of the confidentiality agreement. Additionally, the marketing specialist should stress that potential acquirers are strictly prohibited from contacting other potential acquirers regarding any aspect of the process.

## DUE DILIGENCE<sup>15</sup>

Due diligence is the potential acquirers’ on-site inspection of the premises, records, and operations of the failing bank. Due diligence allows the potential acquirers to assess the franchise value and calculate a knowledgeable bid amount.

Approved potential acquirers will have the opportunity to go on-site and examine the relevant records of the failing bank. The potential acquirer must have completed a confidentiality agreement and should be reminded of the need for confidentiality regarding the transaction. The confidentiality agreement is a legally binding document and violations are subject to criminal penalties.

Maintaining the “level playing field” concept, all potential acquirers conducting due diligence should have access to the same information. The number of members of potential acquirers’ due diligence teams will depend on available space.

Potential acquirers should be granted adequate review time, keeping in mind the urgency of the resolution process. If the failing bank is relatively small and/or the contemplated transaction is a deposit transfer with no asset sales, due diligence may be accomplished in a day or less. On the other hand, a larger bank in a transaction with possible asset sales may require a week or more. In cases of lengthy due diligence, appropriate financial information may be updated and provided to all potential acquirers.

The marketing specialist should create and maintain a schedule of the due diligence calendar. Scheduling should generally be on a first-come, first-served basis. Each potential acquirer performing due diligence must provide the name of the leader of the team (with contact information: telephone number, fax number, e-mail address, etc.) and a list of all the members of their due diligence team. The number and/or names of other due diligence teams should not be disclosed under any circumstances.

Working with the conservator, the marketing specialist must ensure that all necessary information (as of the same date) is avail-

<sup>14</sup> Where there is expected to be a limited amount of interest in acquisition of a problem bank, this process can be conducted in a more informal manner.

<sup>15</sup> Often, a problem bank will need such swift action that a period of due diligence is not possible. These guidelines are provided for those situations where there is adequate time for it.

able to each due diligence team. The conservator or designee should monitor the due diligence process on-site. Unusual requests should be cleared with the marketing specialist. Sign in/out forms should be developed and use required of the due diligence teams.

Policies regarding record review access must be developed. For example, to prevent customer raiding, due diligence policy may dictate providing depositor information represented only by account numbers, with no names and addresses (if possible). More access should be allowed in asset review, because it is in the best interest of the supervisory authority to divest as many assets as possible.

Copying of the failing bank's records should be prohibited, although handwritten notes or personal computer-generated information may be permitted. Additionally, the potential acquirers conducting due diligence should not have access to board minutes, supervisory examinations, or personnel or other sensitive records.

## BID ACCEPTANCE

After all potential acquirers have finished due diligence, they will submit their bids to the appropriate authority (Annex 5.5). The bid amount (or premium) is the price a potential acquirer puts on the value of the transaction (asset purchase options, deposit base, branch network, etc.).

Unless the level of due diligence scheduling prevents it, the bid date announced at the marketing presentation should be adhered to. Bid submission policy should require personal delivery of an original bid, signed by an authorized officer of the potential acquirer. Faxed bids should not be allowed except in very unusual circumstances (and then the original must be delivered via overnight mail).

Although the bid forms should not be altered, the supervisory authority reserves the right to accept or reject any bid for any reason. After bids are received, the winner is selected. Because the P&A transaction is so simple, usually this is a matter of selecting the highest bid. When priced pools of assets have been offered as an option, however, more complex analysis may be necessary.

The winning bidder should be notified, and a meeting to sign contracts should be scheduled. A reminder of the confidentiality of the process is appropriate at this point. Losing bidders should also be notified; however, again because of confidentiality concerns, the identity of the winning bidder should not be disclosed. The winning bidder is referred to as the "assuming bank" in the P&A transaction because it is assuming deposits as an agent of the supervisory authority.

## CONTRACT SIGNING

To provide a comfort level to both parties to the transaction, the P&A contracts are signed several days prior to the actual closing of the bank. This eliminates last-minute conditions or demands by either party. Authorized representatives from the supervisory authority and the agent bank will sign the

P&A agreements, and, if applicable, the interim servicing agreement. Both parties will also sign the escrow agreement. The escrow agreement merely states that the aforementioned documents were signed and put into escrow until the stipulated date. The agent bank receives only a copy of the escrow agreement. The other signed agreements will be delivered to the agent bank at the time of the bank closing.

## CLOSING THE TRANSACTION

Bank failures can disrupt a community and undermine confidence in a banking system. Because it is critical to provide prompt access of customers to their deposits, a quick resolution to the event is required. The final step in the resolution process is actually closing the bank and transferring the assets purchased and deposits assumed to the assuming bank.

If the bank has been operating under conservatorship, much of the preparation for the final resolution can be done in advance. The final resolution will occur in a similar fashion to the initial intervention and appointment of a conservator. That is, supervisory authority staff will address each functional area, striving for asset control and security as stipulated in Chapter 3.

The supervisory authority is responsible for settling the affairs of the closed bank. At the closing, the accounting team will prepare pro forma financial statements. According to the terms of the P&A transaction, the team will:

- Balance the accounts of the bank
- Transfer certain assets and insured deposits to the acquirer
- Prepare a pro forma balance sheet demonstrating the division of assets and deposit liabilities that pass to an acquirer and those that remain with the liquidation
- Calculate any amount necessary to balance the transaction (assets purchased compared to deposits assumed, minus bid amount).

An efficient use of time is to close a bank at the usual time on a Friday, work through the weekend to prepare the pro forma, and allow the assuming bank to re-open the bank as a branch the following Monday morning. The assuming bank will sign official receipts documenting the assets and liabilities transferred to it (Annex 5.7).

On Monday, the assuming bank will have access to the liquid assets purchased in an amount necessary to fund the transferred deposits. This will be based on the pro forma created over the weekend. If the pro forma is not completed, an estimate will be produced, subject to adjustment for errors and omissions.

## PUBLIC AWARENESS

When the bank is closed and the supervisory authority appoints a receiver, the supervisory authority issues a press release to inform the public (see Annex 3.14 in Chapter 3).

The press release should stress that the action is being taken to minimize the impact of a bank failure on the local economy by finding an assuming bank to handle deposits and transferring assets into the private sector. The assuming bank may also issue a press release; however, the P&A transaction requires that the supervisory authority approve it in advance.

As mentioned in Chapter 1, goodwill can be created by sharing as much information as possible with the local media. Television, radio, and local newspaper announcements can provide failed bank customers with critical information regarding their accounts (whether loan or deposit). It is critical to publicize information regarding *when* and *where* insured deposits will be paid. Another information vehicle to consider is the town meeting, where representatives from the supervisory authority and/or DIA are available to answer questions about the failure, resolution process, clos-

ing process, and other general questions. Of course, private, confidential, customer-specific information should not be disclosed or discussed.

The marketing specialist should remain on-site throughout the weekend in case there are any disputes arising from misinterpretations of the transaction. After the bank is reopened on Monday morning, the marketing specialist is finished and the remaining assets and liabilities are subject to the liquidation process.

Of course it will not always be possible to follow all the recommended procedures due to time constraints, confidentiality concerns, or conflicting bankruptcy legislation, to name a just few possible complications. The bank resolution methods described may have to be modified and steps skipped in order to accomplish a successful resolution and pay insured depositors.

## ANNEX 5.1. EXAMPLE OF A RESOLUTION TIMELINE

Days	1-8	9-41	42	43	44	45	46	47	48	49	50	52-70	71-94	95	96	97	98	99	100	101	102	103	104	105	106
<b>1 Problem bank enters “formal” stage of enforcement measures</b>																									
Select information and asset valuation review teams																									
Appoint Bank Intervention Manager (BIM)																									
<b>2 Assemble information package/Decide on transaction structured</b>																									
BIM prepares Intervention Action Plan																									
Provide legal division with recommendation to draft documents																									
Set information meeting: location, time, and place																									
BIM begins preparing information package																									
<b>3 Asset valuation review assembled/Function Managers appointed</b>																									
<b>4 Asset valuation review package reviewed by senior management</b>																									
<b>5 Function Managers prepare intervention packages</b>																									
<b>6 Information meeting</b>																									
Identify short list of bidders																									
Conduct meeting																									
Intervention – Appoint Special Administrator																									
<b>7 Due diligence</b>																									
Update balance sheet and deposit information																									
<b>8 Bid acceptance/analysis/management decision</b>																									
<b>9 Special Administrator prepares function area intervention</b>																									
<b>10 Winning bidder signs documents</b>																									
<b>11 Closing date</b>																									
<b>12 Special Administration Intervention Team updates intervention actions</b>																									
<b>13 Pro forma balance sheet completed and splits with assuming bank completed</b>																									

Source: Adapted from Federal Deposit Insurance Corporation, *Resolutions Handbook* (Washington, 1998).

**ANNEX 5.2. SAMPLE DEPOSIT TRANSFER FORM****DEPOSIT INSURANCE AGENCY****Deposit Transfer From**

Date: \_\_\_\_\_

To: Deposit Insurance Agency

From: \_\_\_\_\_ [Name of Sending Bank]

Subject: Transfer of Deposit from Failed Bank to \_\_\_\_\_ [Name of Sending Bank]

Re: \_\_\_\_\_ [Name of Failed Bank Deposit Account Customer]

Deposit type: \_\_\_\_\_

Deposit Account Number at Failed Bank: \_\_\_\_\_

Passport or ID Number \_\_\_\_\_

Check one or more of the following if applicable:

Government employee

Recipient of payment(s) from Ministry of Labor and Social Welfare

(pensions, disability, etc.)

Please provide an electronic funds transfer of the balance of the above-referenced deposit account customer, up to a maximum of \_\_\_\_\_ of the balance, to (Name of Sending Bank) into Account Number \_\_\_\_\_.

Sincerely,

Name of Sending Bank Account Officer

Title of Account Officer

By signing this form, the undersigned depositor promises to repay to the Deposit Insurance Agency any portion of this amount that represents an overpayment of the undersigned's deposit. In addition, the undersigned payee assigns to the Deposit Insurance Agency all rights against the closed bank to the extent of the Deposit Insurance Agency's deposit payment.

This assignment subrogates the Deposit Insurance Agency to all rights of the undersigned payee against said institution.

\_\_\_\_\_  
 Depositor signature  
 (Optional language as applicable)

For government employees and/or recipients of social assistance and contributions paid in accordance with the law:

I hereby authorize the Deposit Insurance Agency to disclose to, as may be applicable, the relevant ministries, agencies and departments, information related to my new bank account and any other information included in this form. Such authorization shall be valid for the purpose of ensuring continued payment of my salary and/or any other payments from the Government, its Ministries and/or Agencies to the new bank account referred to above and shall not be used for any other purposes. With respect to information disclosed pursuant to the present authorization, I commit to hold the Deposit Insurance Agency harmless of any actual or potential liabilities.

\_\_\_\_\_  
 Depositor signature

## ANNEX 5.3. CONFIDENTIALITY AGREEMENT

In consideration of \_\_\_\_\_ [Failed Bank] \_\_\_\_\_, \_\_\_\_\_ [Location] \_\_\_\_\_ or its Affiliates (hereinafter collectively referred to as the “Bank”) and the Federal Deposit Insurance Corporation’s (the “FDIC”) furnishing to the undersigned potential acquirer (the “Potential Acquirer”) Proprietary Information (hereinafter defined) in order to enable the Potential Acquirer to evaluate a possible FDIC assisted acquisition of the Bank or any of its assets and liabilities (“Transaction”) and to prepare an acquisition proposal (“Proposal”), the Potential Acquirer hereby covenants and agrees with the FDIC as follows:

### 1. Definitions.

- a. “Proprietary Information” means all information, including without limitation, financial data and reports, plans and policy statements, business strategy and objectives, marketing information, names, addresses, loan files, and other information about depositors, businesses, organizations, individuals, governmental units, or other persons having a past, current, or potential banking or business relationship with the Bank (“Customers”), furnished by the Bank or the FDIC, or their respective directors, officers, employees, agents, or controlling persons, to the Potential Acquirer in connection with the Potential Acquirer’s evaluation of the Transaction at any time, and regardless of the manner in which it is furnished. Proprietary Information also includes: (a) this agreement, the circumstances under or for which it was made, the Information Package, the Instructions for Prospective Acquirers, any Summary of Terms or Summary of the Transaction and any other documents, financial data, and other information (written or oral) relating to the Bank obtained from, prepared by, or compiled by the FDIC; and (b) information, documents, data, or other materials derived from Proprietary Information. Proprietary Information does not include, however, information which (i) is or becomes generally available to the public other than as a result of a disclosure by the Potential Acquirer or its Representatives or Potential Investors (as such terms are hereinafter defined), (ii) was available to the Potential Acquirer on a non-confidential basis prior to its disclosure by the Bank or the FDIC, or (iii) becomes available to the Potential Acquirer on a non-confidential basis from a person other than the Bank or the FDIC, provided the Potential Acquirer has no reasonable basis to believe that such person is bound by a confidentiality covenant or agreement with the Bank or the FDIC, or that such person is otherwise prohibited from transmitting such information to the Potential Acquirer;
- b. “Affiliate” means any Person who is directly or indirectly controlling, or controlled by, or under direct or indirect common control with the party in question, including any person who would be an Affiliate or Subsidiary within the meaning of Section 2 of the Bank Holding Company Act;
- c. “Person” means any corporation, governmental unit (excluding the FDIC), company, partnership, joint venture, association, trust, unincorporated organization, or individual;
- d. “Representative” means any Affiliate, director, officer, employee, agent, or other contractor, including attorneys, accountants, and other advisors of the Potential Acquirer.

2. The Potential Acquirer agrees that it shall identify in writing to the FDIC, and provide other information as requested by the FDIC concerning, any agent, attorney, accountant, advisor, or contractor of the Potential Acquirer who is not a full-time employee of the Potential Acquirer prior to (i) any communications between such agent, attorney, accountant, advisor, or contractor and the FDIC regarding the Transaction, and (ii) the release or disclosure of any Proprietary Information by the Bank, the FDIC, or the Potential Acquirer to such agent, attorney, accountant, advisor, or contractor. The Potential Acquirer also agrees that it shall identify in writing to the FDIC, and provide other information as requested by the FDIC, concerning any Person (“Potential Investor”) with whom the Potential Acquirer intends to, or may enter into, a joint venture, partnership, syndication, investor group, or similar arrangement for the purpose of consummating, or attempting to consummate, the Transaction or preparing a Proposal, prior to (i) any communications between such Potential Investor and the FDIC regarding the Transaction, and (ii) the release or disclosure of any Proprietary Information by the Bank, the FDIC, or the Potential Acquirer or its Representatives to such Potential Investor.

3. Unless otherwise agreed to in writing by the FDIC, the Potential Acquirer agrees, and shall cause its Representatives and any Potential Investor to agree, except as required by law, (a) to safeguard and keep all Proprietary Information confidential and not to disclose or reveal any Proprietary Information to any person other than the Potential Acquirer or its Representatives or Potential Investors who are participating in the evaluation of the Transaction, or who otherwise need to know Proprietary Information for the purpose of evaluating the Transaction, (b) not to use Proprietary Information for any purpose other than to evaluate the Transaction and prepare a Proposal on behalf of the Potential Acquirer, and (c) to comply with the terms of this agreement. The Potential Acquirer acknowledges that the Proprietary Information may contain information subject to the confidentiality provisions of 12 C.F.R. Part 309 as such regulation may, from time to time, be amended, and may include Customer information subject to the Right to Financial Privacy Act as such Act may be amended and that any unauthorized use of such information may result in the imposition of criminal penalties under 18 U.S.C. Section 641 as such section may be amended. The Potential Acquirer will be liable for any breach of the terms of this agreement by any Representatives or Potential Investors,

and any Representative or Potential Investor will be liable for any breach of the terms of this agreement by such Representative or Potential Investor. Further, the Potential Acquirer or any Representative or any Potential Investor will not take any originals or copies of Proprietary Information off the premises of the Bank without the prior written consent of the FDIC or as otherwise agreed to in writing between the Potential Acquirer and the FDIC.

4. In the event that the Potential Acquirer is requested pursuant to, or required by, applicable law or regulation, or by legal process, to disclose any Proprietary Information, the Potential Acquirer agrees that, as soon as possible prior to any such disclosure, the Potential Acquirer will promptly notify the FDIC of any such request or requirement so as to enable the FDIC to seek an appropriate protective order or take other appropriate action, and the Potential Acquirer will consult with the FDIC regarding the reasons for and the nature of any proposed disclosure. In the event that the Potential Acquirer is prohibited from notifying and consulting with the FDIC by court order or other compulsory legal process, the Potential Acquirer will notify and consult with such party as early as may be permissible. With respect to any disclosure referred to in the first sentence of this Section 4, the Potential Acquirer will furnish only that portion of Proprietary Information that, in the opinion of the Potential Acquirer's counsel, is legally required, and the Potential Acquirer will exercise the Potential Acquirer's best efforts to obtain reliable assurances that confidential treatment will be accorded such Proprietary Information. This Section 4 shall not restrict the Potential Acquirer in disclosing Proprietary Information to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, or other federal or state regulatory agencies, if such disclosure is necessary to obtain required regulatory approvals of a Proposal or is otherwise required. References in this Section 4 to the "Potential Acquirer" shall be deemed to include its "Representatives" and "Potential Investors" unless the context otherwise directs in the judgment of the FDIC.

5. Unless otherwise required by law, neither the Potential Acquirer nor its Representatives or any Potential Investor will, without the prior written consent of the FDIC, disclose to any person (other than any person described in Section 3(a)) any information about the Transaction, or the terms, conditions, or any other facts relating thereto, including the fact that discussions are taking place with respect thereto or the status thereof, or the fact that Proprietary Information has been made available to the Potential Acquirer. The restrictions of this Section 5 shall not apply if the Potential Acquirer is selected as the acquirer of the Bank and consummates the Transaction.

6. If the Potential Acquirer decides not to submit a Proposal, the Potential Acquirer will promptly advise the FDIC of that decision. In that case, or if the Potential Acquirer is not selected as the acquirer of the Bank or the Transaction is otherwise not consummated by the Potential Acquirer, or upon the request of the FDIC at any time, the Potential Acquirer and its Representatives and Potential Investors will promptly deliver to the Bank all Proprietary Information obtained from the Bank, and to the FDIC all Proprietary Information obtained from the FDIC, and the Potential Acquirer and its Representatives and Potential Investors will destroy all copies, reproductions, computer records, notes, summaries, analyses, or extracts of Proprietary Information, or based on Proprietary Information, in the Potential Acquirer's possession or in the possession of any of its Representatives or any Potential Investor. Upon the request of the FDIC, the Potential Acquirer will certify that the requirements of this Section 6 have been satisfied.

7. The Bank and the FDIC do not make any representation or warranty, express or implied, as to the genuineness, accuracy, or completeness of Proprietary Information. Neither the FDIC nor the Bank, nor any of their respective officers, directors, employees, agents, or controlling persons (within the meaning of Section 20 of the Securities Exchange Act of 1934) shall have any liability to the Potential Acquirer or to its Representatives or Potential Investors relating to or arising from the use of Proprietary Information. Information compiled by the FDIC with respect to insured institutions is compiled for the FDIC's own supervisory purposes and is not a sufficient basis for preparing a Proposal.

8. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE MAIN OFFICE OF THE BANK IS LOCATED.

9. The Potential Acquirer and its Representatives and Potential Investors acknowledge that the Bank or the FDIC, as the case may be, is the sole and rightful owner of Proprietary Information and that unauthorized disclosure will cause great and irreparable injury to the Bank or the FDIC for which there is no adequate remedy at law. Without prejudice to any rights and remedies otherwise available to the Bank or the FDIC, including compensatory damages, the Bank and the FDIC, and each of them, shall be entitled to equitable relief by way of injunction if the Potential Acquirer or any of its Representatives or Potential Investors breaches or threatens to breach any of the provisions of this agreement.

10. The Potential Acquirer agrees that, for a period of two years from the date hereof, the Potential Acquirer and its Affiliates or Potential Investors (who are bank or thrift depository institutions) who receive Proprietary Information or who have knowledge of the Transaction: (a) will not, nor will they encourage other persons to, directly or indirectly, solicit to hire any employees of the Bank; and (b) will not solicit Customers, including depositors with, or borrowers from, the Bank, other than in the normal and general course of business, and no such solicitation shall be based on or make use of Proprietary Information, directly or



indirectly. The restrictions of this Section 10 shall not apply if the Potential Acquirer is selected as the acquirer of the Bank and consummates the Transaction.

11. It is further understood and agreed that no failure or delay by the FDIC in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder or under applicable law. The Potential Acquirer and its Representatives and Potential Investors acknowledge that any breach of, or failure to comply with, this agreement may constitute grounds for the FDIC to limit or suspend the eligibility of the breaching person to participate in any other FDIC-assisted acquisitions. No provision of this agreement may be amended or waived except in writing by the FDIC and the Potential Acquirer. This agreement, which may be executed in counterparts, constitutes the entire understanding of the parties with respect to the subject matter hereof.

In witness whereof, this agreement has been executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

**POTENTIAL ACQUIRER**

FEDERAL DEPOSIT INSURANCE CORPORATION

\_\_\_\_\_  
**Printed Name of Potential Acquirer**

By: \_\_\_\_\_ By: \_\_\_\_\_  
(signature) (signature)

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

## ANNEX 5.4. ESCROW AGREEMENT

THIS ESCROW AGREEMENT made and entered into by and between the undersigned acquirer (the “Acquirer”), and the Federal Deposit Insurance Corporation (“FDIC”), hereinafter collectively the “Parties.”

WHEREAS, \_\_\_\_\_ [Failed Bank], \_\_\_\_\_ [Location] \_\_\_\_\_ (the “Bank”) may be closed by the appropriate governmental authority on \_\_\_\_\_, 20\_\_\_\_\_; and

WHEREAS, it is contemplated that the FDIC will be appointed Receiver of the Bank; and

WHEREAS, in contemplation of the closing of the Bank, the appointment of the FDIC as Receiver thereof, and the consummation of a certain transaction (the “Transaction”), the Acquirer and the FDIC have this date executed a certain **Purchase and Assumption Agreement** (the “Agreement”); and

WHEREAS, the parties to the Agreement desire that the Agreement and any ancillary documents be held in escrow in accordance herewith.

NOW, THEREFORE, in consideration of the foregoing, it is hereby agreed by and between the Parties as follows:

1. The Parties hereby appoint and constitute below designated person as Escrow Agent and herewith deposit the Agreement and the ancillary documents, if any, in escrow with the Escrow Agent subject to the following instructions:

- (a) The Escrow Agent shall hold the Agreement and any other ancillary documents pending the closing of the Bank and the appointment of the FDIC as Receiver.
- (b) At the direction of the Regional Director Field Operations Branch (or designee) of the FDIC’s Division of Resolutions and Receiverships, upon the closing of the Bank and appointment of the FDIC as Receiver, the Escrow Agent shall release and distribute the escrowed documents to the appropriate parties in order to consummate the Transaction, which consummation is conditioned upon the receipt of requisite regulatory or other approval(s) as provided in the Agreement.
- (c) In the event that: (i) the required regulatory or other approval(s) is/are not granted, or (ii) the closing of the Bank and appointment of the FDIC as Receiver have not taken place within two (2) days following the originally contemplated date and time for such closing, it is understood and agreed by the Parties that the Agreement and any ancillary documents deposited in escrow shall become null and void, without further action by any Party or the Escrow Agent. Provided, however, such two (2) day period may be extended by the FDIC, in its sole discretion, for up to an additional twelve (12) days beyond such two days. The Acquirer agrees that the FDIC may in its discretion alter the Agreement to reflect the appropriate effective or closing date in the event the Transaction is completed; in such event, the Acquirer further agrees to initial any such alteration(s), reexecute the Agreement, and/or otherwise affirm any such alterations in writing, as may be required by the FDIC.
- (d) The Escrow Agent expressly shall have the power to appoint a successor Escrow Agent, in writing or otherwise, as the same shall become necessary or convenient, in the course of performing the duties of Escrow Agent hereunder.

2. The Parties agree to indemnify and hold harmless the Escrow Agent hereby appointed and any successor Escrow Agent appointed pursuant to paragraph 1(d) from and against any cause, suit or action, or claim made by any person in any manner predicated upon the Escrow Agent’s exercise of his or her powers or performance of his or her duties pursuant hereto.

3. This Escrow Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Escrow Agreement.

4. THIS ESCROW AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE MAIN OFFICE OF THE BANK IS LOCATED.

IN WITNESS WHEREOF, the Parties have caused this Escrow Agreement to be executed by their duly authorized representatives on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**ACQUIRER**

\_\_\_\_\_ **[Printed Name of Acquirer]**

FEDERAL DEPOSIT INSURANCE CORPORATION

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTANCE BY ESCROW AGENT

The undersigned hereby accepts the appointment to act as Escrow Agent in accordance with the foregoing Escrow Agreement effective as of the date of such Agreement.

\_\_\_\_\_  
**Printed Name of Escrow Agent**

\_\_\_\_\_  
**(signature)**

Title: \_\_\_\_\_

**ANNEX 5.5. EXHIBIT “A” BID FORM**

**TO:** Federal Deposit Insurance Corporation  
1601 Bryan St. - Suite 32128  
Dallas, Texas 75201

Attention: Manager - Franchise Marketing  
Division of Resolutions and Receiverships

**FROM:** \_\_\_\_\_

**BID FOR:** \_\_\_\_\_ [Failed Bank] \_\_\_\_\_ [Location] (the “Bank”)

The undersigned Potential Acquirer submits this Bid Form (“Bid”), in accordance with the Instructions to Potential Acquirers (“Instructions”) and instructions contained on this Form, to acquire certain assets and liabilities pursuant to a Purchase and Assumption (Whole Bank) with Loss Share Agreement.

This is bid number \_\_\_\_\_  
of \_\_\_\_\_ bids submitted.

**I. Transaction # 1 – All Deposits**

**The Potential Acquirer is:** \_\_\_\_\_ [Name, City, State]

The asset premium (discount) bid must be stated as a dollar amount. The Deposit premium bid must be stated as a percentage. Bids may be stated as a positive or as a negative number. When completing the Bid Form, Potential Acquirers **must** indicate a negative bid by placing parentheses “( )” around the number. Bids will be considered positive if not in parentheses. If no bid is made for a transaction or option, leave the space blank or write “no bid.” If one of the two components is filled in and the other is blank, the bid will be treated as a live bid with a bid of 0 in the blank. **A bid of zero in any form will be treated as a live bid of \$0 or 0%.**

The asset premium (discount) bid is: \$ \_\_\_\_\_.

The Deposit premium bid is:\* \_\_\_\_\_ %.

\*All Deposits will be assumed, but the bid is calculated on only certain deposits per the bid instructions.



This is bid number _____ of _____ bids submitted.
--

- B. Upon consummation of any transaction contemplated in this Bid, the name of the resulting financial institution involved in the transaction will be

\_\_\_\_\_

and such institution will be a:

- \_\_\_\_\_ national bank  
 \_\_\_\_\_ state member bank  
 \_\_\_\_\_ state non member bank  
 \_\_\_\_\_ federal savings bank  
 \_\_\_\_\_ state savings bank  
 \_\_\_\_\_ federal savings and loan association  
 \_\_\_\_\_ state savings and loan association  
 \_\_\_\_\_ other (please explain)

- C. To be completed **only** if a holding company is involved:

Name of holding company: \_\_\_\_\_

Address of holding company: \_\_\_\_\_

The holding company will be a:

- \_\_\_\_\_ bank holding company  
 \_\_\_\_\_ thrift holding company

#### IV. Contact

The following person is the designated contact person for the Potential Acquirer:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ (office)

\_\_\_\_\_ (other)

Facsimile: \_\_\_\_\_

cc: Name: \_\_\_\_\_

This is bid number _____ of _____ bids submitted.
--

**V. Consummation of Transaction**

The Potential Acquirer agrees that upon notification (which may be verbal) from the Corporation that the Potential Acquirer's Bid with respect to one of the transactions contemplated herein has been accepted, the Potential Acquirer will execute the appropriate agreement(s) and work diligently to consummate the transaction. Such consummation shall occur at such time and place as the Corporation in its sole discretion determines.

The Potential Acquirer represents and warrants that it has executed and delivered to the Corporation a Confidentiality Agreement, is eligible to purchase assets and able to execute a Purchaser Eligibility Certification ("Certification"), and that all information provided and representations made by or on behalf of the Potential Acquirer in connection with this transaction and the transactions contemplated hereby, including, but not limited to, the Confidentiality Agreement and its eligibility to purchase assets and ability to execute a Certification, are and remain true and correct in all material respects and do not fail to state any fact required to make the information contained therein not misleading. The Potential Acquirer agrees that if it is a successful bidder that on notification it will execute and immediately deliver to the FDIC a Certification via fax and overnight delivery.

The undersigned, on behalf of the Potential Acquirer, hereby certifies that (i) the Potential Acquirer has full power and authority to submit this Bid and has taken all corporate action necessary with respect thereto, and (ii) the undersigned has been duly authorized to execute and submit this Bid on behalf of the Potential Acquirer.

A Board resolution authorizing the submission of the bid and authorizing this representative to sign on behalf of the institution or group has been submitted with each bid form.

\_\_\_\_\_  
**Printed Name of Potential Acquirer**

By: \_\_\_\_\_  
 (signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ANNEX 5.6. SAMPLE PRINT ADVERTISEMENT FOR BANK RESOLUTION

### BANKING OPPORTUNITY

The \_\_\_\_\_ [name of entity] \_\_\_\_\_ is presently restructuring one or more banks and is preparing to offer them for sale. This represents an excellent opportunity for banks or investors to enter or expand into the banking market. Selected banks will be sold under a contract similar to the U.S. Federal Deposit Insurance Corporation's Purchase and Assumption Agreement (P&A). Simply put, an acquirer will:

- Purchase certain assets (liquid and/or performing assets)
- Assume certain liabilities (predominantly insured deposits)

Banks who participate in this process will be able to acquire a deposit base quickly and inexpensively. They will also have an option to continue banking business in existing premises. It is expected that a potential acquirer will be willing to pay a reasonable premium for this opportunity.

If your bank is interested in entering or expanding into the banking market of the \_\_\_\_\_, an authorized bank officer should contact:

\_\_\_\_\_ [Name] \_\_\_\_\_

\_\_\_\_\_ [Address, telephone number, and e-mail address] \_\_\_\_\_



## ANNEX 5.7. OFFICIAL RECEIPT

Receipt Number \_\_\_\_\_

Branch Number \_\_\_\_\_

### OFFICIAL RECEIPT

DATE: \_\_\_\_\_

BANK NAME: \_\_\_\_\_

BANK ADDRESS: \_\_\_\_\_

BANK NUMBER: \_\_\_\_\_

THE \_\_\_\_\_ [ASSUMING BANK] \_\_\_\_\_ HEREWITH ACKNOWLEDGES RECEIPT OF THE FOLLOWING ITEMS:

BY: \_\_\_\_\_  
For the Assuming Bank Title

BY: \_\_\_\_\_  
For the Supervisory Authority/Deposit Insurance Agency

# Bank Liquidation Procedures<sup>1</sup>

When a bank fails, the liquidating authority succeeds to the rights, powers, and privileges of the bank and its stockholders, officers, and directors. The liquidating authority can be a deposit insurance agency (DIA), a special-purpose agency (e.g., an asset management company—see Annex 6.1), or an administrator appointed by a commercial bankruptcy court. A bank liquidation office can be a stand-alone operation established in the failed bank's office, or consolidated within a DIA or other special-purpose agency, such as an asset management company. To facilitate the orderly solution of bank failures, standardized procedures and methods of dealing with failed banks and the liquidation of their assets should be developed and followed.

During a liquidation process, and even after a purchase and assumption (P&A) transaction, the liquidating authority will have assets to liquidate and administrative matters to address. This chapter<sup>2</sup> provides detailed procedures regarding the effective liquidation operations, regardless of what entity bears responsibility.<sup>3</sup> These bank liquidation procedures are equally applicable whether it is one bank, or a conglomeration of many failed banks.

Priorities of this approach include:

- Ensuring that all operations are consistent with proper governance, transparency, and accountability
- Maximizing the price of such sale or disposition of assets, consistent with the goal of protecting depositors and other creditors of the bank

- Ensuring fair competition among potential purchasers or merger partners
- Prohibiting any kind of discrimination in the solicitation and consideration of offers.

A typical liquidation office structure can be divided into two functional departments: operations (the subject of this chapter); and asset management and disposition (discussed in Chapter 7). Annex 6.2 is an organizational chart that illustrates the functional structure of a liquidation office. Any liquidation office, from the smallest unconsolidated bank liquidation site to an entire national liquidation operation, can be structured similarly. The number of specialists and technicians shown under each department will vary according to the size of the operation. In fact, in smaller operations, one individual may be responsible for two or more functional areas. The notes that accompany Annex 6.1 define the functional areas and describe the areas of responsibility for each.

The guidelines in this chapter, along with Chapter 7, represent a compilation of standards that have proven successful in many bank liquidations. As applicable, they can form the basis for bank liquidation operational manuals.<sup>4</sup> In that case, when changes are made to liquidation guidelines or asset disposition policies, appropriate directives or numbered memoranda should be distributed to all affected personnel (i.e., managers, liquidation committees, and account officers). On a regular basis, such memoranda can be directly incorporated into revised chapters of the manual, which will be updated and distributed, accompanied by a change notice.

Note that because job titles are subject to change and task assignments vary somewhat, the term “account officer” has been adopted for use in describing duties that may be performed by asset management specialists, claims specialists, technicians, and other specialists. In these bank liquidation discussions, an account officer is the individual responsible for performing the particular duty.

<sup>1</sup> An earlier version of this chapter was published in David C. Parker, *Liquidation Operations and Asset Disposition* (U.S. Agency for International Development, Washington, 2000).

<sup>2</sup> Along with Chapter 7, which addresses asset management and disposition. Taken together, this bank liquidation discussion provides basic standardized procedures for liquidation office operations and asset disposition. Although the aim is for a comprehensive guide regarding bank liquidation, it is virtually impossible to cover every aspect that may conceivably come up. However, the ideas contained here can aid in the approach to decision-making for situations that are not covered.

<sup>3</sup> If bank liquidation is conducted through commercial bankruptcy court, the supervisory authority or DIA may be able to provide similar guidelines to the bankruptcy administrator to help ensure more efficient operations, which would ultimately result in greater recovery for the depositors and creditors of the bankruptcy estate.

<sup>4</sup> Although specific situations may present opportunities for alternative approaches, these guidelines should be followed to the extent feasible and in accordance with good business judgment and legal constraints.

**Box 6.1. Example of Bankruptcy Claims Priorities**

1. Claims by secured creditors, up to the value of their security.
2. Employee compensation, taxes, and social contributions.<sup>1</sup>
3. Receivership operational expenses and administrative costs (all costs pertaining to the liquidation process), including other obligations created during conservatorship or liquidation.

<sup>1</sup> In some jurisdictions.

4. Claims by insured depositors, or the subrogated claims of a deposit insurance agency (in cases where a deposit insurance scheme exists).
5. Claims by uninsured depositors<sup>2</sup> and other creditors.
6. Claims by subordinated debt holders.
7. Claims by shareholders.

<sup>2</sup> Note that some jurisdictions, with or without a deposit insurance agency, may have depositor preference; that is, all depositors' claims (even uninsured, as applicable) have a higher claim priority than any other creditor.

**BANK LIQUIDATION OPERATIONS**

A bank liquidation operations division deals with matters that support but are not necessarily directly involved in asset liquidation. The areas that are discussed in this chapter are depositors and creditors claims, settlements, administration, facilities, personnel, contracting, legal, management information systems, and auditing.

**Depositor and Creditor Claims**

Prompt payment of a failed bank's deposits according to legal priority can help maintain confidence in the banking system (Box 6.1). Depending on the legal framework, claims responsibility may be split. For example, in jurisdictions with a narrow-mandate (paybox) deposit insurance agency (DIA), insured depositor claims will be handled by the DIA and all other claims by a receiver or through bankruptcy court. In jurisdictions with a broad-mandate DIA (i.e., the DIA has bank resolution and liquidation powers), the DIA is responsible for everything. In jurisdictions with no DIA, the bankruptcy court is responsible for everything. This chapter assumes a broad-mandate DIA and refers to this function as the claims department. In this context, the claims department is responsible for processing general creditor and other claims against the bank receivership, as well as determining funds available for dividend distribution.

As noted in Chapter 3, before a bank closing, the claims department should collect necessary information about the bank's depositors and creditors. Ideally, information regarding the size of the bank (number of depositors and dollar amount of deposits), secured deposits, workspace facilities, and bank personnel should be readily available from the bank examiners. Potential claims, including number, type, and amount of projected deposits, should be obtained. Other critical information includes the sophistication of the bank's data processing system, types of contracts and leases, and any other special situations or deposit accounts.

The claims department will coordinate with other members of the closing team in gathering and determining the appropriate resources for the bank closing. This would include the number of personnel required to fulfill the functions, an adequate amount of supplies and equipment, and assurances of obtaining the necessary deposit reports.

During a closing, the claims department will continue coordination with other members of the closing team in performing the assigned function. To begin the process of paying off insured deposits, several tasks must be accomplished. These include, but are not limited to:

- Collecting required documentation
- Establishing a filing system
- Initiating a tickler system
- Arranging for handling any credit card deposit accounts
- Arranging for processing any electronic deposits.

The claims department will arrange for any required legal notice to depositors and creditors to be published in local newspapers and filed with the court. The claims department will begin processing any general creditor claims. Also, any items affecting any deposit balances through an ATM must be addressed. Of course, all actions taken should be completely documented. Files must be established for each claimant that should contain, at a minimum:

- Documentation supporting the claim (e.g., proof of ownership of a deposit account, signed invoice for services performed or goods received)
- Proof of identity of claimant
- All correspondence and memoranda regarding the claim
- Ultimate disposition of the claim.

After the closing, the claims department shifts into more of an administration mode, with duties to assure that liability accounts of the closed bank are properly reconciled, and that all claims are properly tracked. The payment of deposit accounts will continue by legal priority, as will those of general creditors, depending on the availability of funds.

**Settlements<sup>5</sup>**

Whenever a bank has gone through a P&A transaction there will be a need for a settlement function. Variations of this type

<sup>5</sup> Portions of this section have been excerpted from Federal Deposit Insurance Corporation, *Closing Manual* (Washington, 2006).

of transaction are discussed at length in Chapter 5. Duties of settlement personnel include adjusting for purchase prices of assets, arranging appraisals for purchase of fixed assets, and correcting any errors and omissions of the closing process, as further described below.

The settlement unit is responsible for administering the terms of the P&A transaction with a purchasing bank. This includes monitoring the agreement to ensure compliance by both the purchasing bank and the receiver. The settlement function allows for finalizing and making adjustments compelled by the transfer of liabilities and the purchase of assets from the liquidating authority to the purchasing bank. Additionally, this unit scrutinizes and processes the various options available to the purchasing bank according to the terms of the P&A agreement.

By definition, the settlement function exists only when there is a P&A transaction with an assuming bank. The standard settlement period continues for 180 days from the date of the bank failure and usually provides for various events and functions to be performed within a certain time frame. During this period, the settlement agent oversees the transfer of the failed bank's assets and liabilities in accordance with the terms of the agreement, and the correction of any discrepancies related to the asset or liabilities balances purchased by or transferred to the assuming bank.

However, it is important to note that each closing is unique, and therefore the exact roles and responsibilities of the settlement personnel may vary according to the agreement and other factors associated with the particular closing. The following list is a typical representation:

- Assists the assuming institution, as required, in understanding its roles and responsibilities during the settlement period
- Communicates the P&A agreement's critical dates to the appropriate parties and monitors to ensure compliance
- Facilitates the purchase of assets under option in the P&A agreement
- Negotiates with the assuming bank to pay bills on behalf of the receiver
- Accumulates information for costs to be split between the receiver and the assuming bank
- Prepares appropriate documentation and secures the appropriate approvals for each financial adjustment
- Directs interim and final settlement funding between the receivership and the assuming bank in accordance with the P&A agreement.

### Types of Settlement Transactions

Settlement transactions vary according to the unique nature and complexity of the failed bank. However, this section summarizes the most common activities.

**Pro forma adjustments.** These typically include adjustments from book value to market value, correction of errors/omissions detected after the pro forma balances were posted,

and reallocation of assets/liabilities. Only those adjustments that affect both the receiver and assuming bank may be settlement items. For example, errors may have been made in balancing general ledger accounts. To the extent that these accounts transferred to the purchasing bank, plus or minus adjustments may be necessary.

**Discovered assets and liabilities.** Further analysis of the failed bank may reveal new or "discovered" assets or liabilities not identified during the initial pro forma. Discovered assets and liabilities are settlement items only to the extent that they affect both the receiver and the assuming bank.

**"Cherry picks" and put-backs.**<sup>6</sup> In order to divest as many assets as possible, a P&A agreement may provide an opportunity for a purchasing bank to "cherry pick" (a fully discretionary purchase) good assets (usually loans), or "put back" lower quality assets (usually loans) to the receiver. In a put-back transaction, the assuming bank may return an asset to the receiver as described in the P&A agreement.

In a repurchase, the receiver may determine it is in the best interest of the receivership to own the asset.

**Post-closing expenses.** Certain expenses such as post-closing wages for temporary employees may be paid by the assuming bank on behalf of the receiver and if so, are reimbursed to the assuming bank via settlement. Additionally, the cost of appraisals on bank premises to determine fair market value is typically shared equally by the receiver and the assuming bank. These amounts are also paid via a settlement.

**Purchase of premises, furniture, fixtures and equipment, or prepaid contracts.** The P&A agreement may provide an option for the assuming bank to purchase these assets. Typically, appraisal costs are included as settlement items, as are asset-related rent amounts and asset purchase amounts. Moreover, the P&A agreement may grant a purchasing bank an exclusive 90-day option to purchase the bank premises (and branches, if applicable). During this period, the settlement unit must coordinate the selection of appraisers and schedule any required appraisals with the purchasing bank. Often the P&A agreement grants the purchasing bank an option to assume various contracts and leases. Notification of the exercise of such options is usually required within 30 days.

**Other typical adjustments.** Net wire interest; securities valuations/purchases; premises leases/assignments/quit claim deeds/bills of sale; and correspondent bank account reconciling items; expense adjustments (i.e., broker/appraiser fees, telephone bills, data processing fees).

### Administration

An effective administration unit of a liquidation office will promote the smooth and efficient operation of the

<sup>6</sup> A P&A agreement will usually provide for various events and functions to be performed within a certain time frame. For example, the "put-back" provision for lower-quality assets must generally be accomplished within 60 days.

organization. The primary responsibilities of an administration unit include facilities, personnel, and contracting.

### Facilities

Attention to detail in the facilities area will ensure that account officers are free to perform their assigned functions without needlessly worrying about the smaller things that make an office function properly. These matters include:

- Obtaining and maintaining adequate office space
- Obtaining and maintaining adequate office equipment (e.g., telephones, copying machines, computers, printers, etc.)
- Obtaining and maintaining adequate office supplies (paper, toner, pads, pens, etc.)
- Providing for efficient shipping services, and mail receipt and delivery
- Negotiating and monitoring administrative contracts (e.g., leases, maintenance agreements, etc.)
- Any other administrative duty that may be required to facilitate the efficient operation of the office.

### Personnel

An administration unit should also follow all applicable policies and procedures regarding the employees of the failed bank. Based on the asset size of the bank in liquidation, and the relative sizes of the various types of asset portfolios, adequate staff should be retained to aggressively pursue asset disposition and administer operational functions. Comparing the guidelines itemized in Chapter 7 to the portfolios of assets acquired will provide a benchmark for the level of staffing required, ensuring optimum asset collection efforts.

Training is another matter that falls within the responsibility of the personnel unit. Sufficient resources should be devoted to assuring that employees are adequately grounded in the knowledge required to perform their duties. This would include instructions on subjects as diverse as timesheets, claims administration, asset disposition, and delegation of authority.

### Contracting

Contracting for goods and services should be competitively bid to the extent possible. Relationships can be established with local vendors for small and/or regular purchases of goods (e.g., office supplies, cleaning services, etc.); however, for larger, more specialized services, comprehensive procedures need to be developed on a standardized basis and closely followed. Additionally, a contractor oversight unit should be instituted with responsibility to ensure compliance with contractual agreements.

### Legal

Many of the duties and responsibilities of liquidation activities require the professional services of attorneys. From the

initial drafting of a sales agreement to monitoring the performance of a purchasing bank and providing legal expertise to assist in the collection of assets, a liquidation office cannot do without legal representation. Legal work can encompass a broad range of areas such as foreclosure, loan workouts, bankruptcy of debtors, contract disputes, asset sales, collecting on notes and guarantees, tax issues, pension funds, and shareholder suits. The duties can also include investigations to determine whether directors, officers, or other professionals caused harm to the failed bank.

Depending on the situation, a legal adviser could be an employee of the supervisory authority, the DIA, or an asset management company, or be an independent contractor. Regardless of status, the legal adviser's duties will generally be the same in each situation. The size and complexity of the bank's organization and the asset structure will determine the extent of the duties and the duration of the assignment. The legal adviser will work closely with the receiver and provide, on an as-needed basis, advice and assistance on all legal questions and matters that arise. Also, the legal adviser will be involved in various employee issues.

It is critical to the success of an organization that its personnel view their relationship with the legal department as a partnership. Initiation and management of litigation involve both legal and business decisions. Additionally, decisions regarding litigation usually involve the exercise of joint delegation of authority to the legal department and the liquidation office.

Put simply, an attorney from the legal department is responsible for decisions concerning legal issues, while the account officer is responsible for making the business decisions related to the case. Coordination between the account officer and the attorney within the structure of the attorney-client relationship is paramount to achieving successful results. Litigation should be initiated or settled only under joint delegation of authority from the agency.

In jurisdictions with special bank insolvency regimes, the receiver is usually imbued with special powers, as briefly mentioned in Chapter 1. Some of those powers include:

- **Contract repudiation.** A receiver may repudiate any contract within a "reasonable time" of appointment if the receiver (1) deems it burdensome, and (2) finds that repudiation would promote the orderly administration of the estate. This repudiation power ends any future obligations imposed by the contract. Any damages resulting from contract repudiation are limited to actual direct compensatory damages.
- **Stay of litigation.** A receiver is substituted as a party for litigation pending against the failed bank. Because the receiver may need time to assess each case to determine whether and how to proceed, the law permits the receiver to request a stay of legal proceedings of up to 90 days. This power also extends to litigation filed after the bank's failure. The receiver must formally request the stay; however, a court cannot decline to issue the stay.

- **Avoidance powers.** A receiver has the power to avoid certain fraudulent conveyances. A receiver may avoid a security interest in a property, even if perfected, if the security interest was taken in contemplation of the bank's insolvency, or with the intent to hinder, delay, or defraud the bank or its creditors. The receiver may avoid any transfers made by obligors within five years of the receiver's appointment. These rights are superior to any rights of a trustee or any other party.
- **Special defenses.** A receiver has certain "special defenses" that it can use to defeat the defenses of obligors of a failed bank. For example, improperly documented agreements are not binding on the receiver. The receiver must be able to rely upon the books and records of the failed bank to evaluate its assets and liabilities accurately, critical to effective resolution transactions, asset sales, and debt collection. Courts may not enjoin the receiver. Courts cannot prevent the receiver from conducting foreclosures or asset sales, nor can they attach or execute upon any assets the receiver possesses. (These statutory provisions do not bar the recovery of monetary damages, however.)<sup>7</sup>

## Management Information Systems

Taken together, the areas of accounting and information processing comprise a management information system (MIS). A sound MIS is a key component of management effectiveness and decision-making processes. Management is responsible for developing and implementing an information system that facilitates managerial activities. An MIS is considered a feedback device and as such is a method for managing risks. Senior management determines what information is needed for them to make informed decisions and monitor activities of the establishment. Staff correspondingly develops the systems to ensure that the desired information is available and usable for performance measurement.

The financial records should be kept in accordance with the accounting standards of the International Accounting Standards Board; however, liquidation accounting is generally on a cash rather than accrual basis. To ensure financial integrity, an organization must have an effective accounting and information processing system that provides for general and subsidiary ledgers. The organization's general ledger system is its official financial system of record. The general ledger exhibits the financial condition of the organization and is used by the government and the public to monitor the financial operations of the organization. To ensure financial integrity, subsidiary records must be reconciled on a timely basis and kept in balance with general ledger control figures.

An accounting and management information system should assure that the organization has the capability to account for its cost and expenses related to each bank. The

system should have the capacity to calculate, track, and record each bank's collections and expenditures. It is very important to be able to allocate these items for each bank. By accounting for each bank in this manner, the organization can determine the expenditures per bank versus any income (collections or sale) the bank generates. Documenting operational losses related to the management of assets can help an organization decide whether to close out a liquidation.

The organization may want to establish a management committee for the finance and data processing functions. The MIS, finance area, and senior management of the asset disposition departments should have representatives on the management committee. The committee should ensure that the services of the data processing and finance departments are geared toward supporting the effective management of the asset portfolio. To that end, the management committee should develop a comprehensive policy regarding both data processing and accounting. This should address standardized reporting requirements, daily operational procedures, and internal controls.

One of the first responsibilities of the MIS and accounting unit is preparing a final pro forma statement of condition at the time of a bank closing. This requires balancing all the accounts of the failed bank. Going forward, the accounting unit is responsible for maintaining accurate financial records for all liquidation, or receiverships under its responsibility.

Each failed bank's accounting records should be maintained separately. Other important aspects of a standardized accounting system include:

- Having a general and subsidiary ledger
- Ensuring that all accounts are balanced and reconciled on a daily basis
- Having a system to control disbursements (including any payment orders or check stock)
- Establishing a payment-processing procedures (including mail control, place for payment, etc.)
- Developing expense submission procedures (required documentation, etc.)
- Cost accounting
- Asset valuation.

These components will support financial reporting, asset management, and asset management monitoring.

The design of the MIS should consider a system's probable life cycle as well as allow for regular re-evaluation. A reliable information system should meet the following minimum requirements:

- Capability to handle the anticipated data volume
- Ease of use for sorting and updating
- Capability to integrate financial management system needs with overall MIS strategy.

Management should ensure that these objectives are realized while keeping in mind the competing points of development time versus lifetime of the mission. Senior management should devote considerable analysis to whether system

<sup>7</sup> FDIC, *Resolutions Handbook* (Washington, 1998).

requirements are more efficiently developed in house or outsourced. Cost of purchased or contracted development of software must be weighed against the time needed to develop the system in house. Experience has shown, however, that developing data processing applications in house is generally more costly and time consuming than purchasing off the shelf systems or contracting with vendors to provide the service, especially when time frames are short.

There are five essential elements that must be addressed in the area of accounting and information processing:

1. Timeliness
2. Accuracy
3. Consistency
4. Completeness
5. Relevance.

Management decisions and strategies may be rendered invalid or even detrimental should any one of these components be compromised.

**Timeliness.** Information must be current and available to all appropriate users to facilitate timely decisions. This necessitates prompt collection and editing of data. Records should be updated daily, reflecting each day's activities separately and distinctly from that of another day. The records should show the bank's financial condition as of the given date.

**Accuracy.** A system of internal controls must be in place to ensure the accuracy of data. Information should be properly edited and reconciled, with the appropriate control mechanisms in place. A comprehensive internal and external audit program would greatly facilitate this endeavor.

An efficient operation cannot be conducted without a record-keeping system capable of generating a wide variety of internal information and reports. Such a system is necessary if a company's board of directors is to be kept well-informed and maximum managerial effectiveness achieved. Subsidiary records should always be kept in balance with general ledger control figures.

The records and systems should be designed to enable the tracing of any given item as it passes through the company's books as well as the creating of archives. The following recordkeeping deficiencies should be avoided:

- General ledger entries fail to contain an adequate description of the transaction.
- Reconciliation records of accounts are not kept current and/or fail to reflect the description and disposition of outstanding items.
- Details concerning debits and credits to accounts are inadequate.
- Accounts and records are not posted on a current basis.

A policy regarding segregation of duties should be implemented. The participation of two or more persons or departments in a transaction provides for dual control and allows the work of one to serve as proof of the accuracy of another. Additionally, when two or more persons are involved in a transaction, the possibility of fraud diminishes consider-

ably. Ideally, duties should be arranged so that no one person dominates any transaction from inception to termination. For example:

- Those having authority to sign checks should not be assigned to reconcile bank accounts.
- Records should be reconciled to the general ledger by someone other than the one originating the entries.
- Personnel should not initiate transactions or correct data (on rare occasions when such activity is required to complete processing in a timely manner, transactions should be approved by appropriate levels of management in the data center and at the affected department).

Similarly, a policy regarding rotation of personnel should be adopted. Planned and unannounced rotation of duties is an important principle of internal control. The rotation should be of sufficient duration to be effective. Rotation of personnel is an effective internal check and can also be a valuable aid in the company's overall training program.

**Consistency.** Without consistent information, strategies and decisions cannot be adequately monitored or measured. Variations in how data is collected or reported can distort analysis. Any change in collection or reporting procedures should be clearly defined, documented, and communicated to all users.

The uniform handling of like transactions is essential to the production of reliable reports. It is essential that instructions be established for processing routine transactions. The organization should develop and implement standardized accounting procedures (i.e., an accounting manual) in order to ensure consistency in operating procedures.

Where records are computer-generated there should be a user's guide for each application readily available for reference by user departments. Manuals for each application should consist of a guide provided by the vendor and supplemented by procedures written by the user. Manuals should delineate preparation and control of source documents, routines pertaining to control over the movement of documents, the daily reconciliation of totals to general ledger, and changes to master files.

**Completeness.** Information provided by MIS mechanisms must be complete. The critical need for and dependence on information involves a concern and responsibility for the integrity of not only the specific information furnished, but the system that supplies it as well. An effective MIS is composed of information from a number of sources, and the information must serve a number of users, each having various needs. The MIS must selectively update information and coordinate it into meaningful and clear formats. Quality, quantity, and timeliness are factors that determine the effectiveness of management information systems.

**Relevance.** Decision-makers cannot fulfill their responsibilities unless all pertinent information is provided in a comprehensive yet concise format. Care should be taken to ensure that senior management receives relevant information

in order to identify and measure potential risks. Unnecessary, inappropriate, or unsuitable details are of no value in effective decision-making.

## Audit

The management of a liquidation office should create a policy to direct the office's auditing goals. The policy should establish the:

- Authority of the internal auditor
- Scope and timing of audits
- Recognition and implementation of corrective actions.

The auditor must be independent of any other department, have no additional conflicting duties, and report directly to senior management.

The appointment of a professionally competent internal auditor responsible for the development and administration of an internal audit program is one of the most effective internal control procedures available. The basic purpose of internal auditing is the prevention and detection of loss. An effective program includes determination that controls and operational procedures are functioning in a manner that will minimize the possibility of losses due to inefficiencies, irregularities, and/or willful manipulation.

The auditor's role is to help safeguard the organization's assets by performing tests and procedures establishing the validity and reliability of operating systems, procedural controls, and resulting records. The internal audit program should:

- Be in written form
- Be approved by executive management
- Identify the scope of the program
- Be reviewed on a periodic basis
- Be revised when necessary.

Auditors must have complete independence in carrying out the audit program and should report their findings directly to executive management or a designated audit committee. It is imperative that internal auditors have sufficient authority and the degree of audit independence essential to exercise their responsibilities, and no other operational duties. Auditors should not audit accounts for which they have responsibility.

A comprehensive internal audit program should include the following elements.

1. A determination that the records are complete and adequate, and that transactions are promptly and properly recorded in the accounts.
2. A review of data processing controls that should include proof totals, batch totals, document counts, number of accounts, and any prenumbered documents that are used. The auditor should periodically sample the controls to ensure their accuracy. Sampling includes:
  - Spot-checking reconciliation procedures to ensure output totals agree with input totals
  - Reviewing the disposition of suspense items, determining why they are not processed, and assuring that they are properly corrected and reentered on a timely basis
  - Verifying selected master file information and reviewing exception reports to source documents.
3. A determination that assets are adequately safeguarded and properly presented in financial reports, and that liabilities are completely disclosed and accounted for.
4. An assurance that collateral and other nonledger items are properly recorded and protected by effective custodial controls.
5. A review for compliance with delegation of authority to be certain there are no departures from established policy.
6. A review for compliance with other policies set forth by management. This would also encompass such matters as review of information technology procedures and controls, as well as review of source documents to ensure that sensitive master file change requests have supervisory approval.
7. An accounting for the receipt of income and review of expenses to determine that they are correct in amount and consistent with policy.
8. An appraisal of the performance of personnel in accomplishing assigned internal control functions and responsibilities. This would entail tracing transactions to final disposition to ensure there are adequate audit trails.
9. The preparation of a proper and complete set of working papers covering each audit.
10. The utilization of accepted verification and confirmation techniques.
11. The establishment and maintenance of an operating manual describing the specific procedures and techniques to be used by the auditor or auditing staff in performing the audit function.



## ANNEX 6.1. ASSET MANAGEMENT COMPANIES<sup>1</sup>

This annex describes the primary features that make an asset management company (AMC) effective. Many of these features can be equally applicable in operating bank liquidation within a deposit insurance agency or via commercial bankruptcy courts.

There are alternative strategies for managing and disposing of impaired assets, depending on factors such as the type of asset, size and distribution, structure of the banking system, and available management capacity in the banks and in the public sector. There is no single optimal solution. There are, however, common factors that contribute to the success of AMCs. These include a supportive legal and regulatory environment, strong leadership, operational independence, appropriately structured incentives, and a commercial orientation.

Probably the most important purpose of having AMCs is the managerial factor. The handling of bad loans and assets requires other skills beyond those normally available in a bank. Real estate specialists, liquidation experts, and specialists on various industrial sectors may be needed. In addition, managing the bad assets would interfere with the daily running of the bank. Importantly, both the good bank and the AMC could be given independent and transparent profit goals if separated. That would provide incentives for managers and staff.

An effective AMC must have clearly defined goals and a governance structure that is both supportive of these goals and assures that management meets the goals. In some countries AMCs have operated with a focus on disposing of the assets. These AMCs have functioned as rapid disposition vehicles, quickly selling assets to the private sector. In all cases the goal was to dispose of the asset as quickly as possible so as to avoid further deterioration in value and to minimize the carrying cost of the government. It should be recognized that rapid disposition requires the AMC to have good information about the assets it is attempting to dispose of and that a market for these assets exists.

AMC operations should be guided ultimately by the objective of profit maximization or loss minimization, taking into full account market conditions as well as the funding cost to the AMC. Experience has shown that AMCs with clearly defined, focused, and consistent goals are more likely to be effective.

Various approaches to the structure and organization of AMCs can be adopted to achieve the authorities' objectives. In terms of ownership, AMCs can be either public or private, and within these there are alternative structures. When a substantial amount of bad loans and assets has to be transferred to an AMC over a short period of time, it is often difficult to find a private investor willing to own such an AMC without asking for far-reaching government guarantees covering the future value of the asset portfolio. In this situation, the government is in a more favorable position owning the AMC itself rather than providing guarantees, since it might then benefit from any future upward price movements of the AMC's assets. In addition, it is difficult to formulate guarantees that would give a private owner strong incentives to sell the assets at the best prices. This could lead to further losses for the state.

Public AMCs can be freestanding entities or may be a responsibility of an existing public agency, such as the ministry of finance or the deposit insurer. It is preferable, however, that AMCs not be set up as a unit within the central bank, or as its subsidiary, since the central bank's primary responsibility is to achieve and maintain price stability, and its balance sheet should not be made unwieldy by taking on large amounts of nonperforming assets of the banking system.

An important issue in setting up AMCs concerns their legal powers. The legal basis of the AMC should provide for clean transfers of titles (and the associated priority) in all of its asset transactions. Similarly, legal obstacles for the transfer of assets, such as the requirement that permission of the debtors be obtained before the transfer of loans can be effected, should be removed. The legal basis should ensure that the AMC "stands in the shoes" of the former bank at least in the eyes of the law. In addition, asset disposition by public AMCs could be delayed by perceived potential legal liabilities accruing to the AMC management. In this situation, legal protection for the employees of the AMCs in the execution of their responsibilities in good faith should be considered.

Effective asset management and disposition require the support of an effective legal system. Such a system should clearly define the rights of ownership as well as the legal obligations between debtors and creditors and provide for the orderly resolution of disputed claims, including debt recovery and realization of collateral for unpaid debt. Such a system should also balance the protection of creditors and that of debtors. However, when the existing legal system is not equipped to deal with the magnitude of the nonperforming assets (e.g., when the court system is inexperienced and does not have enough resources), or when endeavors to reform the system are excessively time consuming, there may be a case to grant special legal powers to AMCs to facilitate asset recovery and restructuring.

Good governance is necessary to assure the effective operation of an AMC. Especially in the case of a government-owned AMC, governance issues are critical because the AMC is, on the one hand, subject to potential political pressure and, on the other, accountable to the public for its actions and performance. Therefore, it is essential that an AMC be both independent and

<sup>1</sup> Excerpted from Dong He, Stefan Ingyes, and Steven A. Seelig, "Issues in the Establishment of Asset Management Companies" in *Bank Restructuring and Resolution* (International Monetary Fund, Washington, 2006), pp. 212–26.

transparent with regard to its operations. Its stakeholders—the public, government, and shareholders—must be able to evaluate its performance.

The very nature of the asset management process invites political interference. If delinquent borrowers feel they may get more favorable treatment by contacting their elected officials, it is likely that they will do so. One must also expect elected representatives to make inquiries on behalf of their constituents. The critical balance is to assure that the AMC does not take inappropriate actions as a result of pressure, but at the same time is responsive to the public.

Along with independence, however, come transparency and accountability. Transparency with respect to all of its operations and its performance is critical for the AMC's political independence. It is also key to maintaining public confidence that the liquidation process is being carried out in a fair and objective fashion. Transparency promotes accountability of the managers and the board vis-à-vis the public and reduces the perception of, and possibly tendencies for, corruption.

To assure transparency, AMCs should be required to publish regular reports describing their performance in pursuing their goals. The financial statements should be prepared in accordance with accepted liquidation and fund accounting practices. In addition to making detailed financial information public, the AMCs should be audited regularly to assure that their financial statements are accurate, that representations as to the value of assets are reasonable, and that the AMC has proper internal controls in place to safeguard the assets under its management. Independent auditors chosen by the government should undertake such audits.

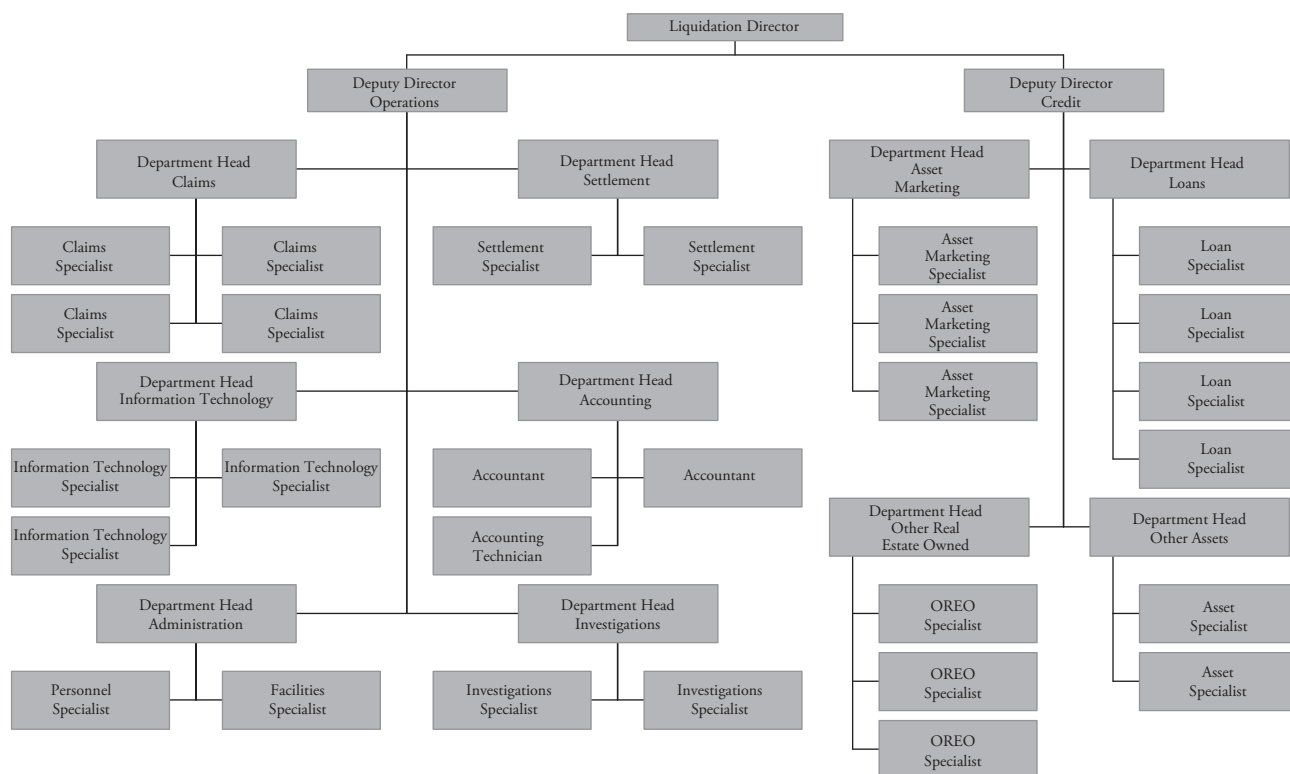
To help strengthen the independence of a government-owned AMC, it should be governed by a board of directors and, following principles of corporate governance, the majority should be outside independent directors. These directors should be sufficiently independent so as to be able to assist the AMC in resisting pressure from borrowers and prospective purchasers of assets seeking preferential treatment. The board should have a clearly defined mandate and be responsible for assuring that the AMC carries out its mission and meets performance goals. The board should have the flexibility to establish all policies and procedures for the AMC, including policies for staff compensation, asset disposition strategies, credit and restructuring, budgets, and financial reporting.

AMCs face an inherent incentive problem. Most commercial operations assure their continued existence by being successful. However, asset management operations are in the business of going out of business. If they are successful, they will liquidate the assets under their management through restructuring and disposition and cease to exist. Consequently, it is important to design AMCs so that they do not become “warehouses” of nonperforming loans. There is a need for a structure of incentives that are designed to ensure effective and efficient asset management and disposition. These incentives need to address both the issues of the limited life of the entity and the performance of the staff. (See also Box 7.3 for more details on liquidation goals.)

One approach to the problem of the AMC being a self-liquidating entity is to develop incentives for the board members to counterbalance the motivations of the staff to prolong the life of the AMC unnecessarily. These incentives can take the form of political rewards, such as higher office or public recognition of a job well done, or financial incentives to the directors. Another option that has been successful in several countries is to limit the life of the AMC at the time it is created. This approach worked well and contributed to the success of the Resolution Trust Corporation in the United States and some of the private AMCs established by acquiring banks to manage assets for the receiver. If the AMC is a public entity, it helps to have senior career managers but rely on employees on term appointments that are tied to the expected life of the work. The use of term employees helps to alleviate political pressure to keep the AMC going in order to protect the jobs of its employees.

The other critical incentive issue is how to motivate employees and managers to maximize outcomes consistent with goals. One option is to have two components in the compensation package: salary and performance-based bonuses. A risk is that assets will be disposed of regardless of price just so employees can get a quick bonus. However, this can be mitigated by having proper approval procedures and establishing appropriate goals for individual assets.

## ANNEX 6.2. STRUCTURE EXAMPLE: DIVISION OF LIQUIDATION OFFICE



**Notes:**

**Accounting:** Responsible for preparing a final pro forma balance sheet for the failed bank and providing accurate accounting services for the receivership(s).

**Administration:** Provides administrative services (personnel, facilities, contracts, etc.) during bank closing, and subsequently for receivership(s).

**Asset marketing:** Responsible for identifying similar types of assets to pool and sell as a package (bulk sale).

**Claims:** Responsible for administering and processing depositor and creditor claims.

**Information technology:** Responsible for all computer hardware, software, conversions and processing, both as liaison with failed bank's system, and for subsequent needs of the receivership(s).

**Investigations:** Responsible for researching bank records and interviewing employees to determine criminal or civil liability in conjunction with the failure of the bank.

**Loans:** Responsible for inventory, control, and collection of all loans (installment, mortgage, commercial, etc.).

**Other real estate owned (OREO):** Responsible for marketing and sale of other real estate owned.

**Other assets:** Responsible for the liquidation or sale of other assets (repossessed collateral, prepaid expenses, etc.).

**Settlement:** Responsible for administering the terms of the transaction agreement with an assuming bank (e.g., adjustments to asset purchase prices, errors and omissions on pro forma balance sheet, etc.).

The following functional areas are not contained within the structure of a liquidation office, but contribute to the operations:

**Internal review:** Responsible for auditing the office's operations.

**Legal:** Provides legal advice and support for bank closings and receivership operations.

**Ombudsman:** Provides a vehicle to facilitate media, governmental, and customer relations.

# Asset Management and Disposition<sup>1</sup>

Effective asset management and disposition are a crucial aspect of problem bank resolution. The asset disposition department is comprised of all matters that have to do with actual asset liquidation (i.e., loan collection or sale, sale of own real estate owned, etc.). The liquidating authority is expected to maximize the return on the assets of the failed bank and minimize losses related to the failure. The primary goal of this department is to market the bank's assets, liquidate them, and distribute the proceeds to claimants as prioritized by the law (see the section on claims in Chapter 6). Effective asset management and disposition include proper governance, transparency, and accountability, which can be strengthened with proper delegation of authority and decision-tracking, reporting, and filing systems.

Following a receivership takeover, debtors almost invariably tend to develop a culture of nonpayment, waiting to see what will happen with the receivership process or what measures will be adopted for the bank's assets. Speed in resolving this situation is a factor that not only lowers maintenance costs, but also improves the capacity of recovery through the various means employed (direct sale, restructuring, collections, conveyances, etc.).<sup>2</sup> See Box 7.1 for guidance in practice.

Many of the examples of assets and collection procedures may not be applicable in all situations. The guidelines can be used as a model, however, to assist the liquidation office in fulfilling its mission. Within the general guidelines, account officers are encouraged to exercise creativity and initiative in the performance of their duties, and especially with regard to the disposition of asset portfolios. The guidelines are meant to provide an overall framework under which flexibility and adaptability can be accommodated in order to foster sound business decisions, while maintaining accountability to the liquidating authority.

As mentioned in Chapter 6, because job titles are subject to change and task assignments vary somewhat, the

## Box 7.1. The 80/20 Rule

The 80/20 rule is a casual concept that illustrates the importance of concentrations. In the context of bank liquidation, the 80/20 rule holds that 80 percent of the value of assets held is concentrated in 20 percent of the assets. Of course, these numbers are not absolute; they merely serve to illustrate the concept. The numbers could as easily be 85/15, 75/25 or an even odder combination. In addition, keep in mind that the value of loans, especially nonperforming, does not necessarily equate to book value.

A bank liquidation operation would do well to consider this theory when analyzing which assets deserve the most attention. Identifying the assets with the most value and focusing collection efforts on them will result in higher recoveries and increased cash flows to distribute to depositors and creditors, as well as help finance the bank liquidation efforts.

term “account officer” has been adopted for use in describing duties that may be performed by asset management and other specialists; that is, an account officer is the individual responsible for performing the particular duty.

The purpose of the asset disposition department is to administer and dispose of assets in a manner that returns the maximum net present value (Box 7.2). (The concept of net present value recognizes the time value of money, justifying the value of collecting a discounted sum immediately over a greater amount of future cash flows or lump sums.) Asset review sheets should be completed for each loan in order to estimate cash recoveries (see Annex 3.19 in Chapter 3).

## ASSET DISPOSITION STRATEGIES AND TIMELINES

Failed banks may have homogeneous performing loans (e.g., consumer, mortgages) that can be packaged and sold in bulk to other banks or investors. To the extent possible, this is the preferred method of asset liquidation simply because it is faster. Frequently, however, failed banks have many problem loans (e.g., nonperforming, abusive insider loans, etc.) that will be virtually impossible to sell. The asset collection procedures below deal with the disposition of all types of assets.

<sup>1</sup> The original version of this chapter was published as David C. Parker, *Liquidation Operations and Asset Disposition* (U.S. Agency for International Development, Washington, 2000).

<sup>2</sup> Fernando de Mergelina and Francisco Rivillas, *Managing Residual Assets from Banking Liquidations. Operating Manual No. 4* (Inter-American Development Bank, Washington, 2004), p. 2.

**Box 7.2. Asset Management in a Liquidation Context**

The fundamental objectives of asset management in the context of a liquidation procedure are to:

1. Improve the quality of the assets to be liquidated. This is achieved through various actions, such as:
  - Improving the supporting documentation for those assets
  - Improving the custody and physical maintenance of the assets
  - Taking any legal actions necessary to legally protect the rights over and/or enforceability of the assets
  - Taking actions to recover delinquent assets
  - Facilitating the migration of assets to other financial entities, without losses
  - Attempting to accelerate credit recovery, allowing early payment provided that the amount to be recovered exceeds the estimated value of the credit's liquidation in auction.

2. Continue with the administration and collection of the credit assets.

It is important that the majority of debtors be allowed to fulfill their commitments and be encouraged to continue doing so, since that will facilitate subsequent portfolio sales to other "healthy" banks. At the same time, it will reduce the negative financial impact on the proprietor of the assets. Such an approach also contributes to discouraging the development of a culture of "nonpayment," which invariably arises in the event of a bank receivership and liquidation.<sup>1</sup>

<sup>1</sup> Fernando de Mergelina, Francisco Rivillas, *Managing Residual Assets from Banking Liquidations. Operating Manual No. 4* (Inter-American Development Bank, Washington, 2004), pp. 12–15.

For each primary asset type, the asset disposition department outlines the liquidating authority's primary asset disposition strategies. Account officers should employ these preferred strategies when disposing of assets.

Assets of obvious positive value and collectability should be given prompt attention. Nonloan assets, such as automobiles, furniture, etc., should be converted to cash as swiftly as possible. Loans will require special treatment. Account officers must follow standard practice in working with the debtors of the failed bank. The account officers should emphasize that the failed bank no longer exists and that it is important for the debtor to establish a new banking relationship.

Unless otherwise specified, the primary disposition strategies for each asset type are not listed in any order of preference. In certain circumstances, however, it may be appropriate to employ a disposition strategy for a particular asset or group of assets that is not specified in this manual.

Table 7.1 shows the various asset types along with the primary disposition strategy. Liquidation management should set goals to provide incentives for staff (Box 7.3).

## ASSET COLLECTION PROCEDURES

As mentioned above, the assets that are not sold to an acquirer at resolution should be given prompt attention. Nonloan assets should be converted to cash according to the procedures set forth above.

Debtors of the failed bank should be encouraged to refinance and establish new banking relationships with healthy banks, so that ongoing and future credit needs can be met. Because not all debtors' loans can be refinanced, the account officer must decide whether more recovery can be achieved through sale of the loan than other methods. In any case, prompt action will maximize recovery.

Restructuring a loan for a troubled borrower, generally by modifying terms, can sometimes be more productive than foreclosing on collateral or initiating collection lawsuits. Some of

these borrowers are operating ongoing businesses. Revenue from these businesses as a loan repayment source must be considered when developing a liquidation strategy. For example, if a business loan secured by the enterprise's equipment and repayment derives from the continuing business operations, then it would be imprudent to foreclose and repossess the equipment. This would put the firm out of business and curtail further sources of repayment.<sup>3</sup> Box 7.4 provides some examples of loan structuring guidelines.

Asset collection is one of the most important but difficult aspects of bank liquidation. Account officers should be aggressive in their collection efforts. Detailed below are examples of step-by-step procedures that must be considered in asset collection (local situations may vary, and the account officer may need to exercise creative collection techniques to achieve the liquidation office's objectives):

- Assigning assets
- Establishing and maintaining asset files
- Establishing tickler systems
- Initial notices
- Borrower communications
- Good faith negotiations
- Initial asset review
- Disposition timelines
- Applying loan payments
- Documentation
- Loan collection
- Reminder notices
- Unresolved delinquencies
- Advances
- Skip tracing
- Loan valuation
- Pooling assets for sale
- Participations

<sup>3</sup> Federal Deposit Insurance Corporation, *Resolutions Handbook* (Washington, 1998).

TABLE 7.1

Asset Types and Primary Disposition Strategies	
Asset Type	Primary Disposition Strategy
Cash and all due from bank's accounts	Turn over to accounting unit upon bank failure.
Investment securities	Utilize stock brokerage firm, or investment banker to liquidate as soon as possible at market value.
<b>Loans<sup>1</sup></b>	
Performing real estate – individuals	Package and sell from failed bank if feasible. If not, service according to terms of notes.
Nonperforming real estate – individuals	Package and sell from failed bank if feasible. Attempt restructure, compromise, or workout. Begin legal proceedings to gain control of the property when appropriate (no later than 180 days after default or acquisition). Borrowers have incentive to preserve equity and avoid foreclosure, so typically will pay more than through third party sale.
Performing commercial real estate	Package and sell from failed bank if feasible. If not, service according to terms of notes.
Nonperforming commercial real estate	Package and sell from failed bank if feasible. If not, service according to terms of notes. Attempt restructure, compromise, or workout. Begin legal proceedings to gain control of the property when appropriate (no later than 180 days after default or acquisition). Borrowers have incentive to preserve equity and avoid foreclosure, so typically will pay more than through third party sale.
Performing land loans	Package and sell from failed bank if feasible. If not, service according to terms of notes. Market for this type of asset is limited and value may decline substantially.
Nonperforming land loans	Package and sell from failed bank if feasible. If not, service according to terms of notes. Market for this type of asset is limited and value may decline substantially. Continue servicing and immediately attempt restructure, compromise, or workout. Begin legal proceedings to gain control of the property when appropriate (no later than 180 days after default or acquisition).
Performing construction loans	Encourage borrower refinancing or restructure to permanent end loan.
Nonperforming construction loans	Continue servicing and immediately attempt restructure, compromise, or workout upon default or acquisition. Begin legal proceedings to gain control of the property when appropriate (no later than 180 days after default or acquisition).
Performing business loans	Encourage borrower refinancing. Package and sell on whole loan individual line or portfolio sealed bid basis. Continue servicing until maturity or refinancing.
Nonperforming business loans	Continue servicing and immediately attempt restructure, compromise, or workout upon default or acquisition. Begin legal proceedings to gain control of any property or other security when appropriate (no later than 180 days after default or acquisition).
Performing consumer loans	Package and sell on a whole loan portfolio sealed bid basis if feasible. If not, service according to terms of notes.
Nonperforming consumer loans	Package and sell on a whole loan portfolio sealed bid basis if feasible. If not, service according to terms of notes. Begin legal proceedings to gain control of any property or other security when appropriate (no later than 180 days after default or acquisition).
Judgments, deficiencies, and charge-offs	Package and sell on sealed bid basis. Attempt compromise or workout. Write off those assets determined to have no value.
Other real estate owned – residential	List with real estate agent for 90-day period. Sealed bid, auction, direct sale with or without seller financing.
Other real estate owned – commercial	Sealed bid sale or broker listing. Auction, if deemed appropriate. Direct sale. Seller financing may be offered to broaden market and facilitate sales.
Other real estate owned – residential	Sealed bid sale or broker listing. Auction, if deemed appropriate. Direct sale. Seller financing may be offered to broaden market and facilitate sales.
Other assets	Dispose of real property (automobiles, etc.) via direct sale, sealed bid, or auction.
Subsidiaries – inactive	Liquidate any remaining assets and dissolve immediately.
Subsidiaries – real estate holding only	Enter into service and agency agreements. Upstream or dividend assets as appropriate. Dissolve when appropriate.
Subsidiaries – other	Sell stock of subsidiary, or sell assets of subsidiary and dissolve.

<sup>1</sup> The asset management and disposition department must be prepared to address loan participations, unfunded loan commitments, and letters of credit in the course of their duties.

### Box 7.3. Liquidation Goals<sup>1</sup>

Effective annual goals can promote successful liquidation procedures. Some examples include the following:

1. Establish a cash collection target based on aggregate volume of assets available for liquidation as of the commencement of a year. This would be expressed as cash recoveries of 20 percent of booked assets or may be expressed as 35 or 40 percent, etc., of the liquidation appraised value of assets. Since collected interest is a part of cash collections this is not an unattainable objective. The target needs to be high enough to force the liquidator's strategy to accomplish the total liquidation effort within the maximum number of years for termination of the liquidation activities. A low goal virtually ensures that the liquidation effort will go on for a very long period, thus denying creditors return of their claims for many years into the future.
2. Establish a book value reduction percentage-of-assets target. Like the cash target this focuses the liquidator's attention on making considerable progress in reducing the assets of the liquidation on a reasonably aggressive basis. In the first two years a book value reduction goal of 30 percent or more of the initial assets should move the liquidation along at a reasonable speed.
3. Establish a goal that total expenses of liquidation should not exceed 20, 15, or 10 percent of cash collections. This focuses the liquidator's attention on not spending sub-

stantial resources on low-value assets. It also provides a strong incentive to sell off the very low-value assets quite rapidly to reduce aggregate expenses of their liquidation. Sale of these types of assets very early in the process avoids duplication of these same type expenses for years 2, 3, and 4.

4. Establish a goal for the disposal rate of any retained banking premises and real estate owned. As a general rule, for example, 75 percent of real estate owned in monetary terms should be disposed of within 12 months of its acquisition.
5. Establish a goal for the reduction of staff from x level to y level each calendar year. By early sale of a substantial part of the smallest value assets, it makes it easier to reduce staff and simplify accounting and information technology issues.

The types of goals set forth above force liquidation management to avoid holding a significant number of small-value assets that might eventually pay in full but will be very expensive to administer. When proper consideration is made of the cost of excess salaries, unnecessary accounting and data processing services, higher-than-necessary loan servicing costs, distractions of management on marginal value assets, etc., then clearly it is better to sell off marginal value assets at market value, rather than carrying these types of costs described for three to five years (absent a sales strategy for the low-value assets).

It is generally best to simplify and limit the number of goals to ensure that senior liquidation management concentrates on the most important issues, thus making it easier to monitor progress in the most critical liquidation areas.

<sup>1</sup> William Dudley, *Liquidation Closing Procedures and Liquidation Manual* (U.S. Agency for International Development, Washington, July 2003).

- Unfunded loan commitments
- Judgments, deficiencies, and charge-offs
- Other real estate owned.

- Many of the borrowers are in bankruptcy
- Many of the assets have been referred for noncomplex litigation
- A high percentage of assets are performing.

### Assigning Assets

The first step in effective asset collection procedures is the assignment of responsibility for liquidation (or collection) of assets to an account officer. Different factors may affect the assignment of loans and other real estate owned; however, in general, asset assignment will include the following:

1. Loan assignments:
  - Loan type (commercial, mortgage, consumer, etc.)
  - Complexity of the asset (legal issues, etc.)
  - Book value of the asset or related line
  - Book value of an account officer's total portfolio
  - Number of assets or related lines.
2. Owned real estate assignments:
  - Property type (commercial, vacant land, residential, etc.)
  - Appraised value of the property
  - Appraised value of account officer's total portfolio
  - Number of properties
  - Property location.

Situations may develop in which a larger number of assets should be assigned to an account officer, including, for example:

Similarly, situations may develop in which a smaller number of assets should be assigned to an account officer, including, for example, the complexity of assets or litigation requires a high degree of oversight.

As time goes by, the number and composition of assets will change, and personnel will probably change, so asset assignment will require periodic review and possible redistribution.

### Establishing and Maintaining Asset Files

The following are some preliminary procedures that should be performed when account officers are assigned an asset:

- Verify the existence of the original promissory note and collateral.
- Review all the documentation in the file.
- Immediately inform the appropriate supervisor of any missing documents.

The bank file is obtained from the failed bank. Each bank file should be maintained in its original condition. Items may be removed from the bank file for copying, but all original documents must be returned, thereby maintaining the

**Box 7.4. Some Loan Restructuring Guidelines**

- If the amortization period is extended, include a shorter call (or balloon) date (three-year maximum).
- Waive penalty interest for early cash payouts (within 30 days of the first meeting date).
- Use a generic form restructure agreement for consistency and simplicity.
- Always try to get more collateral and guarantees, even collateralized guarantees.
- Require financial statements from the previous three years.

integrity of the bank file. Exceptions are original collateral documents, which should be kept secure in a collateral file. Copies of the original collateral documents should be placed in the bank file. All documentation generated after the bank closing should be kept in an asset file.

The asset file should:

- Contain copies of the note and collateral documentation, including any modifications
- Not be a duplicate of the bank file
- Be the official record of actions taken on the asset by receivership account officers
- Contain all agreements made with the borrowers and the results of all meetings and telephone conversations, which must all be properly documented in writing.

The time and duration of meetings and telephone conversations with outside counsel should be recorded. (This information is used in verifying legal fee bills.) If an asset is in litigation, then verify the existence of the original promissory note and collateral securing the note. If important documents from the bank file are copied to the asset file, the account officer will be relieved of retrieving the bank file for future reviews, thereby maintaining the integrity of the bank file.

The account officer should write short notes or memoranda recording the conversations, results of meetings, etc., that occur with the disposition efforts on the asset. These notes should be properly documented, maintained, and included in the asset file. Finally, a copy of all these items and any other related correspondence and memoranda must be included in the appropriate asset file. The asset file is the official record of actions taken on the asset by receivership personnel.

### Establishing Tickler Systems

Tickler systems are reminders to perform actions by certain deadlines to protect the receivership's rights. The deadlines may reflect specific time periods, events, thresholds, etc.

It is the account officer's responsibility to assure that tickler systems are updated and maintained. Examples of deadlines or thresholds that should be monitored via a tickler system include:

- Statutes of limitations
- Expiration of security interest
- Cross-reference listing co-makers, endorsers, and guarantors
- Property and life insurance premium due dates
- Property tax payment due dates
- Senior lien holders with due dates
- Other escrow payment requirements
- Maturity dates on securities
- Extensions of mortgages
- Court dates for appearances and filings
- Tracking pertinent indices for adjustable rate changes
- Appraisals
- Any other important time-sensitive matter.

### Initial Notices

This section regards sending out initial notices to borrowers and various other parties regarding a bank's failure.

As soon as possible, account officers should send notices that the liquidation office has assumed responsibility for a closed bank.<sup>4</sup> Depending on the specific circumstance, the following should be included as appropriate:

- Letters to all borrowers, endorsers, and guarantors
- Notice to all users of bank-owned property, indicating that subsequent rent or lease payments are to be paid to liquidation office
- Notice to all firms holding securities for the failed bank
- Notice to all relevant utility, service, and supplier companies
- Notice to customers leasing safe deposit boxes (if there is no acquirer)
- Notice to insurers to cancel coverage when the liquidation office has policies in effect
- Notice to insurers to include coverage as necessary on assets acquired
- Notice to insurers of collateral to replace loss payee with liquidation office
- Notice to attorneys, legal firms, and collection agencies engaged by failed bank for collection of debts
- Notice to all loan participants
- Notice to all senior lien holders of junior lien positions as the information becomes available.

### Borrower Communications

Account officers should make every effort to contact borrowers and guarantors as soon as possible and to develop and maintain lines of communication. Borrowers will be required to provide information essential to the asset collection process. Account officers may need to remind stubborn borrowers that without their cooperation it may be impossible

<sup>4</sup> This should include the same language regarding the authority for the action as is found in Annexes 3.4–3.11 in Chapter 3.



to approve any asset resolution, which could lead to legal action. Although borrowers are entitled to continue making payments and abiding by the terms of the note, it may be prudent to suggest that the borrower attempt to refinance elsewhere, in order to cultivate a new banking relationship.

### Good Faith Negotiations

All negotiations with borrowers must be conducted in good faith. Account officers must be very careful to keep all parties involved in any negotiations fully informed. If an asset in current negotiations is under consideration for inclusion in an asset marketing pool of assets, the asset should either be excluded, or notification given to the borrower.

### Initial Asset Review

The account officer should quickly become familiar with each asset in his or her portfolio. Whether from the closing of a new bank, or a transfer from another account officer, all available files should be reviewed in order to prioritize their workload.

One logical way to determine workload priorities is to identify those assets that pose imminent financial risk to a liquidating operation. Examples include assets in foreclosure, assets with unfunded commitments, incomplete construction loans, assets in litigation, etc. Assets in these categories have the potential for causing significant losses if timely disposition strategies are not closely monitored. Once priorities are established and portfolios stabilized, the account officer can strategize for the remainder of the portfolio (e.g., address obstacles, anticipate deadlines, and implement disposition strategies).

### Disposition Timelines

Timelines for asset disposition were stipulated above; however, very often, an account officer will be successful in disposing of an asset in less time than is indicated in the guidelines. Timely access to meaningful information is key to the speedy resolution of assets. Information that is helpful in the collection of a nonperforming loan, for example, may include appraisals, asset and lien searches, borrower and guarantor financial information, business cash flows and financial data, title reports, and credit reports. Additionally, as appropriate, a representative from the legal division should be included in the process as soon as is practical.

### Applying Loan Payments

Unless the note provides to the contrary, loan payments should be applied first to advances (if any); second to accrued interest; and third to the principal balance.

Interest on loans should be computed on a 365-day basis, unless otherwise specified in the note. Indexed interest rates, similarly, should adhere to the stipulations of the note. In cases where the failed bank indexed interest rates according to an internal calculation that cannot be duplicated, the rate

should be indexed to the standard prime rate most widely used, with appropriate documentation to that effect.

Late charges, delinquency fees, default rates of interest, and prepayment penalties should likewise be assessed only as permitted by the terms of the note. Account officers should keep in mind, however, that waiver (under proper delegated authority, of course) of some or all of these fees can be an effective tool in negotiating disposition of an asset.

### Documentation

To ensure that the portfolio is managed appropriately, each asset should have a disposition strategy. Account officers should maintain complete notes regarding all communication and actions taken concerning the asset in order to provide a clear understanding of the asset, the actions and activities taken to date, and the disposition plan. Any disposition short of full payoff should be properly documented with a case memorandum approved by the proper level of delegated authority.

### Loan Collection

Generally, liquidation office policy should be to collect all loans in full; however, in some situations it will be prudent to consider settlements, compromises, modifications, and write-offs.

Different categories of loans may require slightly different techniques and actions for collection, but the following general guidelines can be applicable for all types. The account officer should be familiar with all loans in his or her portfolio and understand any special collection requirements of each.

After the initial contact letter, borrowers need not be contacted as long as their loans remain current. The closing of a bank does not automatically cause obligations to mature or accelerate; therefore, a borrower cannot be forced to pay a note prior to its maturity unless some act of default has occurred. Current loans should be handled according to the terms of the note, with the account officer ensuring that proper and timely documentation is received.

By emphasizing the benefits of refinancing, however, sizable collections can be accomplished at the outset for loans in disposition. The following are persuasive arguments that encourage loan refinancing:

- The bank that made the loan is out of business and no longer able to provide extensions of credit and provisions for continuing bank services.
- The loan may be sold to an out-of-area investor.
- Interest rates for refinancing may be lower than the rate on the existing note.

Account officers should emphasize that borrowers look for a new bank that can provide continuing service. Sometimes refinancing is done quickly and easily, especially when a borrower has a relationship with a number of banks. More difficult situations involve “one bank” borrowers who have to establish new banking connections, who are marginal

credit risks, or who have little to offer in the way of deposit balances.

Prior to maturity and when a borrower is unable to refinance the obligation at another bank, the account officer should attempt to work with a cooperative borrower to extend or modify the loan. The goal of the modification is to have the borrower continue to make payments under the obligation and to create a marketable loan. To the extent necessary and possible, deficiencies in loan file documentation should be addressed and corrected at this time. Foreclosure or seizure of collateral should be undertaken only as a last resort.

### Reminder Notices

The account officer should send a reminder notice when a loan is seven to 10 days delinquent. The notice should be polite and short. If a loan becomes 10 to 15 days delinquent, the borrower should be contacted by telephone. The telephone is probably the most effective means of mild collection action. On the initial telephone call, it is a good idea to verify file information and obtain additional information such as nature of employment, payday, etc. Other than verifying information, the account officer should:

- Identify the borrower.
- Tell the borrower who is calling.
- State the purpose of the call.
- Establish the reason for delinquency.
- Obtain a commitment to pay by a definite date.
- Document the information in the asset file.

At this stage, it is appropriate to suggest that the loan be refinanced at another bank. A telephone call should be supplemented with a follow-up letter that recaps the commitments made over the telephone.

### Unresolved Delinquencies

When a delinquency remains unresolved for 30 days or longer, a delinquency letter should be sent to the borrower. The letter can be a form letter. It should refer to the delinquency and list the penalties that apply:

- Repossession of collateral
- Acceleration of entire debt
- Legal action to enforce collection.

The letter should be the final step before aggressive collection action is taken. An alternative is to use two such letters before moving to aggressive collection action, one at 30 days, and one at 45 days, with personal contact, if appropriate, between the letters.

At this point, it is advisable to begin preparations for more stringent collection efforts. These actions could include, but are not limited to:

- Detailed financial analysis of existing financial statements
- Asset searches

- Appraisals of any collateral and other assets owned by the borrower that may be attachable in litigation.

When a loan has become 60 days delinquent, the account officer should review the loan file thoroughly in preparation for aggressive collection efforts. Loan and collateral documentation should be checked for completeness. A threat of litigation can be an effective negotiating tool; however, it should not be used lightly. Legal action should be the last resort in the asset disposition process. Consequently, the account officer should review loan modification or settlement alternatives, whenever possible, before legal action is begun. An analysis of the net present value of the various scenarios (loan modification, settlement, foreclosure, litigation, or bankruptcy) often provides the economic justification and substantiation to effectuate a settlement or loan modification.

A final and formal demand letter should be sent to all persons liable for the obligation: borrower(s), co-maker(s), endorser(s), and guarantor(s). The letter should be sent by certified and regular mail. It should describe the delinquency, give a short period of time to cure it, and set forth the intended actions if the delinquency is not cured. This letter should be the final step before repossession of collateral or submission to legal counsel for suit.

If the borrower responds after a referral to legal counsel, but before action has been taken, the attorney should be notified that negotiations are in process and that no further action should be taken until it can be ascertained if the borrower is negotiating in good faith. A short time frame (e.g., 15 days) should be established to make that determination, during which time the account officer should handle negotiations. If the negotiations are not in good faith, litigation should immediately be resumed.

### Advances

The account officer may occasionally need to advance funds to pay delinquent property taxes or loss/damage insurance policy premiums. When making such advances, the account officer should always demand immediate repayment from the borrower. If the borrower fails to repay the advance within 30 days, it will be considered a default and the advance should be added to the loan. The account officer should work closely with the accounting department for proper accounting of advances.

### Skip Tracing

If a borrower has apparently skipped, or disappeared, a thorough effort should be made to locate the borrower before a decision is made to take no further action on the loan, particularly if collateral or sizable sums are involved.

### Loan Valuation

Proper credit decisions require the evaluation of collection alternatives on a comparable basis. Present value techniques can assist in determining the courses of action most advantageous to asset liquidation.

TABLE 7.2

Property Type and Loan-to-Value (LTV) Ratio	
Property Type	LTV Ratio (percent)
1-4 Family	95
Multifamily	80
Commercial	80
Land	70
Other	75

The first step in loan valuation is to determine whether the loan is performing, subperforming, or nonperforming. The following definitions are intended for valuation purposes only, and should not necessarily be used with other collection activities. For example, a subperforming loan, by definition, may actually be currently performing. Also, the nonperforming loan definition includes loans that are past maturity, but with borrowers making ongoing payments. Although the liquidation scenario is used in the valuation methodology for such loans, that may not be an alternative under consideration given disposition guidelines. As with existing loans, contemplated restructures should be classified as performing or subperforming to determine the appropriate valuation method.

A *performing* loan is defined as a loan that is paying as agreed (less than 60 days past due) and is expected to pay in full under the terms of the note. Past delinquency or file documentation problems do not disqualify a loan as performing (although they may have an effect on the discount rate used to calculate the market value).

A *subperforming* loan is one where the borrower is making reduced payments consistent with historical financial statements or is presently performing, but projected to ultimately default due to a severe negative event in the future. This event may occur for a variety of reasons, including a known major tenant move-out, a step-up in debt service payment, or a balloon payment coupled with a poor loan-to-value ratio (LTV). If the LTV is greater than the percentages listed in Table 7.2, it is considered poor.

A poor LTV however, does not in itself classify a loan as subperforming. Account officers should also consider whether the borrower has the financial capacity to fund the debt service from sources other than the property.

A *nonperforming* loan is one that is 60 days or more past due or is past the note (or modification) maturity date, regardless of whether or not ongoing payments are being received from the borrower.

### Valuation of Performing Loans

The market value of a performing loan is calculated through a mark-to-market process in which the remaining payments are “present-valued” using current market yield requirements for similar loans. The current market yield is comprised of a base rate, which is the rate for good quality, market-standard

loans, and an adjustment for the characteristics of the specific loans.

The base rate may be well defined for some loans, but estimations may be required for loans with more unique terms. The base rate may be determined either through recognized publications that quote comparable rates, or through surveys of local lending banks. A register indicating dates and names of contacts should be maintained as part of the credit file for the latter.

Once the base rate is determined, specific characteristics that affect the required yield should be identified through a review of the loan files and the payment histories. These characteristics include delinquency rates or deficiencies related to missing documentation such as financial statements, the original note or credit agreement, current collateral appraisal, or credit file. A further adjustment may be required for geographic location if the base rate does not reflect local lending practices. The current market yield is the result of adjusting the base rate for any of these characteristics.

### Valuation of Subperforming and Nonperforming Loans

The valuation of subperforming and nonperforming loans is based on a net present value of estimated cash recoveries in a liquidation scenario, broadly defined as the cash flows identified with the foreclosure/repossession, holding and sale of pledged collateral, and the collection through litigation from identifiable assets of the borrowers or guarantors. By using a liquidation scenario, decisions regarding a compromise, restructure, or sale of the loan are based on the same established value. It is also useful when the account officer considers other alternatives or to develop a realistic counteroffer to a cash offer by the borrower.

To calculate the net present value of estimated cash recoveries, it is necessary to project all cash flows and discount them. When estimating cash flows, consider all potential sources of recovery, including existing collateral, as well as other attachable assets of the borrower or guarantors. (Recovery may also result from the income of operating properties during the estimated holding period.) Collateral values should be based on current appraisals, while recoveries from other sources require a more subjective analysis based on available information such as financial statements, credit reports, or asset and lien searches. As with collateral, recoveries from other sources should follow a liquidation scenario, such as obtaining and executing a judgment, and not the compromise of a deficiency balance. All analysis regarding the estimated recovery should be fully documented in the file.

Direct cash collection expenses include legal fees, advances, payment of prior liens, foreclosure costs, selling expenses, appraisal fees, operating expenses, management fees, and any other applicable direct cash expense. No deductions should be made for indirect expenses such as internal overhead or the administrative costs of doing business.

**TABLE 7.3**

Examples of Discount Rate Calculations	
Sources of Estimated Cash Recovery (ECR)	Discount Rate
At least 50 percent of total ECR from real estate collateral	Prime + 5
Less than 50 percent of total ECR from real estate collateral	Prime + 7
ECR entirely from sources other than real estate collateral (includes unsecured loans)	Prime + 10

The timing of estimated cash recoveries and expenses depends on foreclosure laws, litigation and bankruptcy scenarios, and the estimated selling time for acquired assets. Generally, liquidation accounting is performed on a cash basis, not accrual. Therefore, cash recovery should be listed at the time of sale, not at the time of foreclosure. Similarly, expense for the estimated recoveries should be placed in the periods in which they are expected to occur. For example, payments of prior liens will normally occur at foreclosure, while management fees, appraisal costs, etc., may be incurred before the property is sold.

If a projected recovery is based on the questionable outcome of a court decision, the estimated recovery should reflect the legal department's assessment of probable success. The percentage provided by the attorney should be applied only to those cash flows resulting from a successful outcome. It would not affect any recoveries or expenses leading, or unrelated, to the court's decision.

The documentation required in estimating recoveries can vary depending upon the size and type of the loan. For large loans, however, documentation should be adequate to establish the recovery estimate. Whether compromising, restructuring, or selling a loan, every effort should be made to obtain valid appraisals, asset and lien searches, credit reports, and financial statements. The increase in sales price or the ability to negotiate a more favorable disposition usually outweighs the time and costs associated with obtaining the documentation for an accurate valuation.

Discount rates used in present value calculations measure the potential risk associated with sources of recovery and the timing of the projected cash flows as well as an appropriate return on investment. For example, less risk should be associated with estimating recovery on a mortgage loan with a current appraisal on file than with an unsecured loan with an outdated financial statement. Although it is virtually impossible to deal with all categories of estimated cash recoveries, Table 7.3 gives a few examples of how discount rates might be calculated.

### Pooling Assets for Sale

There can be economies of scale, both for the liquidator as well as the purchaser, if assets of a similar nature, such as real estate mortgage loans, commercial loans, and/or installment loans are packaged and sold as a loan pool. In these circumstances loans are often pooled as to specific type, and depend-

ing upon the interested parties, the loan pools may also be organized as to duration (maturity), type of collateral, interest rates (fixed/variable), etc.

In order to provide maximum transparency, the liquidator would provide an advertisement/legal notification in a local paper of general circulation and/or perhaps a business journal announcing the proposed auction (sale). It would provide all interested parties with the same set of informational materials, which could include, by loan, the name of the debtor, loan amount, collateral type, interest rate, and payment history. Prospective purchasers would make assumptions about the collectability of the loans and make a sealed bid accordingly.

### Participations

Whether the inherited role in a participation loan situation is as lead lender or not, certain responsibilities and risks are assumed. The account officer should review the participation agreement to determine the specific fiduciary responsibilities. Lines of communication with other participants should be opened and maintained.

At a minimum when in the lead position, reasonable care and judgment in collecting the loan, managing the property, and keeping other participants informed should be exercised. When not in the lead position, the account officer should assure that all applicable documentation is obtained. In all cases, complete notes regarding the situation and any actions on the asset should be maintained in the asset file.

### Unfunded Loan Commitments

Unfunded loan commitments, such as construction loans with construction activity in progress, land development loans, bridge loans, or letters of credit, may exist when a bank fails. Care must be exercised to ensure that the economic interests of the receiver are not threatened by the curtailment of funding. Prompt communication with the borrower immediately following the bank closing is paramount and should be fully documented in the asset file. Decisions to fund or not fund these commitments must also be fully documented in the asset file along with detailed information supporting the decision.

Clearly, the receiver must not continue financing ventures if no legal liability exists and the economics of the project do not support further advances. However, it is important to support those decisions with the same degree of care exercised when making decisions to continue funding. A decision either way should be clearly documented in a case memorandum reviewed by legal counsel and approved under the proper delegated authority (see Chapter 6).

### Judgments, Deficiencies, and Charge-offs

Judgments, deficiencies and charge-offs (JDC) represent assets that may or may not be reflected on a failed bank's books; however, these assets must be reviewed to determine the appropriate disposition strategy.

Account officers should work JDC assets within the liquidation office under the following circumstances:

- If legal reasons preclude the sale or transfer of such assets
- If other compelling business reasons indicate that the asset should be worked in-house. Some examples are if a judgment's estimated recovery is substantial and is expected within a reasonable time frame, and cases of JDCs related to non-JDC assets where transfer of the JDC asset would be detrimental to a global settlement or other disposition of the combined assets
- Any newly acquired judgments should be immediately and aggressively pursued. When deemed appropriate, these assets should be sold on the open market.

Otherwise JDCs should be packaged and sold. Because pricing of these assets is often difficult to establish, it may be advisable to enter into a revenue-sharing partnership agreement with an investor. This allows the liquidation office to share in the collections on such assets and mitigates the risk that only the purchaser will benefit from potential collections or settlements that exceed estimates.

## Owned Real Estate

A liquidation office acquires real property through various methods, such as from a failed bank, foreclosing on collateral, or as part of a settlement agreement. Since the goal is not to acquire and manage real property, the real property should be promptly disposed of at the highest return possible. Owned real estate property is typically sold "as is," although repairs may be completed to protect value or to comply with health, safety, or code concerns.

The primary objective in the management of owned real estate properties is to maintain or enhance value while not adversely affecting market stability. Proper management will provide that property does not suffer depreciation from neglect or other controllable causes, and that necessary steps are taken to preserve or enhance marketability.

Any cash flow of the property should not be allowed to deteriorate. Failure to responsibly manage an owned real estate property can directly or indirectly cost significant funds or cause additional loss.

On acquisition of a property, an owned real estate account officer should assess its status and initiate efforts to:

- Enhance cash flows that may accompany ownership
- Reduce and prevent hazards to human health and safety
- Take prudent action to minimize exposure to liability and risk.

Any existing property management contracts involving owned real estate should be reviewed as soon as practical upon acquisition. Evidence of fraud, incompetence, or conflicts of interest should lead to immediate replacement of the contractor. Potential recovery of lost funds should be pursued.

Other issues to be addressed by the account officer include, but are not limited to, the following:

- Obtaining appropriate property and liability insurance coverage for each real estate asset
- Obtaining current appraisals
- Ensuring property taxes are paid
- Obtaining appropriate approval of an owned real estate budget for the property
- Arranging for on-site management of the property
- Developing an appropriate leasing plan for income producing property
- Developing and implementing an appropriate marketing strategy
- Updating files
- Ensuring environmental issues are addressed
- Making site inspections, including visiting with property managers and tenants, as applicable
- Preparing the property for sale, including checking status of title, liens, etc.

The responsibility for the management of owned real estate assets should be assigned to knowledgeable staff familiar with the type of property to be managed. For example, management of hotel properties requires extensive knowledge of hotel operations and franchising; large office buildings and retail centers require understanding of commercial lease agreements; and handling of raw land assets is helped by the knowledge of environmental, development, and zoning issues. Therefore, it is highly recommended that a third party with requisite expertise be hired to manage the day-to-day operations of the asset, particularly income producing property. In conjunction with this, account officers should ensure that:

- All expenditures are properly approved under delegated authority
- The overall efforts of third-party vendors, such as property managers, appraisers, brokers, site inspectors, and auditors are coordinated and managed
- There is timely disposition of the asset at current market value.

## Subsidiaries

An investment in a subsidiary refers to the ownership that a failed financial institution has in a separate and distinct corporation. The subsidiary may have been formed to insulate the financial institution from liabilities associated with financial, environmental, and construction defects, as well as legal obligations, arising from a particular business venture or asset. Alternatively, it may have been formed when a financial institution wished to expand its operations into areas that were not allowed by law and formed a separate corporation to carry out the particular business activity.

A subsidiary is a legal entity subject to the laws of the country where it is incorporated. Subsidiaries may be:

- Real estate related
- Securities firms
- Real estate development companies
- Insurance companies
- Small business investment firms
- Agricultural credit corporations
- Other types of lending institutions.

At the heart of the parent/subsidiary relationship is the parent shareholder's limited liability for the actions taken by the subsidiary corporation. If the law is adhered to, the parent generally will not have liability beyond its initial capital investment in subsidiary stock. This concept of limited liability is often referred to as the "corporate veil," indicating that the actions of the subsidiary are separate and distinct from those of the parent shareholder through the imposition of a legal barrier.

The court generally recognizes the separate existence of a subsidiary as long as the corporate formalities under applicable law are observed. A parent shareholder may be liable for the debts and liabilities of a subsidiary corporation if a creditor brings a successful legal action to "pierce the corporate veil." Although there are different legal theories under which the action can be brought, the most common alleges that the parent corporation exerted such pervasive control over the subsidiary's actions and assets that the court is justified in disregarding the legal barrier between the two entities.

Depending upon the size of the financial institution, there may be multiple or tiers of subsidiaries, meaning subsidiaries that are themselves owned by other subsidiaries; this arrangement is referred to as a multi-tiered subsidiary. Depending upon the number of shares held, a subsidiary may be wholly owned (100 percent), majority-owned (greater than 50 percent) or, in rare instances, minority-owned. Under applicable securities law, the concept of "control" as a shareholder is different from whether the shareholder owns a majority of the shares of stock. Court cases show that a minority interest (less than 50 percent) can still "control" the election of directors and, through them, corporate governance and policies if there are no other large blocks of stock held by any one investor or groups of investors. A "controlling interest" is defined as owning or controlling 50 percent or more of the outstanding voting shares.

The Legal Department should be consulted concerning the rights of minority stockholders before taking any shareholder action. These rights are prescribed by law, articles of incorporation, bylaws, or by contract. Finally, apart from an equity interest, the financial institution also may have been the subsidiary's lender or served as the guarantor of the subsidiary's debts. The Legal Department should be consulted so that a strategy can be developed to balance those interests.

Situations may arise when a subsidiary is first acquired or discovered that require immediate or emergency action. Therefore, it may be necessary to seek authorization to take action to ensure that the subsidiary operates legally and in the best interest of the corporate entity and its shareholder(s). Such sit-

uations may include electing directors, authorizing emergency funds for operating the subsidiary, or handling litigation.

The objective of the Subsidiary Due Diligence Review Checklist (Annex 3.23 in Chapter 3) is to perform a comprehensive analysis that evaluates all aspects of the subsidiary, including each asset and liability. The due diligence review is critical to the disposition of a subsidiary. Omissions or mistakes in the initial review of a subsidiary's assets and liabilities can result in significant liabilities being transferred to the receivership. Based on the results of this review, a comprehensive Business and Disposition Plan (Annex 3.24 in Chapter 3) should be prepared for each subsidiary.

The analysis should answer two basic questions: (1) Is the subsidiary corporation necessary? and (2) Can it survive without funding from the parent? If the answer to either of these questions is no, the subsidiary may be a candidate for dissolution. Finally, sound subsidiaries having value as "going concerns" should be kept intact to maximize their disposition value.

## DELEGATION OF AUTHORITY

The liquidating authority has a responsibility to provide comprehensive and well-reasoned delegation of authority to conservators or liquidation team directors. This policy can expedite good business decisions while providing for a more timely liquidation of assets as well as operational and administrative decisions. Managers who have demonstrated skill in asset liquidation should be trusted to act within the best interests of the liquidating authority when making decisions regarding settlements, compromises, write-offs, etc. Similarly, experienced operations managers should be empowered to lease office space, award contracts, etc.

The liquidating authority delegates the authority to conduct operational matters and asset management and disposition functions on its behalf to a conservator or a liquidation team director. The conservator or liquidation team director may redelegate authority to various managers and/or committees to allow decisions to be made at the appropriate level in the organization.

The conservator or liquidation team director can establish a credit review committee (CRC) to approve certain matters under delegated authority. The conservator or liquidation team director may delegate any or all of their authority for asset disposition matters, subject to any specific limitations imposed by the delegation of authority. The conservator or liquidation team director (or designee) should serve as the chairman of the CRC. Voting members should be selected from high-level managers of the credit department of the organization, although the conservator or liquidation team director may decide to include additional voting members.

Similarly, an operations review committee (ORC) can be established to deal with operational decisions. Most decisions requiring action under delegated authority, however, are credit-related matters.

TABLE 7.4

Basis and Requirements for Write-offs by Type of Asset	
Type of Asset	Basis and Requirements for Write-off
Asset that is compromised	Write off the residual asset after it has been fully compromised under the proper authority, no further collateral or claims exist, and the transaction has closed.
Asset (loans, property, etc.) that is transferred or sold	Write off the residual asset after the transaction has been approved under the proper authority and closed.
Assets in which the statute of limitations has run	Obtain a written legal opinion to support write-off if the statute has expired.
Asset in which all borrowers are bankrupt and all guarantors have been released or are also bankrupt, and no other claims or collateral exist	Write off the asset after receiving proper evidence discharging a borrower from bankruptcy proceedings and determining that no further collateral or claims exist and all guarantors have been released or discharged in bankruptcy.
Asset in which the borrower (if a company or corporation) is no longer in business and is without known assets, and all guarantors have been released or discharged in bankruptcy	Write off the asset after substantiating defunct status of company or corporation, determining no assets remain, and receiving proper evidence that all guarantors have been released or discharged in bankruptcy.
Assets in which there is no further recourse and for which no legal source of recovery from collateral exists	Write off the asset after the legal division concurs that no legal source of recovery exists.

The conservator or liquidation team director should have broad delegation of authority for asset disposition and operational matters. Generally, his or her individual approval should be limited to emergency actions. The appropriate committee (CRC or ORC) should approve, reject, or concur in the most significant asset disposition matters.

The CRC should meet often enough to ensure timely action on all asset-disposition-related matters. It is the manager's responsibility to notify the conservator or liquidation team director of the need for any emergency meetings to expedite critical matters. The CRC that holds the proper level of delegated authority shall be the final authority to approve, reject, or concur on those actions before them. A secretary should be appointed for the CRC meetings and appropriate records (see next section on the case memorandum system) maintained to document all actions. The minutes should reflect the members present and the vote of each member on each case considered at the meeting.

Senior management should review all decisions over a certain amount. Amounts should be high enough that senior management is not swamped with routine decisions. Written procedures should be developed for dealing with delegation of authority violations. Delegation of authority should be periodically reviewed to determine if any adjustments are necessary.

Below are excerpts from a recent example of the FDIC's delegation of authority. The example may include references that may not necessarily be applicable in other countries (e.g., compliance with U.S. employment legislation), but the framework can provide an excellent pattern for the conservator or liquidating authority to develop customized delegation of authority for the local situation.

The FDIC's delegation of authority is coded C for conservatorship or liquidation activity and F for legal activity. It usually contains a matrix delegating authority up to a certain monetary amount (usually book value) depending on an employee's position.

The paragraphs below are selected examples of the delegation of authority that should probably apply in any conservatorship or liquidation activity.

C (1) provides for an organization "...to take all other appropriate action with respect to assets..." This language allows the office to use C (1) as a source of authority separate from other delegation if the book value of the asset is less than the stated C (1) authority. In such circumstances, C (1) may be used to authorize certain actions so long as the effect is not to override or render a more specific delegation meaningless.

Additionally, C (1) provides authority to compromise, abandon an asset, and release guarantors, etc., whenever the book value of the asset does not exceed a specified amount. All assets connected to a single borrower (a credit line) must be combined when determining the appropriate level of delegation. The aggregate total of assets owed to a particular failed bank shall be the determining factor. The procedure for determining a credit line will apply to multiple assets connected with a single maker. The credit line should not be inclusive of other debt associated with guarantors that is unrelated to the maker.

Sales of owned real estate and personal property must be approved under C (2).

C (3) is used to approve expenditures in a specific amount per calendar year for the protection of any asset. These disbursements, which must be supported by the proper receipts, invoices, etc., may include appraisals for real and/or personal property, asset searches, title reports and/or searches, environmental reports and checklists, and real property taxes. (Payment arrangements should be implemented in cooperation with the accounting department to allow proper tracking and monitoring of asset-related expenses.)

Loan sales are authorized under C (9) for performing loans, and C (10) for performing or nonperforming loans. Although C (9) authorizes noncompetitive sales, it should not be interpreted as encouraging noncompetitive sales. Noncompetitive sales should be limited to sales where it is clear a competitive sale will not improve the price (such as the sale of

student loans to the insurer at par). In determining the appropriate level of delegated authority for loan sales, the aggregate book value of all loans being sold is to be used rather than the individual book value of each asset.

If an offer is received to purchase loans of a borrower as a direct result of the borrower's attempt to refinance or compromise the obligation, there is probably a relationship between the borrower and third-party purchaser. Transactions of this nature should be treated as a compromise under C (1) and should be supported by the required elements of a compromise case (e.g., current financial statements, affidavits, tax returns, etc.).

The write-off of any asset categorized as nondiscretionary is authorized under C (25), regardless of book value, as specified in Table 7.4.

Delegation C (26) provides the authorization to fund loan commitments that were originated by the failed bank.

The decision to repudiate a commitment is governed by C (36). Repudiation decisions are based on book value plus the remaining unfunded commitment. In the case of continued funding, however, decisions are based on the remaining amount of the unfunded commitment at the time of acquisition. If multiple commitments have been made to a single borrower, then the aggregate of these commitments should be used for determining the appropriate level of delegated authority.

Delegations F (1), F (2), F (4), and F (5) involve litigation-related actions that require the joint approval of liquidation staff and legal staff with the appropriate delegated authority:

- F (1) governs the initiation of any litigation arising from liquidation activities.
- F (2) applies to the settlement of litigation and is referred to as "nonasset" litigation. (The settlement of asset-based litigation is generally accomplished under C (1) with the concurrence of the legal division.)
- F (5) provides joint authority to settle nonasset litigation against directors and officers and against professionals such as attorneys, accountants, and appraisers.
- F (4) deals with the dismissal of individual defendants from a lawsuit, as distinct from dismissal of the entire case.

## CASE MEMORANDUM SYSTEM

This section sets forth the procedures to take action, whether on an asset or operational matters, under delegated authority. An official paper, known as a case memorandum (or case), should be prepared and submitted to the proper authority to request approval for the proposed action. This document will also serve as a record for action taken under delegated authority. (Of course this documentation should be adapted to the local situation; for example, a bankruptcy court may require different information and/or format from the bankruptcy administrator.)

The case memorandum system provides a consistent method to document the facts and circumstances leading to

decisions and actions during the conservatorship or liquidation process. A case memorandum is properly used for operational and asset disposition matters. It should clearly and concisely present:

- Reference to specific delegation of authority
- Basic facts, including full asset description as applicable
- Background information concerning alternatives and options (including any offers made and rejected in the process)
- Discussion of the merits of the proposed action compared to alternatives
- Justification
- Substantiation.

These factors should be carefully evaluated when reviewing a case. The most important function of the reviewer, however, is the evaluation of the business decision.

Cases should be tracked and recorded by assigning a case number to them. The system serves as a record to explain and justify decisions to those who may have an interest in, or a right to know, what is occurring in the bank. It also identifies those persons who have recommended, approved, and reviewed the decisions.

Case memoranda identify decisions clearly and serve as authorizations for subordinates to act. They are the means of initiating the decision-making process under delegated authority. The most knowledgeable functional representatives (of the subject matter) should prepare the case memoranda. The cases should be as complete as possible, providing lucid reasoning to the decisionmakers.

An effective case memorandum should stand on its own merits, written so that individuals without extensive financial training or intimate knowledge of the bank can clearly understand it. Bear in mind that someone who may be acting in the public interest or some other fiduciary capacity may review the document at a later date.

The objective is to provide a logical analysis for decision-making, and to produce an understandable audit trail. The case memorandum system is a clear-cut permanent record of the decisions and actions taken during the bank's rescue or liquidation period.

Some examples of actions or conditions where a case memorandum is appropriate (or required, depending on delegated authority) are:

- Initial operating budget
- Staffing cases
- Engagement of a professional firm or service company
- Discharge of an employee
- Monthly budget.

Other examples, depending on the book value of the asset and related lines, are:

- Sale of an asset
- Agreement to compromise, settle, or restructure a loan
- Foreclosure of property.



In summary, any significant action taken by the conservator or liquidation team director during the course of the rescue or liquidation should be recorded in case memorandum form.

The paragraphs below outline a suggested case memorandum format. The format may be varied by policy or by the writer to include additional identifying or statistical information, additional review/concurrence lines, or other modifications for clarification. Whatever changes are made to its format, it should still contain the necessary information outlined below.

**Memorandum heading.** The heading should reflect a unique case memorandum number and the date the case was completed and ready for signatures. It should identify the bank, also by unique number, and whether the bank is in conservatorship or liquidation. It should be addressed to the lowest-ranking official who has delegated authority for the proposed action. The writer should be identified. The subject line should clearly identify the matter under discussion, including the asset name and number, if applicable.

**Proposal.** This section should contain the specific action(s) for which authority is requested and should relate solely to the delegation of authority being requested. It should be explained in a concise, direct manner, usually no more than two sentences. It should also identify the individual responsible for carrying out the action and include a completion date.

**Executive summary.** A concise summary of the proposal that highlights significant issues and provides a brief justification for the action should be presented here. This section may include relevant background information, but only facts that are relevant and necessary to substantiate the proposal.

**Legal issues.** For cases involving outside counsel, provide the date of referral, legal fees expended to date, projected legal fees, and projected date for completion.

**Description.** Fully describe the subject matter of the case as comprehensively as possible. For example, if the case concerns deposit payouts, give full information about all the deposits of the bank, by categories, numbers, and balances of deposits. For all cases involving specific assets, provide a detailed description of the asset, including book value, accrued interest, unpaid interest, delinquency, and detailed description of all collateral, as well as legal description, appraised value (and date), unpaid taxes, prior liens, and any environmental problems. Also include information regarding expenses to date and projected.

**Background.** This section provides detailed information necessary to understand the recommendations and the context for making them. Include the history of the asset, origination date, purpose, description of the borrower, and a concise summary of past actions taken on the asset. Identify any other alternatives or proposals.

**Discussion.** This section should be limited to relevant facts that substantiate the recommendation and defend it when compared with other alternatives. Information that may be included here would be the financial condition of the borrower, the appraisal of the asset (along with date, name of

appraiser, valuation, method of valuation, and any analytical objections to appraisal). Subheadings, such as environmental analysis, legal analysis, and marketing strategy, may be used to keep the case organized and flowing. The positives and negatives of each alternative to the disposition of this asset, including those you are not recommending, should be fully discussed.

**Conclusion.** A succinct summary of the points covered in the case, which logically proves the good business judgment of the proposed action, should be presented here. Discuss the negative effects of failure to take the proposed action. Show the benefit to the liquidating authority. New information should not be offered in this section.

**Date for action to be completed.** Specify the date by which the action can be completed and whether or not extensions will be permitted.

**Signatures.** The writer of the case will sign under a “recommended” heading. All supervisors or representatives of credit committees who are to sign the case under delegated authority should be listed under a “reviewed” or “concur” heading. The lowest level supervisor with delegated authority sufficient to approve the action should sign under an “approved” heading. Finally, there should be a heading for “action completed” where the individual responsible for carrying out the action will sign upon completion.

Generally it should not be necessary to provide attachments to the case. All supporting documentation should be available in the asset file for reference, and it is the responsibility of the first-level supervisor to ensure that all facts are accurate.

Annex 7.1 provides a few sample cases that demonstrate the format and reasoning behind the system.

## Case Memorandum Logs (Annex 7.2)

**At the institution.** A case memorandum log is required to be maintained in the institution. The log should list all case memoranda in numerical order, showing the date submitted, the date approved within the bank, the date the case memorandum was sent to the agency, and the action completed date.

**At the liquidating authority.** A case memorandum log should be maintained at the liquidating authority, segregated by each institution for which the liquidating authority is responsible. It should list all case memoranda in numerical order (by bank), showing the dates the case memoranda were received, date reviewed, and date approved (as applicable at the liquidating authority).

## Case Memoranda Retention

Originals of all cases (including those not approved) on which decisions have been made by the conservator or liquidation team director should remain in the official archives of the institution. Copies of all cases should be sent to the liquidating authority for review and retention. Management of the liquidating authority must establish the method and

personnel to be employed in the review of these case memoranda, as they are completed in banks under their control. They will also determine a schedule for the submission of cases, and for notifications to the banks when the reviews have been completed.

## REPORTING

The conservator or liquidation team director must maintain an effective reporting system. The liquidating authority's fiduciary capacity and, in fact, good business sense require it. The conservatorship or closed bank needs to keep track of assets liquidated, creditors paid, and progress on the liquidation.

When compiling a standard report, such as "collections by asset type," it is important to indicate gross cash receipts, because postings to interest and/or principal can sometimes be very arbitrary. Gross cash receipts generally give a more accurate representation of the effectiveness of the liquidation process.

Information necessary to calculate the expense-to-collection ratio is another important factor for reporting considerations. This measurement should not be relied on exclusively, however, because as long as collections exceed expenses, it is worth doing. Usually, liquidators are guided as to which option of liquidation to use by the concept of maximization of liquidation return, based on a present value calculation. Book value reduction should not be overemphasized because it will often result in more write-offs than cash collections. Write-offs need to be looked at in conjunction with cash collections in order to gather the clearest picture.

Other reports that may prove beneficial include reports on asset sales, owned real estate sales, actions taken under delegated authority, and assets in litigation. Other nonasset-related reports could include outstanding settlement issues with acquiring banks, claims filed, approved and disapproved, and periodic financial statements from the accounting department.

Additionally, there should be special reports on any very large or sensitive assets from any individual bank. This would include large assets that are in litigation or important settlement or workout negotiations. Sometimes one asset can account for more book value and expense than all the other assets put together, and therefore may deserve the most time and attention, unless it is clearly uncollectible.

Some account officers or contractors will continually work worthless assets until they are told not to. Because of this, staff should make periodic reports regarding the estimated value of the assets. This can range from fairly rudimentary estimates to very technical ones (with computations of internal rates of return, estimating expenses, etc.). But even the best models are very subjective and often overly optimistic. Often, the most worthwhile estimated value report consists of the collector conservatively reporting his best approximation, based on available information.

To estimate the return using different disposition methods, and to track performance during the liquidation process, liquidators use a combination of spreadsheet-based tracking tools. An automated spreadsheet (e.g., Excel, etc.) listing each asset, its estimated liquidation value, the estimated time it will be turned to cash, and the present value based on estimated value and time can be utilized for reporting on a single bank liquidation. A typical spreadsheet would have column titles, resembling those in Annex 7.3. As assets are liquidated, estimated values and dates are replaced with actual dates. A "totals" calculation at the bottom of the spreadsheet summarizes the recovered amount and timing of the entire bank liquidation portfolio.

Similarly, the report can be modified to combine the individual bank's recovered amounts to generate an aggregate report for all liquidated banks. With this summarization, it is possible to project total recoveries as well as the liquidation balance sheet today and in the future. Actual performance should be tracked against the last quarter's projection in order to further hone estimated recoveries based on new information.

Sometimes it may make sense to combine assets from different banks in liquidation to assemble a more attractive portfolio for sale (pooling method). And sometimes an outside contractor is hired to liquidate assets from many different banks. In either of these situations it may be impossible to perfectly allocate the proceeds to individual credits or banks. In such circumstances, a proportional allocation is a legitimate method of reporting recoveries.

Monthly reporting on the collection and expense data should be adequate for effective monitoring. Reports containing value estimations can be required less frequently (perhaps quarterly), though direction should be given requiring adjustments whenever a tangible change occurs. A good reporting system should provide necessary information for management, but should not unduly burden the account officers to the degree that their collection efforts are impaired.

## FILING SYSTEM

Filing is the systematic arrangement and classification of the information contained in active records for later retrieval. Those responsible for this task represent an important link in the chain of information handling. Without properly filed records, it is difficult and sometimes even impossible to make the decisions required for effective operation.

This section emphasizes the importance of an effective filing system for conservatorships and liquidation operations. It also explains the benefits of an efficient filing system and gives several filing tips.

A well-designed filing system must:

- Simplify filing and offer quick and easy placement of retrieval of information
- Assure integrity and continuity of record keeping (anyone must be able to retrieve the information they need at any time)
- Allow for easy identification of inactive records.

The conservator or liquidation team director is responsible for the organization and maintenance of the files and documents of the conservatorships or liquidations. These files should include all documentation prepared before and during the intervention as well as all documents, including case memoranda reflecting any decisions or actions taken during the conservatorship or liquidation period.

The liquidating authority is also responsible for the retention and security of the files of the bank as found at intervention. This includes but is not limited to:

- Asset and credit files
- Financial statements
- All working papers and other accounting information
- Personnel records
- Correspondence
- Minutes of committees and boards
- Policy and procedures manuals
- Contracts for services
- Leases
- All other pertinent files of the bank.

The security of electronic files, computer systems, software and hardware, and documentation concerning these systems is also very important. Unless proper backup procedures for all systems in the bank are already in place, the liquidating authority should implement them.

Original documents regarding the analysis and discussion of cases and other actions should remain in the files of the bank under secure conditions. If any original documents must be removed from the bank for legal or supervisory purposes, copies should be made and retained. Individuals removing original documents must sign an official receipt form clearly identifying and itemizing the files being removed.

Keeping financial and business records is important, and having an organized filing system makes the records useful. Setting up a record-keeping system does not have to be a monumental task; it involves development of a policy and adhering to it.

Subject filing offers the most substantial advantages for effectively handling paperwork. Some initial steps are:

- Develop a list of categories to use
- Create a file folder for each category
- Alphabetize the list on a computer file and then label each alphabetically
- Make sure that documents are filed currently
- Keep a master list on the file.

Some relevant categories for a bank in conservatorship or a closed bank are likely to be:

- Chronological file of *all* correspondence
- Chronological file of important internal memoranda
- Notices and legal material from appointment of liquidating authority
- All Intervention files
- Media and public relations
- Agent bank information (receipts, official signers)

- Pro forma
- Case management system
- Committee minutes
- Facility and equipment leases
- Accounting records that back up the accounting transactions.

This is not an exhaustive list, but serves to give some examples of what a filing system should consist of.

The records should go into the folder in real time (i.e., as soon as received or, at least, after initial processing). The folder contents then end up in reverse chronological order, oldest at the bottom, newest at top. This standardization will make it easier to find retained documents more efficiently.

Procedures for files that are no longer “active” (i.e., not frequently referred to and not likely to be) are to:

- Transfer the files to record storage boxes
- Label the boxes with the contents
- Store the boxes in a dry storage area.

Audit or other access to archived records is expedited and simplified.

### Filing Tips

- Manila folders, binders, and a 2-hole punch are fundamental filing supplies.
- Create a file guide with a description of the official filing system along with instructions for users. Then, new personnel can begin and continue to use the filing system easily. This will also avoid the arbitrary creation of new file folders.
- Create cross-listings to help locate items. Create a file database on a PC using file-folder heading, cross-listing, and location notes.
- Spell out acronyms and abbreviations.
- Sort records prior to filing.
- Use staples rather than paper clips in folders.
- Bind all documents into the folders. Do not place them in loosely.
- Discard envelopes if the return address is available on the document itself. Most phone messages, illegible notes, and routine acknowledgments can also be discarded. Important information should be documented on a “memorandum to file” and included in the file.
- Label and date all file folders. Develop a format for the subject on the tabs.
- Use “out markers” when removing folders for use. This makes refilling much easier and lets others know that a file exists, ensures that another is not created, and indicates who has the file and when it was checked out.
- If you must keep your semi-active records somewhere other than your office, keep a complete inventory handy. Include retention dates to keep track of when these records will be eligible for destruction.
- Do not always save every draft of a document. For most purposes the final version is sufficient.

- Do not file multiple copies of the same document.
- Do not file periodicals or newspaper clippings unless you refer to them frequently. It may be more effective to create a library.
- Some records seem to belong under more than one series or category. To handle this, file the records in one category and place a cross-reference note in the other. It is important to be consistent in deciding where to file records. Once information is filed in a given series and category, it should always be filed there.
- Some records do not seem to fit conveniently into any series or category. If you need different categories, create them and place them in the appropriate series.
- Color-coding the different series is a useful tool, especially for refile folders.
- Do not overstuff your file folders. If they are overstuffed, divide them into several folders with the same name and roman numerals (e.g., Credit Committee Case Memoranda, 1997, I... Case Memoranda, 1998, II). In cases like this, the file headings may be too broad. Being more specific may help. On the other hand, being too specific may result in one document per folder. Try to find a happy medium.
- Do not overstuff your file drawers. This can make retrieval of files difficult, as well as create a dangerous work environment.
- Purge files regularly, using established retention schedules. Send records scheduled for destruction to the records center for storage until their retention requirements expire. Send records scheduled for permanent retention to the archives.

## ANNEX 7.1. SAMPLE CASE MEMORANDA

### Sample Case Memorandum: Sale of Automobiles

DATE: \_\_\_\_\_

INSTITUTION NAME: \_\_\_\_\_

CASE NUMBER: 1

TO: \_\_\_\_\_  
Conservator

FROM: \_\_\_\_\_  
Fleet Supervisor

#### PROPOSAL:

Dispose of the fleet of business automobiles owned and formerly used by the (name of institution). The automobiles will be offered for sale (cash only) as a group to qualified dealers. Three bids must be received or alternative marketing will be undertaken. The most advantageous bid to the Institution will be accepted. The sale will be consummated within 60 days of approval of the case.

#### DESCRIPTION:

The automobiles are:

Manufacturer	Year	Model	Mileage	Condition	Estimated Value
1. _____					
2. _____					
3. _____					
4. _____					
5. _____					
6. _____					

The former executives and staff of the institution used these vehicles in the course of business. There is an active automotive market in \_\_\_\_\_ [territorial entity] \_\_\_\_\_, and the sale will be consummated in a short period of time. Estimated values have been determined by reviewing records of actual sales in the market in the past several weeks. The institution has the proper ownership documents for these vehicles.

#### DISCUSSION:

Because the bank has ceased operations, there is no need for these vehicles. In addition, the institution has been paying parking fees of \_\_\_\_\_ per month at the \_\_\_\_\_ garage where these vehicles are stored. Licensing fees, insurance, taxes, and other fees are being incurred while the vehicles are under its ownership. (Show as accurately as possible the actual amounts of these items, both here and in the JUSTIFICATION section.)

#### JUSTIFICATION:

This recommendation is justified because there is no further need for these vehicles in carrying out the business of the institution. They should be liquidated and converted to cash in a competitive bid basis. The cash received from the sale will improve the financial condition of the institution. Assets will have been liquidated and various expenses eliminated.

**ACTION COMPLETED DATE:**

Action will be completed on this case within 60 days of approval.

**RECOMMENDED:**

X \_\_\_\_\_ Fleet Supervisor \_\_\_\_\_ [DATE]

**REVIEWED:**

X (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ [DATE]

**APPROVED:**

X \_\_\_\_\_ [DATE]  
Conservator

**ACTION COMPLETED:**

X \_\_\_\_\_ Fleet Supervisor \_\_\_\_\_ [DATE]

**Sample Case Memorandum: Payout of Depositors**

DATE: \_\_\_\_\_

INSTITUTION NAME: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

TO: \_\_\_\_\_  
Conservator

FROM: \_\_\_\_\_

SUBJECT: Payout of Deposits

**PROPOSAL:**

Pay the deposit liabilities of the bank in accordance with the following payout plan and under the timetable included with the plan:

**DESCRIPTION:**

The payout plan is based on the following priorities of depositors and priorities as determined by Article \_\_\_\_\_ of the law.

The payout plan includes the following general provisions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- The plan will pay no interest on any deposit or liability until the principal balances of all claims and deposits for all priorities of depositors and creditors have been paid in full.
- The plan will pay no principal or interest on any deposit or claim to any director, officer, or shareholder or related party of the failed institution until all other deposits and claims have been paid in full, with interest.
- The plan will disburse funds for each category in sequence. No funds will be disbursed for a category until all amounts specified by the plan for a prior category have been disbursed.
- Deposits denominated in currencies other than \_\_\_\_\_ will be disbursed in \_\_\_\_\_.

For accounts on which no claim is made prior to the planned payout period, the funds will be retained for a period of \_\_\_\_\_ during which the claim may be made. If the funds are not claimed by the end of that period, they will revert to the liquidation process of the bank.

**DISCUSSION:**

The plan follows the law with respect to the categorization and prioritization of the various groups of depositors.

The payout plan includes an outreach effort to contact individuals on the bank's records who have not yet filed claim forms, using a mailing directed to the last known addresses of the individuals, and including a claim form to be submitted by mail or in person.

The conservator/liquidator will explore whether some arrangement can be made for the payout of deposits to be made through another bank in order to avoid paying out large sums of cash to numerous people in a short period of time. Failing that, the conservator/liquidator will arrange for adequate cash to be on hand and for security to be in place to ensure the safe disbursement of the large amount of cash involved in these payoffs.

**JUSTIFICATION:**

This plan will distribute the insured deposits of the bank according to the law of banks, and will ensure the most equitable distribution possible under the circumstances.

**ACTION COMPLETED DATE:**

Action will be completed on this case within five days of approval.

**RECOMMENDED:**

X (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ [DATE] \_\_\_\_\_

**REVIEWED:**

X (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ [DATE] \_\_\_\_\_

**APPROVED:**

X \_\_\_\_\_ [DATE] \_\_\_\_\_  
Conservator

**ACTION COMPLETED:**

X (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ [DATE] \_\_\_\_\_

**Sample Case Memorandum: Personnel Recommendations**

DATE: \_\_\_\_\_  
 INSTITUTION NAME: \_\_\_\_\_  
 CASE NUMBER: \_\_\_\_\_  
 TO: \_\_\_\_\_  
 Conservator

FROM: \_\_\_\_\_  
 SUBJECT: PERSONNEL RECOMMENDATIONS  
 PROPOSAL: To engage the services of trained personnel in the following areas:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**DESCRIPTION:**

Prior to the intervention by the regulatory authority, the bank employed \_\_\_\_\_ individuals in various capacities for a monthly payroll of \_\_\_\_\_. The regulatory authority intervened into the affairs of the bank on (date), and appointed \_\_\_\_\_ [name] as conservator. During the period of his administration \_\_\_\_\_ [name] has reduced the number of staff members at the bank to \_\_\_\_\_, at a monthly salary cost of \_\_\_\_\_. A large part of the reduction was directed by \_\_\_\_\_ [name] in order to reduce expenses, but a significant part of the reduction came about as a result of individuals seeking out and finding new employment opportunities on their own. One result of this exodus is that a number of significant responsible positions, which are necessary to carry out the liquidation process, are unfilled in the bank.

As an example of the shortage of trained personnel to perform vital functions, when the conservator, aware of the need to provide a certain required annual report, reviewed the available staff, he found that no one on the current staff was trained or equipped to produce the statement. Accordingly, he engaged the services of \_\_\_\_\_ [name] to prepare the statement.

A projection of the work, which must be accomplished in the next several months, includes the following functions, which must be performed:

- Analysis of the deposit liability of the bank, including a review of the legal requirements, available information in the bank computer systems, and analysis of the public relations aspects of paying off depositors;
- Analysis of a number of significant assets on the balance sheet of the bank and the preparation of recommendations to resolve issues necessary to increase marketability;
- Liaison with the teams of auditors and forensic examiners who will enter the bank sometime in the next few weeks seeking information and records only knowledgeable people can generate.
- Analysis of a number of significant transactions that occurred in the bank prior to intervention, and that have a material effect on the asset and liability sides of the balance sheet.

Accordingly, the conservator has made the recommendation as above to increase staffing in the areas indicated.

A list of personnel and their job titles currently in the bank is Attachment I.

**DISCUSSION:**

The conservator will continue to monitor staffing levels throughout the bank, and will eliminate positions whenever it is practical to do so. It is clear that increases in staff levels will be met with skepticism from creditors who do not want to see expenditures of funds in a nonfunctional institution. In addition, to attract the types of personnel necessary to perform the necessary functions, it may be necessary to pay a somewhat higher than average salary. The fact remains, however, that the work must be done. A reasonable projection of the net cost of this recommendation is that staffing costs will (increase by \_\_\_\_\_) (decrease by \_\_\_\_\_) (remain the same).



**JUSTIFICATION:**

The need for trained staff is overwhelming. Unless adequate resources are acquired, the necessary work will not be done. Consequently, asset values may deteriorate, deserving depositors may go unpaid, time will pass without progress toward the goal of resolving the institution, expenses will increase, and the liquidating authority, which has ultimate accountability, will come in for criticism.

**ACTION COMPLETED DATE:**

Action will be completed on this case within 60 days of approval.

**SIGNATURE LINES:**

**RECOMMENDED:**

X (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ [DATE] \_\_\_\_\_

**REVIEWED:**

X (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ [DATE] \_\_\_\_\_

**APPROVED:**

X \_\_\_\_\_ [DATE] \_\_\_\_\_  
 Conservator

**ACTION COMPLETED:**

X (NAME) \_\_\_\_\_ (TITLE) \_\_\_\_\_ [DATE] \_\_\_\_\_

\*\*\*\*\*

**ATTACHMENT I**

Current Staff at bank as of \_\_\_\_\_ (date)

	Name	Position
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

**Sample Case Memorandum: Hire Workout Specialist**

DATE: \_\_\_\_\_

INSTITUTION NAME: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

**PROPOSAL:**

Engage the services of \_\_\_\_\_ [name] \_\_\_\_\_ as a consultant for purposes of pursuing a settlement of various assets of the institution.

**DESCRIPTION:**

\_\_\_\_\_ [Name] \_\_\_\_\_ has written a memorandum offering his services in working out the various elements of the financial structure of the bank. See copy attached.

**DISCUSSION:**

The memorandum of \_\_\_\_\_ [name] \_\_\_\_\_ demonstrates some knowledge of the bank situation, but he very optimistic in his judgments concerning time, and the potential cash flow from these elements. On the other hand, nobody is now actively engaging the debtors and creditors of the institution in the direct manner that \_\_\_\_\_ [name] \_\_\_\_\_ proposes. He knows or at least has a good understanding of the roles of the people involved, whereas, almost anyone else would require an orientation period. In our initial meeting, we discussed the liquidation process, the absolute need for cash, the use of present values, and the importance of timing. We do not need to provide \_\_\_\_\_ [name] \_\_\_\_\_ with housing or office space and his financial agreement should be heavily weighted toward results, with only a modest retainer up front.

\_\_\_\_\_ [Name] \_\_\_\_\_ will be instructed on the limits on his ability to negotiate, and that his contact with the bank is through the liquidation team manager.

This is a normal type of consulting contract for an institution in liquidation. Funds are available in the bank to pay the fees.

**JUSTIFICATION:**

This recommendation is justified because it is low risk and low cost to the institution, with the potential of great reward if \_\_\_\_\_ [name] \_\_\_\_\_ is successful. Cash raised through this endeavor will ease the payout situation.

**ACTION COMPLETED DATE:**

Action will be completed within 60 days of approval.

**APPROVED:**

X \_\_\_\_\_ [DATE] \_\_\_\_\_  
Liquidator

**ACTION COMPLETED:**

X \_\_\_\_\_ [DATE] \_\_\_\_\_  
Liquidator

### Sample Case Memorandum: Sale of Computer Equipment

DATE: \_\_\_\_\_

INSTITUTION NAME: \_\_\_\_\_

CASE NUMBER: \_\_\_\_\_

FROM: \_\_\_\_\_

Account Officer

#### PROPOSAL:

- Dispose of computer equipment owned and formerly used by the bank. The sale of this equipment will be accomplished using the services of \_\_\_\_\_ [name of entity].
- Retain a small amount of the equipment as needed for the bank's temporary use.
- Write off any remaining value for this equipment after the sale. (Present net book value of the equipment is \_\_\_\_\_.)

#### DESCRIPTION:

A list of the equipment is on file at the bank.

#### DISCUSSION:

The bank has ceased operations and has no need for this equipment. Knowledge of the very limited market for used computer equipment in \_\_\_\_\_ [territorial entity] is essential in packaging the equipment for potential buyers. \_\_\_\_\_ [Name of entity], through its work with this institution in the past, is familiar with this equipment, and is also familiar with the market. They will prepare the packages most appropriate for the market in \_\_\_\_\_ [territorial entity]. They will be compensated through a commission arrangement to be negotiated. An alternative approach would be to hold an auction or offer the equipment in its entirety for sale on an "as is" basis.

#### JUSTIFICATION:

This recommendation is justified because there is no further need for this equipment, and the cash from the sale will improve the bank's financial condition.

#### ACTION COMPLETED DATE:

Action will be completed on this case within 60 days of approval.

#### APPROVED:

X \_\_\_\_\_  
Liquidation Team Manager

\_\_\_\_\_ [DATE]

#### ACTION COMPLETED:

X \_\_\_\_\_  
Liquidation Team Manager

\_\_\_\_\_ [DATE]





# Appendix<sup>1</sup>

## Purchase and Assumption Agreement

[\*\*\*NOTE TO ACQUIRER: The following may be modified to reflect the transaction consummated.]

[INSURED DEPOSIT][ALL DEPOSIT]

AMONG

FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER OF  
[FAILED BANK], [LOCATION]

FEDERAL DEPOSIT INSURANCE CORPORATION

and

DATED AS OF

\_\_\_\_\_, 20\_\_\_\_

**ATTENTION PROSPECTIVE ACQUIRERS:** Certain words, clauses and Sections within bold brackets and which may be accompanied by “[NOTE TO ACQUIRER]” in this form Agreement are alternative provisions which will be included, stricken or modified in the final agreement to conform to the transaction consummated

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<sup>1</sup> This Appendix is an example of an official FDIC Purchase and Assumption Agreement, as provided to the author.

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# Table of Contents

<b>ARTICLE I</b>	DEFINITIONS .....	<a href="#">190</a>
<b>ARTICLE II</b>	ASSUMPTION OF LIABILITIES .....	<a href="#">195</a>
	2.1 Liabilities Assumed by Assuming Bank .....	<a href="#">195</a>
	2.2 Interest on Deposit Liabilities .....	<a href="#">195</a>
	2.3 Unclaimed Deposits .....	<a href="#">195</a>
	2.4 Employee Benefit Plans .....	<a href="#">196</a>
<b>ARTICLE III</b>	PURCHASE OF ASSETS .....	<a href="#">196</a>
	3.1 Assets Purchased by Assuming Bank .....	<a href="#">196</a>
	3.2 Asset Purchase Price .....	<a href="#">196</a>
	3.3 Manner of Conveyance; Limited Warranty; Nonrecourse; Etc. ....	<a href="#">197</a>
	3.4 Puts of Assets to the Receiver .....	<a href="#">197</a>
	3.5 Assets Not Purchased by Assuming Bank .....	<a href="#">198</a>
	3.6 Assets Essential to Receiver .....	<a href="#">199</a>
<b>ARTICLE IV</b>	ASSUMPTION OF CERTAIN DUTIES AND OBLIGATIONS .....	<a href="#">200</a>
	4.1 Continuation of Banking Business .....	<a href="#">200</a>
	4.2 Agreement with Respect to Credit Card Business .....	<a href="#">200</a>
	4.3 Agreement with Respect to Safe Deposit Business .....	<a href="#">200</a>
	4.4 Agreement with Respect to Safekeeping Business .....	<a href="#">200</a>
	4.5 Agreement with Respect to Trust Business .....	<a href="#">200</a>
	4.6 Agreement with Respect to Bank Premises .....	<a href="#">201</a>
	4.7 Agreement with Respect to Leased Data Processing Equipment .....	<a href="#">202</a>
	4.8 Agreement with Respect to Certain Existing Agreements .....	<a href="#">203</a>
	4.9 Informational Tax Reporting .....	<a href="#">203</a>
	4.10 Insurance .....	<a href="#">203</a>
	4.11 Services for Receiver and Corporation .....	<a href="#">203</a>
	4.12 Agreement with Respect to Continuation of Group Health Plan Coverage for Former Employees of the Failed Bank .....	<a href="#">204</a>
	4.13 Agreement with Respect to Interim Asset Servicing .....	<a href="#">204</a>
	4.14 Agreement with Respect to Option to Purchase Loan Pools .....	<a href="#">204</a>



<b>ARTICLE V</b>	DUTIES WITH RESPECT TO DEPOSITORS OF THE FAILED BANK .....	<a href="#">205</a>
	5.1 Payment of Checks, Drafts and Orders .....	<a href="#">205</a>
	5.2 Certain Agreements Related to Deposits .....	<a href="#">205</a>
	5.3 Notice to Depositors .....	<a href="#">205</a>
<b>ARTICLE VI</b>	RECORDS .....	<a href="#">205</a>
	6.1 Transfer of Records .....	<a href="#">205</a>
	6.2 Delivery of Assigned Records .....	<a href="#">206</a>
	6.3 Preservation of Records .....	<a href="#">206</a>
	6.4 Access to Records; Copies .....	<a href="#">206</a>
<b>ARTICLE VII</b>	BID; INITIAL PAYMENT .....	<a href="#">206</a>
<b>ARTICLE VIII</b>	ADJUSTMENTS .....	<a href="#">207</a>
	8.1 Pro Forma Statement .....	<a href="#">207</a>
	8.2 Correction of Errors and Omissions; Other Liabilities .....	<a href="#">207</a>
	8.3 Payments .....	<a href="#">207</a>
	8.4 Interest .....	<a href="#">207</a>
	8.5 Subsequent Adjustments .....	<a href="#">207</a>
<b>ARTICLE IX</b>	CONTINUING COOPERATION .....	<a href="#">208</a>
	9.1 General Matters .....	<a href="#">208</a>
	9.2 Additional Title Documents .....	<a href="#">208</a>
	9.3 Claims and Suits .....	<a href="#">208</a>
	9.4 Payment of Deposits .....	<a href="#">208</a>
	9.5 Withheld Payments .....	<a href="#">208</a>
	9.6 Proceedings with Respect to Certain Assets and Liabilities .....	<a href="#">209</a>
	9.7 Information .....	<a href="#">209</a>
<b>ARTICLE X</b>	CONDITION PRECEDENT .....	<a href="#">209</a>
<b>ARTICLE XI</b>	REPRESENTATIONS AND WARRANTIES OF THE ASSUMING BANK .....	<a href="#">210</a>
<b>ARTICLE XII</b>	INDEMNIFICATION .....	<a href="#">211</a>
	12.1 Indemnification of Indemnitees .....	<a href="#">211</a>
	12.2 Conditions Precedent to Indemnification .....	<a href="#">212</a>
	12.3 No Additional Warranty .....	<a href="#">213</a>

12.4	Indemnification of Corporation and Receiver .....	<a href="#">213</a>
12.5	Obligations Supplemental .....	<a href="#">213</a>
12.6	Criminal Claims .....	<a href="#">213</a>
12.7	Limited Guaranty of the Corporation .....	<a href="#">213</a>
12.8	Subrogation .....	<a href="#">213</a>

### **ARTICLE XIII MISCELLANEOUS .....** [214](#)

13.1	Entire Agreement .....	<a href="#">214</a>
13.2	Headings .....	<a href="#">214</a>
13.3	Counterparts .....	<a href="#">214</a>
13.4	Governing Law .....	<a href="#">214</a>
13.5	Successors .....	<a href="#">214</a>
13.6	Modification; Assignment .....	<a href="#">214</a>
13.7	Notice .....	<a href="#">214</a>
13.8	Manner of Payment .....	<a href="#">215</a>
13.9	Costs, Fees and Expenses .....	<a href="#">215</a>
13.10	Waiver .....	<a href="#">215</a>
13.11	Severability .....	<a href="#">215</a>
13.12	Term of Agreement .....	<a href="#">215</a>
13.13	Survival of Covenants, Etc. ....	<a href="#">215</a>

### **SCHEDULES**

2.1	Certain Liabilities Assumed .....	<a href="#">217</a>
3.1	Certain Assets Purchased .....	<a href="#">217</a>
3.1(e)	Loans Fully Secured by Assumed Deposits .....	<a href="#">217</a>
3.1(i)	Acquired Subsidiaries .....	<a href="#">217</a>
3.2	Purchase Price of Assets .....	<a href="#">218</a>
3.5(k)	Securities Not Purchased .....	<a href="#">219</a>

### **EXHIBITS**

4.13	Interim Asset Servicing Arrangement .....	<a href="#">220</a>
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# Purchase and Assumption Agreement

[\*\*\*NOTE TO ACQUIRER: The following may be modified to reflect the transaction consummated.]

[INSURED DEPOSIT][ALL DEPOSIT]

**THIS AGREEMENT**, made and entered into as of [Date], by and among the **FEDERAL DEPOSIT INSURANCE CORPORATION, RECEIVER of [FAILED BANK], [LOCATION]** (the “Receiver”), [Assuming Bank], organized under the laws of [the United States of America] [State], and having its principal place of business in [City], [State] (the “Assuming Bank”), and the **FEDERAL DEPOSIT INSURANCE CORPORATION**, organized under the laws of the United States of America and having its principal office in Washington, D.C., acting in its corporate capacity (the “Corporation”).

## WITNESSETH:

**WHEREAS**, on Bank Closing Date, the Chartering Authority closed [Failed Bank] (the “Failed Bank”) pursuant to applicable law and the Corporation was appointed Receiver thereof; and

**WHEREAS**, the Assuming Bank desires to purchase certain assets and assume certain deposit and other liabilities of the Failed Bank on the terms and conditions set forth in this Agreement; and

**WHEREAS**, pursuant to 12 U.S.C. Section 1823(c)(2)(A), the Corporation may provide assistance to the Assuming Bank to facilitate the transactions contemplated by this Agreement, which assistance may include indemnification pursuant to Article XII; and

**WHEREAS**, the Board of Directors of the Corporation (the “Board”) has determined to provide assistance to the Assuming Bank on the terms and subject to the conditions set forth in this Agreement; and

**WHEREAS**, the Board has determined pursuant to 12 U.S.C. Section 1823(c)(4)(A) that such assistance is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in the Failed Bank and is the least costly to the deposit insurance fund of all possible methods for meeting such obligation.

**NOW THEREFORE**, in consideration of the mutual promises herein set forth and other valuable consideration, the parties hereto agree as follows:

# Article I

## Definitions

Capitalized terms used in this Agreement shall have the meanings set forth in this Article I, or elsewhere in this Agreement. As used herein, words imparting the singular include the plural and vice versa.

**“Accounting Records”** means the general ledger and supporting subsidiary ledgers and schedules.

**“Acquired Subsidiaries”** has the meaning provided in Section 3.1.

**“Affiliate”** of any Person means any director, officer, or employee of that Person and any other Person (i) who is directly or indirectly controlling, or controlled by, or under direct or indirect common control with, such Person, or (ii) who is an affiliate of such Person as the term “affiliate” is defined in Section 2 of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841.

**“Agreement”** means this Purchase and Assumption Agreement by and among the Assuming Bank, the Corporation and the Receiver, as amended or otherwise modified from time to time.

**“Assets”** means all assets of the Failed Bank purchased pursuant to Section 3.1. Assets owned by Subsidiaries of the Failed Bank are not “Assets” within the meaning of this definition.

**[\*\*\*NOTE TO ACQUIRER: The following will be modified to reflect the transaction consummated.]**

**“Assumed Deposits”** means [Deposits.]

[Insured Deposits, Guaranteed Transaction Accounts, and Deposits of public money (other than such liabilities that are Insured Deposits) in the Failed Bank to the extent such Deposits are properly and fully secured.

In the event that a depositor’s aggregate Deposits in the Failed Bank are in excess of its Insured Deposit, the Corporation, in accordance with its standard policies and procedures, shall determine which Deposits are assumed.

A Deposit in the form of a negotiable instrument shall not be assumed by or transferred to the Assuming Bank, and any interest with respect thereto as provided in this Agreement shall not accrue or be paid until the owner thereof shall provide proof satisfactory to the Corporation that such negotiable instrument was negotiated to such owner prior to Bank Closing Date, as provided in 12 C.F.R. Section 330.4(b)(4).]

**“Bank Closing Date”** means the close of business of the Failed Bank on the date on which the Chartering Authority closed such institution.

**“Bank Premises”** means the banking houses, drive-in banking facilities, and teller facilities (staffed or automated) together with appurtenant parking, storage and service facilities and structures connecting remote facilities to banking houses, and land on which the foregoing are located, that are owned or leased by the Failed Bank and that are occupied by the Failed Bank as of the Bank Closing Date.

**“Bid Amount”** has the meaning provided in Article VII.

**“Book Value”** means, with respect to any Asset and any Liability Assumed, the dollar amount thereof stated on the Accounting Records of the Failed Bank. The Book Value of any item shall be determined as of the Bank Closing Date after adjustments made by the Receiver for differences in accounts, suspense items, unposted debits and credits, and other similar adjustments or corrections and for setoffs, whether voluntary or involuntary. The Book Value of an

Acquired Subsidiary shall be determined from the investment in subsidiary and related accounts on the “bank only” (unconsolidated) balance sheet of the Failed Bank based on the equity method of accounting. Without limiting the generality of the foregoing, (i) the Book Value of a Liability Assumed shall include all accrued and unpaid interest thereon as of the Bank Closing Date, and (ii) the Book Value of a Loan shall reflect adjustments for earned interest, or unearned interest (as it relates to the “rule of 78s” or add-on-interest loans, as applicable), if any, as of the Bank Closing Date, adjustments for the portion of earned or unearned loan-related credit life and/or disability insurance premiums, if any, attributable to the Failed Bank as of the Bank Closing Date, and adjustments for Failed Bank Advances, if any, in each case as determined for financial reporting purposes. The Book Value of an Asset shall not include any adjustment for loan premiums, discounts or any related deferred income or fees, or general or specific reserves on the Accounting Records of the Failed Bank.

“**Business Day**” means any day other than a Saturday, Sunday or federal legal holiday.

“**Chartering Authority**” means (i) with respect to a national bank, the Office of the Comptroller of the Currency, (ii) with respect to a Federal savings association or savings bank, the Office of Thrift Supervision, (iii) with respect to a bank or savings institution chartered by a State, the agency of such State charged with primary responsibility for regulating and/or closing banks or savings institutions, as the case may be, (iv) the Corporation in accordance with 12 U.S.C. Section 1821(c), with regard to self appointment, or (v) the appropriate Federal banking agency in accordance with 12 U.S.C. Section 1821(c)(9).

“**Commitment**” means the unfunded portion of a line of credit or other commitment reflected on the books and records of the Failed Bank to make an extension of credit (or additional advances with respect to a Loan) that was legally binding on the Failed Bank as of Bank Closing, other than extensions of credit pursuant to the credit card business and overdraft protection plans of the Failed Bank, if any.

“**Credit Documents**” mean the agreements, instruments, certificates or other documents at any time evidencing or otherwise relating to, governing or executed in connection with or as security for, a Loan, including without limitation notes, bonds, loan agreements, letter of credit applications, lease financing contracts, banker’s acceptances, drafts, interest protection agreements, currency exchange agreements, repurchase agreements, reverse repurchase agreements, guarantees, deeds of trust, mortgages, assignments, security agreements, pledges, subordination or priority agreements, lien priority agreements, undertakings, security instruments, certificates, documents, legal opinions, participation agreements and intercreditor agreements, and all amendments, modifications, renewals, extensions, rearrangements, and substitutions with respect to any of the foregoing.

“**Data Processing Lease**” means any lease or licensing agreement, binding on the Failed Bank as of the Bank Closing Date, the subject of which is data processing equipment or computer hardware or software used in connection with data processing activities. A lease or licensing agreement for computer software used in connection with data processing activities shall constitute a Data Processing Lease regardless of whether such lease or licensing agreement also covers data processing equipment.

“**Deposit**” means a deposit as defined in 12 U.S.C. Section 1813(l), including, without limitation, outstanding cashier’s checks and other official checks and all uncollected items included in the depositors’ balances and credited on the books and records of the Failed Bank; provided, that the term “Deposit” shall not include all or any portion of those deposit balances which, in the discretion of the Receiver or the Corporation, (i) may be required to satisfy it for any liquidated or contingent liability of any depositor arising from an unauthorized or unlawful transaction, or (ii) may be needed to provide payment of any liability of any depositor to the Failed Bank or the Receiver, including the liability of any depositor as a director or officer of the Failed Bank, whether or not the amount of the liability is or can be determined as of Bank Closing.

“**Failed Bank Advances**” means the total sums paid by the Failed Bank to (i) protect its lien position, (ii) pay ad valorem taxes and hazard insurance, and (iii) pay credit life insurance, accident and health insurance, and vendor’s single interest insurance.

“**Fair Market Value**” means (i)(a) “Market Value” as defined in the regulation prescribing the standards for real estate appraisals used in federally related transactions, 12 C.F.R. Section 323.2(g), and accordingly shall mean the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) Buyer and seller are typically motivated;
- (2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

- (3) A reasonable time is allowed for exposure in the open market;
- (4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale;

as determined as of the Bank Closing Date by an appraiser mutually acceptable to the Receiver and the Assuming Bank; any costs and fees associated with such determination shall be shared equally by the Receiver and the Assuming Bank, and (b) which, with respect to Bank Premises (to the extent, if any, that Bank Premises are purchased utilizing this valuation method), shall be determined not later than sixty (60) days after the Bank Closing Date by an appraiser selected by the Receiver and the Assuming Bank within seven (7) days after the Bank Closing Date; or (ii) with respect to property other than Bank Premises purchased utilizing this valuation method, the price therefor as established by the Receiver and agreed to by the Assuming Bank, or in the absence of such agreement, as determined in accordance with clause (i)(a) above.

**“Fixtures”** means those leasehold improvements, additions, alterations and installations constituting all or a part of Bank Premises and which were acquired, added, built, installed or purchased at the expense of the Failed Bank, regardless of the holder of legal title thereto as of the Bank Closing Date.

**“Furniture and Equipment”** means the furniture and equipment (other than Safe Deposit Boxes, motor vehicles and leased data processing equipment, including hardware and software), leased or owned by the Failed Bank and reflected on the books of the Failed Bank as of the Bank Closing Date, including without limitation automated teller machines, carpeting, furniture, office machinery (including personal computers), shelving, office supplies, telephone, surveillance and security systems, and artwork.

**[The following definition is to be included in an Insured Deposit Only transaction.]**

**“Guaranteed Transaction Accounts”** means those transaction accounts covered by the Transaction Account Guarantee Program as described in 73 Federal Register 210 (29 October 2008), pp. 64179-64191.

**“Indemnitees”** means, except as provided in paragraph (11) of Section 12.1(b), (i) the Assuming Bank, (ii) the Subsidiaries and Affiliates of the Assuming Bank other than any Subsidiaries or Affiliates of the Failed Bank that are or become Subsidiaries or Affiliates of the Assuming Bank, and (iii) the directors, officers, employees and agents of the Assuming Bank and its Subsidiaries and Affiliates who are not also present or former directors, officers, employees or agents of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank.

**“Initial Payment”** means the payment made pursuant to Article VII (based on the best information available as of the Bank Closing Date), the amount of which shall be either (i) if the Bid Amount is positive, the aggregate Book Value of the Liabilities Assumed minus the sum of the aggregate purchase price of the Assets and assets purchased and the positive Bid Amount, or (ii) if the Bid Amount is negative, the sum of the aggregate Book Value of the Liabilities Assumed and the negative Bid Amount minus the aggregate purchase price of the Assets and assets purchased. The Initial Payment shall be payable by the Corporation to the Assuming Bank if (i) the Liabilities Assumed are greater than the sum of the positive Bid Amount and the Assets and assets purchased, or if (ii) the sum of the Liabilities Assumed and the negative Bid Amount are greater than the Assets and assets purchased. The Initial Payment shall be payable by the Assuming Bank to the Corporation if (i) the Liabilities Assumed are less than the sum of the positive Bid Amount and the Assets and assets purchased, or if (ii) the sum of the Liabilities Assumed and the negative Bid Amount is less than the Assets and assets purchased. Such Initial Payment shall be subject to adjustment as provided in Article VIII.

**[\*\*\*NOTE TO ACQUIRER: The following may be modified to reflect the transaction consummated.]**

**["Insured Deposits”** means the net amount due to any depositor with respect to its Deposits as determined by the Receiver or the Corporation pursuant to 12 U.S.C. Section 1813(m), and applicable regulations at 12 C.F.R. Part 330.]

**“Legal Balance”** means the amount of indebtedness legally owed by an Obligor with respect to a Loan, including principal and accrued and unpaid interest, late fees, attorneys’ fees and expenses, taxes, insurance premiums, and similar charges, if any.

**“Liabilities Assumed”** has the meaning provided in Section 2.1.

**“Lien”** means any mortgage, lien, pledge, charge, assignment for security purposes, security interest, or encumbrance of any kind with respect to an Asset, including any conditional sale agreement or capital lease or other title retention agreement relating to such Asset.

**“Loan File”** means all Credit Documents and all other credit, collateral, or insurance documents in the possession or custody of the Assuming Bank, or any of its Subsidiaries or Affiliates, relating to an Asset or a Loan included in a Put Notice, or copies of any thereof.

**“Loans”** means all of the following owed to or held by the Failed Bank as of the Bank Closing Date:

- (i) loans, participation agreements, interests in participations, overdrafts of customers (including but not limited to overdrafts made pursuant to an overdraft protection plan or similar extensions of credit in connection with a deposit account), revolving commercial lines of credit, home equity lines of credit, United States and/or State-guaranteed student loans, and lease financing contracts;
- (ii) all Liens, rights (including rights of set-off), remedies, powers, privileges, demands, claims, priorities, equities and benefits owned or held by, or accruing or to accrue to or for the benefit of, the holder of the obligations or instruments referred to in clause (i) above, including but not limited to those arising under or based upon Credit Documents, casualty insurance policies and binders, standby letters of credit, mortgagee title insurance policies and binders, payment bonds and performance bonds at any time and from time to time existing with respect to any of the obligations or instruments referred to in clause (i) above; and
- (iii) all amendments, modifications, renewals, extensions, refinancings, and refundings of or for any of the foregoing;

provided, that there shall be excluded from the definition of Loans (a) any portion of the foregoing which the Failed Bank or the Assuming Bank (or any of their respective Subsidiaries) holds not for its own account but solely as agent or fiduciary for, or otherwise as representative of, any other Person, (b) any loans which have been charged off the Accounting Records of the Failed Bank in whole or in part prior to the Bank Closing Date, (c) loans recorded on the Accounting Records of the Failed Bank on “in substance foreclosure” status as of the Bank Closing Date, (d) Commitments and (e) amounts owing under Qualified Financial Contracts.

**“Obligor”** means each Person liable for the full or partial payment or performance of any Loan, whether such Person is obligated directly, indirectly, primarily, secondarily, jointly, or severally.

**“Payment Date”** means the first Business Day after the Bank Closing Date.

**“Person”** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof, excluding the Corporation.

**“Primary Indemnitor”** means any Person (other than the Assuming Bank or any of its Affiliates) who is obligated to indemnify or insure, or otherwise make payments (including payments on account of claims made against) to or on behalf of any Person in connection with the claims covered under Article XII, including without limitation any insurer issuing any directors and officers liability policy or any Person issuing a financial institution bond or banker’s blanket bond.

**“Put Date”** has the meaning provided in Section 3.4.

**“Put Notice”** has the meaning provided in Section 3.4.

**“Qualified Financial Contract”** means a qualified financial contract as defined in 12 U.S.C. Section 1821(e)(8)(D).

**“Record”** means any document, microfiche, microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) of the Failed Bank generated or maintained by the Failed Bank that is owned by or in the possession of the Receiver at the Bank Closing Date.

**“Related Liability”** with respect to any Asset means any liability existing and reflected on the Accounting Records of the Failed Bank as of the Bank Closing Date for (i) indebtedness secured by mortgages, deeds of trust, chattel mortgages, security



interests or other liens on or affecting such Asset, (ii) ad valorem taxes applicable to such Asset, and (iii) any other obligation determined by the Receiver to be directly related to such Asset.

**“Related Liability Amount”** with respect to any Related Liability on the books of the Assuming Bank, means the amount of such Related Liability as stated on the Accounting Records of the Assuming Bank (as maintained in accordance with generally accepted accounting principles) as of the date as of which the Related Liability Amount is being determined. With respect to a liability that relates to more than one asset, the amount of such Related Liability shall be allocated among such assets for the purpose of determining the Related Liability Amount with respect to any one of such assets. Such allocation shall be made by specific allocation, where determinable, and otherwise shall be pro rata based upon the dollar amount of such assets stated on the Accounting Records of the entity that owns such asset.

**“Repurchase Price”** means with respect to any Asset or asset, which shall be determined by the Receiver, the lesser of (a) or (b):

- (a) the amount paid by the Assuming Bank, decreased by the amount of any money received with respect thereto since the Bank Closing Date and, if the Asset is a Loan or other interest bearing or earning asset, the resulting amount shall then be increased or decreased, as the case may be, by interest or discount (whichever is applicable) accrued from and after the Bank Closing Date at the lower of: (i) the contract rate with respect to such Asset, or (ii) the Settlement Interest Rate; net proceeds received by or due to the Assuming Bank from the sale of collateral, any forgiveness of debt, or otherwise shall be deemed money received by the Assuming Bank; or
- (b) the dollar amount thereof stated on the Accounting Records of the Assuming Bank as of the date as of which the Repurchase Price is being determined, as maintained in accordance with generally accepted accounting principles, and, if the asset is a Loan, regardless of the Legal Balance thereof and adjusted in the same manner as the Book Value of a Failed Bank Loan would be adjusted hereunder.

Provided, however, (b), above, shall not be applicable for Loans repurchased pursuant to Section 3.4(a).

If any Asset or asset is purchased as part of a group of Assets or assets for Book Value and/or as a percentage of Book Value, the amount paid by the Assuming Bank, for purposes of (a), above, shall be the Book Value, as of the date of the Bank Closing Date, of the individual Asset or asset being repurchased multiplied, if applicable, by the percentage paid.

**“Safe Deposit Boxes”** means the safe deposit boxes of the Failed Bank, if any, including the removable safe deposit boxes and safe deposit stacks in the Failed Bank’s vault(s), all rights and benefits (other than fees collected prior to the Bank Closing Date) under rental agreements with respect to such safe deposit boxes, and all keys and combinations thereto.

**“Settlement Date”** means the first Business Day immediately prior to the day which is one hundred eighty (180) days after the Bank Closing Date, or such other date prior thereto as may be agreed upon by the Receiver and the Assuming Bank. The Receiver, in its discretion, may extend the Settlement Date.

**“Settlement Interest Rate”** means, for the first calendar quarter or portion thereof during which interest accrues, the rate determined by the Receiver to be equal to the equivalent coupon issue yield on six (6)-month United States Treasury Bills in effect as of the Bank Closing Date as published in The Wall Street Journal; provided, that if no such equivalent coupon issue yield is available as of the Bank Closing Date, the equivalent coupon issue yield for such Treasury Bills most recently published in The Wall Street Journal prior to the Bank Closing Date shall be used. Thereafter, the rate shall be adjusted to the rate determined by the Receiver to be equal to the equivalent coupon issue yield on such Treasury Bills in effect as of the first day of each succeeding calendar quarter during which interest accrues as published in The Wall Street Journal.

**“Subsidiary”** has the meaning set forth in Section 3(w)(4) of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(w)(4), as amended.

# Article II

## Assumption of Liabilities

**2.1 Liabilities Assumed by Assuming Bank.** The Assuming Bank expressly assumes at Book Value (subject to adjustment pursuant to Article VIII) and agrees to pay, perform, and discharge all of the following liabilities of the Failed Bank as of the Bank Closing Date, except as otherwise provided in this Agreement (such liabilities referred to as “Liabilities Assumed”):

- (a) Assumed Deposits, except those Deposits specifically listed on Schedule 2.1(a); provided, that as to any Deposits of public money which are Assumed Deposits, the Assuming Bank agrees to properly secure such Deposits with such of the Assets as appropriate which, prior to the Bank Closing Date, were pledged as security therefor by the Failed Bank, or with assets of the Assuming Bank, if such securing Assets, if any, are insufficient to properly secure such Deposits;
- (b) liabilities for indebtedness secured by mortgages, deeds of trust, chattel mortgages, security interests or other liens on or affecting any Assets, if any; provided, that the assumption of any liability pursuant to this paragraph shall be limited to the market value of the Assets securing such liability as determined by the Receiver;
- (c) overdrafts, debit balances, service charges, reclamations, and adjustments to accounts with the Federal Reserve Banks as reflected on the books and records of any such Federal Reserve Bank within ninety (90) days after the Bank Closing Date, if any;
- (d) ad valorem taxes applicable to any Asset, if any; provided, that the assumption of any ad valorem taxes pursuant to this paragraph shall be limited to an amount equal to the market value of the Asset to which such taxes apply as determined by the Receiver;
- (e) liabilities, if any, for federal funds purchased, repurchase agreements and overdrafts in accounts maintained with other depository institutions (including any accrued and unpaid interest thereon computed to and including the Bank Closing Date); provided, that the assumption of any liability pursuant to this paragraph shall be limited to the market value of the Assets securing such liability as determined by the Receiver;
- (f) United States Treasury tax and loan note option accounts, if any;
- (g) liabilities for any acceptance or commercial letter of credit (other than “standby letters of credit” as defined in 12 C.F.R. Section 337.2(a)); provided, that the assumption of any liability pursuant to this paragraph shall be limited to the market value of the Assets securing such liability as determined by the Receiver;
- (h) duties and obligations assumed pursuant to this Agreement including without limitation those relating to the Failed Bank’s credit card business, overdraft protection plans, safe deposit business, safekeeping business or trust business, if any; and
- (i) liabilities, if any, for amounts owed to any Acquired Subsidiary.

Schedule 2.1 attached hereto and incorporated herein sets forth certain categories of Liabilities Assumed and the aggregate Book Value of the Liabilities Assumed in such categories. Such schedule is based upon the best information available to the Receiver and may be adjusted as provided in Article VIII.

**2.2 Interest on Deposit Liabilities.** The Assuming Bank agrees that, from and after the Bank Closing Date, it will accrue and pay interest on Deposit liabilities assumed pursuant to Section 2.1 at a rate(s) it shall determine; provided, that for nontransaction Deposit liabilities such rate(s) shall not be less than the lowest rate offered by the Assuming Bank to its depositors for nontransaction deposit accounts. The Assuming Bank shall permit each depositor to withdraw, without penalty for early withdrawal, all or any portion of such depositor’s Deposit, whether or not the Assuming Bank elects to pay interest in accordance with any deposit agreement formerly existing between the Failed Bank and such depositor; and further provided, that if such Deposit has been pledged to secure an obligation of the depositor or other party, any withdrawal thereof shall be subject to the terms of the agreement governing such pledge. The Assuming Bank shall give notice to such depositors as provided in Section 5.3 of the rate(s) of interest which it has determined to pay and of such withdrawal rights.

**2.3 Unclaimed Deposits.** If, within eighteen (18) months after the Bank Closing Date, any depositor of the Failed Bank does not claim or arrange to continue such depositor’s Deposit assumed pursuant to Section 2.1 at the Assuming Bank, the Assuming Bank shall, within fifteen (15) Business Days after the end of such eighteen (18)-month period, (i) refund to the Corporation the full amount of each such Deposit (without reduction for service charges), (ii) provide to the Corporation a schedule of all such refunded Deposits in such form as may be prescribed by the Corporation, and (iii) assign, transfer, convey

and deliver to the Receiver all right, title and interest of the Assuming Bank in and to Records previously transferred to the Assuming Bank and other records generated or maintained by the Assuming Bank pertaining to such Deposits. During such eighteen (18)-month period, at the request of the Corporation, the Assuming Bank promptly shall provide to the Corporation schedules of unclaimed deposits in such form as may be prescribed by the Corporation.

**2.4 Employee Benefit Plans.** Except as provided in Section 4.12, the Assuming Bank shall have no liabilities, obligations or responsibilities under the Failed Bank's health care, bonus, vacation, pension, profit sharing or stock purchase plans or similar plans, if any, unless the Receiver and the Assuming Bank agree otherwise subsequent to the date of this Agreement.

## Article III

# Purchase of Assets

**3.1 Assets Purchased by Assuming Bank.** Subject to Sections 3.5 and 3.6, the Assuming Bank hereby purchases from the Receiver, and the Receiver hereby sells, assigns, transfers, conveys, and delivers to the Assuming Bank, all right, title, and interest of the Receiver in and to all of the following:

- (a) cash and receivables from depository institutions (including Federal Reserve Banks and Federal Home Loan Banks), including cash items in the process of collection, plus any accrued interest thereon computed to and including Bank Closing;
- (b) securities (other than the capital stock of Subsidiaries of the Failed Bank and those securities referred to in Section 3.5(k), if any), plus any accrued interest thereon computed to and including the Bank Closing Date;
- (c) federal funds sold and repurchase agreements, if any, including any accrued interest thereon computed to and including the Bank Closing Date;
- (d) Omitted;
- (e) Loans secured, in whole or in part, by Assumed Deposits or deposits at other depository institutions, but only such of those Loans which also are listed on Schedule 3.1(e), if any;
- (f) credit card business, if any, including all outstanding extensions of credit, subject to Section 4.2;
- (g) Safe Deposit Boxes and related business, safekeeping business and trust business, if any, subject to Section 4.3, 4.4 or 4.5, respectively;
- (h) Records and other documents as provided in Section 6.1;
- (i) capital stock of the Subsidiaries of the Failed Bank listed on Schedule 3.1(i), if any (the "Acquired Subsidiaries");
- (j) amounts owed to the Failed Bank by any Acquired Subsidiary;
- (k) assets securing Deposits of public money, to the extent not otherwise purchased hereunder; and
- (l) overdrafts of customers (including but not limited to overdrafts made pursuant to an overdraft protection plan or similar extensions of credit in connection with a deposit account).

Schedule 3.1 attached hereto and incorporated herein sets forth certain categories of Assets. Such schedule(s) is based upon the best information available to the Receiver and may be adjusted as provided in Article VIII. Assets are purchased hereunder by the Assuming Bank subject to all liabilities for indebtedness collateralized by Liens affecting such Assets to the extent provided in Section 2.1.

### 3.2 Asset Purchase Price.

- (a) All Assets and assets of the Failed Bank subject to an option to purchase by the Assuming Bank shall be purchased for the amount, or the amount resulting from the method specified for determining the amount, as specified on Schedule 3.2, except as otherwise may be provided herein. Any Asset, asset of the Failed Bank subject to an option to purchase or other asset purchased for which no purchase price is specified on Schedule 3.2 or otherwise herein shall be purchased at its Fair Market Value.

- (b) The purchase price for securities (other than the capital stock of any Acquired Subsidiary) purchased under Section 3.1 by the Assuming Bank shall be the market value thereof as of Bank Closing, which market value shall be (i) the market price for each such security quoted at the close of the trading day effective on Bank Closing as published electronically by Bloomberg, L.P., or Financial Times (FT) Interactive Data; (ii) provided, that if such market price is not available for any such security, the Assuming Bank will submit a bid for each such security within three days of notification/bid request by the Receiver (unless a different time period is agreed to by the Assuming Bank and the Receiver) and the Receiver, in its sole discretion will accept or reject each such bid; and (iii) further provided in the absence of an acceptable bid from the Assuming Bank, each such security shall not pass to the Assuming Bank and shall be deemed to be an excluded asset hereunder.

**3.3 Manner of Conveyance; Limited Warranty; Nonrecourse; Etc.** THE CONVEYANCE OF ALL ASSETS, INCLUDING REAL AND PERSONAL PROPERTY INTERESTS, PURCHASED BY THE ASSUMING BANK UNDER THIS AGREEMENT SHALL BE MADE, AS NECESSARY, BY RECEIVER'S DEED OR RECEIVER'S BILL OF SALE, "AS IS", "WHERE IS", WITHOUT RECOURSE AND, EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, WITHOUT ANY WARRANTIES WHATSOEVER WITH RESPECT TO SUCH ASSETS, EXPRESS OR IMPLIED, WITH RESPECT TO TITLE, ENFORCEABILITY, COLLECTIBILITY, DOCUMENTATION OR FREEDOM FROM LIENS OR ENCUMBRANCES (IN WHOLE OR IN PART), OR ANY OTHER MATTERS.

### 3.4 Puts of Assets to the Receiver.

- (a) **Puts Within 30 Days After the Bank Closing Date.** During the thirty (30)-day period following the Bank Closing Date and only during such period (which thirty (30)-day period may be extended in writing in the sole absolute discretion of the Receiver for any Loan), in accordance with this Section 3.4, the Assuming Bank shall be entitled to require the Receiver to purchase any Loan transferred to the Assuming Bank pursuant to Section 3.1(e) which is not fully secured by Assumed Deposits or deposits at other insured depository institutions due to either insufficient Assumed Deposit or deposit collateral or deficient documentation regarding such collateral; provided with regard to any Loan secured by an Assumed Deposit, no such purchase may be required until any Deposit setoff determination, whether voluntary or involuntary, has been made; and at the end of the thirty (30)-day period following the Bank Closing Date and at that time only, in accordance with this Section 3.4, the Assuming Bank shall be entitled to require the Receiver to purchase any remaining overdraft transferred to the Assuming Bank pursuant to 3.1(l) which was not made pursuant to an overdraft protection plan or similar extension of credit.

Notwithstanding the foregoing, the Assuming Bank shall not have the right to require the Receiver to purchase any Loan if (i) the Obligor with respect to such Loan is an Acquired Subsidiary, or (ii) the Assuming Bank has:

- (A) made any advance in accordance with the terms of a Commitment or otherwise with respect to such Loan;
- (B) taken any action that increased the amount of a Related Liability with respect to such Loan over the amount of such liability immediately prior to the time of such action;
- (C) created or permitted to be created any Lien on such Loan which secures indebtedness for money borrowed or which constitutes a conditional sales agreement, capital lease or other title retention agreement;
- (D) entered into, agreed to make, grant or permit, or made, granted or permitted any modification or amendment to, any waiver or extension with respect to, or any renewal, refinancing or refunding of, such Loan or related Credit Documents or collateral, including, without limitation, any act or omission which diminished such collateral; or
- (E) sold, assigned or transferred all or a portion of such Loan to a third party (whether with or without recourse).

The Assuming Bank shall transfer all such Loans to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Bank with respect to any such Loan, as provided in Section 12.4.

- (b) **Puts Prior to the Settlement Date.** During the period from the Bank Closing Date to and including the Business Day immediately preceding the Settlement Date, the Assuming Bank shall be entitled to require the Receiver to purchase any Asset which the Assuming Bank can establish is evidenced by forged or stolen instruments as of the Bank Closing Date; provided, that, the Assuming Bank shall not have the right to require the Receiver to purchase any such Asset with respect to which the Assuming Bank has taken any action referred to in Section 3.4(a)(ii) with respect to such Asset. The Assuming Bank shall transfer all such Assets to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Bank with respect to any such Asset, as provided in Section 12.4.

- (c) **Notices to the Receiver.** In the event that the Assuming Bank elects to require the Receiver to purchase one or more Assets, the Assuming Bank shall deliver to the Receiver a notice (a “Put Notice”) which shall include:
- (i) a list of all Assets that the Assuming Bank requires the Receiver to purchase;
  - (ii) a list of all Related Liabilities with respect to the Assets identified pursuant to (i) above; and
  - (iii) a statement of the estimated Repurchase Price of each Asset identified pursuant to (i) above as of the applicable Put Date.
- Such notice shall be in the form prescribed by the Receiver or such other form to which the Receiver shall consent. As provided in Section 9.6, the Assuming Bank shall deliver to the Receiver such documents, Loan Files and such additional information relating to the subject matter of the Put Notice as the Receiver may request and shall provide to the Receiver full access to all other relevant books and records.
- (d) **Purchase by Receiver.** The Receiver shall purchase Loans that are specified in the Put Notice and shall assume Related Liabilities with respect to such Loans, and the transfer of such Loans and Related Liabilities shall be effective as of a date determined by the Receiver, which date shall not be later than thirty (30) days after receipt by the Receiver of the Loan Files with respect to such Loans (the “Put Date”).
- (e) **Purchase Price and Payment Date.** Each Loan purchased by the Receiver pursuant to this Section 3.4 shall be purchased at a price equal to the Repurchase Price of such Loan less the Related Liability Amount applicable to such Loan, in each case determined as of the applicable Put Date. If the difference between such Repurchase Price and such Related Liability Amount is positive, then the Receiver shall pay to the Assuming Bank the amount of such difference; if the difference between such amounts is negative, then the Assuming Bank shall pay to the Receiver the amount of such difference. The Assuming Bank or the Receiver, as the case may be, shall pay the purchase price determined pursuant to this Section 3.4(e) not later than the twentieth (20th) Business Day following the applicable Put Date, together with interest on such amount at the Settlement Interest Rate for the period from and including such Put Date to and including the day preceding the date upon which payment is made.
- (f) **Servicing.** The Assuming Bank shall administer and manage any Asset subject to purchase by the Receiver in accordance with usual and prudent banking standards and business practices until such time as such Asset is purchased by the Receiver.
- (g) **Reversals.** In the event that the Receiver purchases an Asset (and assumes the Related Liability) that it is not required to purchase pursuant to this Section 3.4, the Assuming Bank shall repurchase such Asset (and assume such Related Liability) from the Receiver at a price computed so as to achieve the same economic result as would apply if the Receiver had never purchased such Asset pursuant to this Section 3.4.

**3.5 Assets Not Purchased by Assuming Bank.** The Assuming Bank does not purchase, acquire or assume, or (except as otherwise expressly provided in this Agreement) obtain an option to purchase, acquire or assume under this Agreement:

- (a) any financial institution bonds, banker’s blanket bonds, or public liability, fire, or extended coverage insurance policy or any other insurance policy of the Failed Bank, or premium refund, unearned premium derived from cancellation, or any proceeds payable with respect to any of the foregoing;
- (b) any interest, right, action, claim, or judgment against (i) any officer, director, employee, accountant, attorney, or any other Person employed or retained by the Failed Bank or any Subsidiary of the Failed Bank on or prior to the Bank Closing Date arising out of any act or omission of such Person in such capacity, (ii) any underwriter of financial institution bonds, banker’s blanket bonds or any other insurance policy of the Failed Bank, (iii) any shareholder or holding company of the Failed Bank, or (iv) any other Person whose action or inaction may be related to any loss (exclusive of any loss resulting from such Person’s failure to pay on a Loan made by the Failed Bank) incurred by the Failed Bank; provided, that for the purposes hereof, the acts, omissions or other events giving rise to any such claim shall have occurred on or before the Bank Closing Date, regardless of when any such claim is discovered and regardless of whether any such claim is made with respect to a financial institution bond, banker’s blanket bond, or any other insurance policy of the Failed Bank in force as of the Bank Closing Date;
- (c) prepaid regulatory assessments of the Failed Bank, if any;
- (d) legal or equitable interests in tax receivables of the Failed Bank, if any, including any claims arising as a result of the Failed Bank having entered into any agreement or otherwise being joined with another Person with respect to the filing of tax returns or the payment of taxes;
- (e) Federal Reserve Bank and Federal Home Loan Bank stock, if any;
- (f) amounts reflected on the Accounting Records of the Failed Bank as of the Bank Closing Date as a general or specific loss reserve or contingency account, if any;
- (g) owned and leased Bank Premises and owned and leased Furniture and Equipment and Fixtures and data processing equipment (including hardware and software) located on Bank Premises, if any; provided, that the Assuming Bank does obtain an option under Section 4.6, Section 4.7 or Section 4.8, as the case may be, with respect thereto;

- (h) owned Bank Premises which the Receiver, in its discretion, determines may contain environmentally hazardous substances;
- (i) any amounts owed to the Failed Bank by any Subsidiary of the Failed Bank other than an Acquired Subsidiary;
- (j) any “goodwill,” as such term is defined in the instructions to the report of condition prepared by banks examined by the Corporation in accordance with 12 C.F.R. Section 304.4, and other intangibles;
- (k) any security if, in the discretion of the Receiver, the value of such security either cannot be determined or is determined to be zero pursuant to Section 3.2(b), and any security listed on Schedule 3.5(k), if any; and
- (l) any criminal restitution or forfeiture orders issued in favor of the Failed Bank.

The Assuming Bank only acquires assets and rights as provided in this Agreement. The foregoing shall not be construed to imply that any particular asset or right listed otherwise would have been sold or assigned or that any asset or right not listed is sold or assigned.

### **3.6 Assets Essential to Receiver.**

- (a) The Receiver may refuse to sell to the Assuming Bank, or the Assuming Bank agrees, at the request of the Receiver set forth in a written notice to the Assuming Bank, to assign, transfer, convey, and deliver to the Receiver all of the Assuming Bank’s right, title and interest in and to, any Asset or asset essential to the Receiver as determined by the Receiver in its discretion (together with all Credit Documents evidencing or pertaining thereto), which may include any Asset or asset that the Receiver determines to be:
  - (i) made to an officer, director, or other Person engaging in the affairs of the Failed Bank, its Subsidiaries or Affiliates or any related entities of any of the foregoing;
  - (ii) the subject of any investigation relating to any claim with respect to any item described in Section 3.5(a) or (b), or the subject of, or potentially the subject of, any legal proceedings;
  - (iii) made to a Person who is an Obligor on a loan owned by the Receiver or the Corporation in its corporate capacity or its capacity as receiver of any institution;
  - (iv) secured by collateral which also secures any asset owned by the Receiver; or
  - (v) related to any asset of the Failed Bank not purchased by the Assuming Bank under this Article III or any liability of the Failed Bank not assumed by the Assuming Bank under Article II.
- (b) Each such Asset or asset purchased by the Receiver shall be purchased at a price equal to the Repurchase Price thereof less the Related Liability Amount with respect to any Related Liabilities related to such Asset or asset, in each case determined as of the date of the notice provided by the Receiver pursuant to Section 3.6(a). The Receiver shall pay the Assuming Bank not later than the twentieth (20th) Business Day following receipt of related Credit Documents and Loan Files together with interest on such amount at the Settlement Interest Rate for the period from and including the date of receipt of such documents to and including the day preceding the day on which payment is made. The Assuming Bank agrees to administer and manage each such Asset or asset in accordance with usual and prudent banking standards and business practices until each such Loan is purchased by the Receiver. All transfers with respect to Loans under this Section 3.6 shall be made as provided in Section 9.6. The Assuming Bank shall transfer all such Assets or assets and Related Liabilities to the Receiver without recourse, and shall indemnify the Receiver against any and all claims of any Person claiming by, through or under the Assuming Bank with respect to any such Asset or asset, as provided in Section 12.4.

# Article IV

## Assumption of Certain Duties and Obligations

The Assuming Bank agrees with the Receiver and the Corporation as follows:

**4.1 Continuation of Banking Business.** The Assuming Bank agrees to provide full service banking in the trade area of the Failed Bank commencing on the first banking business day (including a Saturday) after Bank Closing and to maintain such presence until it has received all necessary regulatory approvals to cease providing such banking services in the trade area. At the option of the Assuming Bank, such banking services may be provided at any or all of the Bank Premises, or at other premises within such trade area.

**4.2 Agreement with Respect to Credit Card Business.** The Assuming Bank agrees to honor and perform, from and after the Bank Closing Date, all duties and obligations with respect to the Failed Bank's credit card business, and/or processing related to credit cards, if any, and assumes all outstanding extensions of credit with respect thereto. Fees related to the credit card business collected prior to the Bank Closing Date shall be for the benefit of the Receiver and fees collected after the Bank Closing Date shall be for the benefit of the Assuming Bank.

**4.3 Agreement with Respect to Safe Deposit Business.** The Assuming Bank assumes and agrees to discharge, from and after the Bank Closing Date, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to all Safe Deposit Boxes, if any, of the Failed Bank and to maintain all of the necessary facilities for the use of such boxes by the renters thereof during the period for which such boxes have been rented and the rent therefor paid to the Failed Bank, subject to the provisions of the rental agreements between the Failed Bank and the respective renters of such boxes; provided, that the Assuming Bank may relocate the Safe Deposit Boxes of the Failed Bank to any office of the Assuming Bank located in the trade area of the Failed Bank. Fees related to the safe deposit business collected prior to the Bank Closing Date shall be for the benefit of the Receiver and fees collected after the Bank Closing Date shall be for the benefit of the Assuming Bank.

**4.4 Agreement with Respect to Safekeeping Business.** The Receiver transfers, conveys and delivers to the Assuming Bank and the Assuming Bank accepts all securities and other items, if any, held by the Failed Bank in safekeeping for its customers as of the Bank Closing Date. The Assuming Bank assumes and agrees to honor and discharge, from and after the Bank Closing Date, the duties and obligations of the Failed Bank with respect to such securities and items held in safekeeping. The Assuming Bank shall be entitled to all rights and benefits heretofore accrued or hereafter accruing with respect thereto; provided, that, fees related to the safe keeping business collected prior to the Bank Closing Date shall be for the benefit of the Receiver and fees collected after the Bank Closing Date shall be for the benefit of the Assuming Bank. The Assuming Bank shall provide to the Receiver written verification of all assets held by the Failed Bank for safekeeping within sixty (60) days after the Bank Closing Date.

**4.5 Agreement with Respect to Trust Business.**

- (a) The Assuming Bank shall, without further transfer, substitution, act or deed, to the full extent permitted by law, succeed to the rights, obligations, properties, assets, investments, deposits, agreements, and trusts of the Failed Bank under trusts, executorships, administrations, guardianships, and agencies, and other fiduciary or representative capacities, all to the same extent as though the Assuming Bank had assumed the same from the Failed Bank prior to the Bank Closing Date; provided, that any liability based on the misfeasance, malfeasance or nonfeasance of the Failed Bank, its directors, officers, employees or agents with respect to the trust business is not assumed hereunder. Fees related to the trust business collected prior to the Bank Closing Date shall be for the benefit of the Receiver and fees collected after the Bank Closing Date shall be for the benefit of the Assuming Bank.
- (b) The Assuming Bank shall, to the full extent permitted by law, succeed to, and be entitled to take and execute, the appointment to all executorships, trusteeships, guardianships and other fiduciary or representative capacities to which the Failed Bank is or may be named in wills, whenever probated, or to which the Failed Bank is or may be named or appointed by any other instrument.

- (c) In the event additional proceedings of any kind are necessary to accomplish the transfer of such trust business, the Assuming Bank agrees that, at its own expense, it will take whatever action is necessary to accomplish such transfer. The Receiver agrees to use reasonable efforts to assist the Assuming Bank in accomplishing such transfer.
- (d) The Assuming Bank shall provide to the Receiver written verification of the assets held in connection with the Failed Bank's trust business within sixty (60) days after the Bank Closing Date.

#### 4.6 Agreement with Respect to Bank Premises.

- (a) **Option to Purchase.** Subject to Section 3.5, the Receiver hereby grants to the Assuming Bank an exclusive option for the period of ninety (90) days commencing the day after the Bank Closing Date to purchase any or all owned Bank Premises. The Assuming Bank shall give written notice to the Receiver within the option period of its election to purchase or not to purchase any of the owned Bank Premises. Any purchase of such premises shall be effective as of the Bank Closing Date and such purchase shall be consummated as soon as practicable thereafter, and in no event later than the Settlement Date.
- (b) **Option to Lease.** The Receiver hereby grants to the Assuming Bank an exclusive option for the period of ninety (90) days commencing the day after the Bank Closing Date to cause the Receiver to assign to the Assuming Bank any or all leases for leased Bank Premises, if any, which have been continuously occupied by the Assuming Bank from the Bank Closing Date to the date it elects to accept an assignment of the leases with respect thereto to the extent such leases can be assigned; provided, that the exercise of this option with respect to any lease must be as to all premises or other property subject to the lease. If an assignment cannot be made of any such leases, the Receiver may, in its discretion, enter into subleases with the Assuming Bank containing the same terms and conditions provided under such existing leases for such leased Bank Premises or other property. The Assuming Bank shall give notice to the Receiver within the option period of its election to accept or not to accept an assignment of any or all leases (or enter into subleases or new leases in lieu thereof). The Assuming Bank agrees to assume all leases assigned (or enter into subleases or new leases in lieu thereof) pursuant to this Section 4.6.
- (c) **Facilitation.** The Receiver agrees to facilitate the assumption, assignment or sublease of leases or the negotiation of new leases by the Assuming Bank; provided, that neither the Receiver nor the Corporation shall be obligated to engage in litigation, make payments to the Assuming Bank or to any third party in connection with facilitating any such assumption, assignment, sublease or negotiation or commit to any other obligations to third parties.
- (d) **Occupancy.** The Assuming Bank shall give the Receiver fifteen (15) days' prior written notice of its intention to vacate prior to vacating any leased Bank Premises with respect to which the Assuming Bank has not exercised the option provided in Section 4.6(b). Any such notice shall be deemed to terminate the Assuming Bank's option with respect to such leased Bank Premises.
- (e) **Occupancy Costs.**
  - (i) The Assuming Bank agrees to pay to the Receiver, or to appropriate third parties at the direction of the Receiver, during and for the period of any occupancy by it of (x) owned Bank Premises the market rental value and all operating costs, and (y) leased Bank Premises, all operating costs with respect thereto and to comply with all relevant terms of applicable leases entered into by the Failed Bank, including without limitation the timely payment of all rent. Operating costs include, without limitation all taxes, fees, charges, utilities, insurance and assessments, to the extent not included in the rental value or rent. If the Assuming Bank elects to purchase any owned Bank Premises in accordance with Section 4.6(a), the amount of any rent paid (and taxes paid to the Receiver which have not been paid to the taxing authority and for which the Assuming Bank assumes liability) by the Assuming Bank with respect thereto shall be applied as an offset against the purchase price thereof.
  - (ii) The Assuming Bank agrees during the period of occupancy by it of owned or leased Bank Premises, to pay to the Receiver rent for the use of all owned or leased Furniture and Equipment and all owned or leased Fixtures located on such Bank Premises for the period of such occupancy. Rent for such property owned by the Failed Bank shall be the market rental value thereof, as determined by the Receiver within sixty (60) days after the Bank Closing Date. Rent for such leased property shall be an amount equal to any and all rent and other amounts which the Receiver incurs or accrues as an obligation or is obligated to pay for such period of occupancy pursuant to all leases and contracts with respect to such property. If the Assuming Bank purchases any owned Furniture and Equipment or owned Fixtures in accordance with Section 4.6(f) or 4.6(h), the amount of any rents paid by the Assuming Bank with respect thereto shall be applied as an offset against the purchase price thereof.
- (f) **Certain Requirements as to Furniture, Equipment and Fixtures.** If the Assuming Bank purchases owned Bank Premises or accepts an assignment of the lease (or enters into a sublease or a new lease in lieu thereof) for leased Bank Premises as provided in Section 4.6(a) or 4.6(b), or if the Assuming Bank does not exercise such option but within twelve (12) months following the Bank Closing Date obtains the right to occupy such premises (whether by assignment, lease, sublease, purchase or otherwise), other than in accordance with Section 4.6(a) or (b), the Assuming Bank shall (i) effective



as of the date of the Bank Closing Date, purchase from the Receiver all Furniture and Equipment and Fixtures owned by the Failed Bank and located thereon as of the Bank Closing Date, (ii) accept an assignment or a sublease of the leases or negotiate new leases for all Furniture and Equipment and Fixtures leased by the Failed Bank and located thereon, and (iii) if applicable, accept an assignment or a sublease of any ground lease or negotiate a new ground lease with respect to any land on which such Bank Premises are located; provided, that the Receiver shall not have disposed of such Furniture and Equipment and Fixtures or repudiated the leases specified in clause (ii) or (iii).

**(g) Vacating Premises.**

(i) If the Assuming Bank elects not to purchase any owned Bank Premises, the notice of such election in accordance with Section 4.6(a) shall specify the date upon which the Assuming Bank's occupancy of such premises shall terminate, which date shall not be later than ninety (90) days after the date of the Assuming Bank's notice not to exercise such option. The Assuming Bank promptly shall relinquish and release to the Receiver such premises and the Furniture and Equipment and Fixtures located thereon in the same condition as at the Bank Closing Date, normal wear and tear excepted. By occupying any such premises after the expiration of such ninety (90)-day period, the Assuming Bank shall, at the Receiver's option, (x) be deemed to have agreed to purchase such Bank Premises, and to assume all leases, obligations and liabilities with respect to leased Furniture and Equipment and leased Fixtures located thereon and any ground lease with respect to the land on which such premises are located, and (y) be required to purchase all Furniture and Equipment and Fixtures owned by the Failed Bank and located on such premises as of the Bank Closing Date.

(ii) If the Assuming Bank elects not to accept an assignment of the lease or sublease any leased Bank Premises, the notice of such election in accordance with Section 4.6(b) shall specify the date upon which the Assuming Bank's occupancy of such leased Bank Premises shall terminate, which date shall not be later than the date which is one hundred eighty (180) days after the Bank Closing Date. Upon vacating such premises, the Assuming Bank shall relinquish and release to the Receiver such premises and the Fixtures and the Furniture and Equipment located thereon in the same condition as at the Bank Closing Date, normal wear and tear excepted. By failing to provide notice of its intention to vacate such premises prior to the expiration of the option period specified in Section 4.6(b), or by occupying such premises after the one hundred eighty (180)-day period specified above in this paragraph (ii), the Assuming Bank shall, at the Receiver's option, (x) be deemed to have assumed all leases, obligations and liabilities with respect to such premises (including any ground lease with respect to the land on which premises are located), and leased Furniture and Equipment and leased Fixtures located thereon in accordance with this Section 4.6 (unless the Receiver previously repudiated any such lease), and (y) be required to purchase all Furniture and Equipment and Fixtures owned by the Failed Bank and located on such premises as of the Bank Closing Date.

**(h) Furniture and Equipment and Certain Other Equipment.** The Receiver hereby grants to the Assuming Bank an option to purchase, effective as of the date of the Bank Closing Date, all Furniture and Equipment or any telecommunications, data processing equipment (including hardware and software) and check processing and similar operating equipment owned by the Failed Bank and located at any owned or leased Bank Premises that the Assuming Bank elects to vacate or which it could have, but did not occupy, pursuant to this Section 4.6; provided, that, the Assuming Bank shall give the Receiver notice of its election to purchase such property at the time it gives notice of its intention to vacate such Bank Premises or within ten (10) days after the Bank Closing Date for Bank Premises it could have, but did not, occupy.

#### **4.7 Agreement with Respect to Leased Data Processing Equipment.**

- (a) The Receiver hereby grants to the Assuming Bank an exclusive option for the period of ninety (90) days commencing the day after the Bank Closing Date to accept an assignment from the Receiver of any or all Data Processing Leases to the extent that such Data Processing Leases can be assigned.
- (b) The Assuming Bank shall (i) give written notice to the Receiver within the option period specified in Section 4.7(a) of its intent to accept an assignment or sublease of any or all Data Processing Leases and promptly accept an assignment or sublease of such Data Processing Leases, and (ii) give written notice to the appropriate lessor(s) that it has accepted an assignment or sublease of any such Data Processing Leases.
- (c) The Receiver agrees to facilitate the assignment or sublease of Data Processing Leases or the negotiation of new leases or license agreements by the Assuming Bank; provided, that neither the Receiver nor the Corporation shall be obligated to engage in litigation or make payments to the Assuming Bank or to any third party in connection with facilitating any such assumption, assignment, sublease or negotiation.
- (d) The Assuming Bank agrees, during its period of use of any property subject to a Data Processing Lease, to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of the applicable Data Processing Leases entered into by the Failed Bank, including without limitation the timely payment of all rent, taxes, fees, charges, utilities, insurance and assessments.

- (e) The Assuming Bank shall, not later than fifty (50) days after giving the notice provided in Section 4.7(b), (i) relinquish and release to the Receiver all property subject to the relevant Data Processing Lease, in the same condition as at the Bank Closing Date, normal wear and tear excepted, or (ii) accept an assignment or a sublease thereof or negotiate a new lease or license agreement under this Section 4.7.

#### **4.8 Agreement with Respect to Certain Existing Agreements.**

- (a) Subject to the provisions of Section 4.8(b), with respect to agreements existing as of the Bank Closing Date which provide for the rendering of services by or to the Failed Bank, within thirty (30) days after the Bank Closing Date, the Assuming Bank shall give the Receiver written notice specifying whether it elects to assume or not to assume each such agreement. Except as may be otherwise provided in this Article IV, the Assuming Bank agrees to comply with the terms of each such agreement for a period commencing on the day after the Bank Closing Date and ending on: (i) in the case of an agreement that provides for the rendering of services by the Failed Bank, the date which is ninety (90) days after the Bank Closing Date, and (ii) in the case of an agreement that provides for the rendering of services to the Failed Bank, the date which is thirty (30) days after the Assuming Bank has given notice to the Receiver of its election not to assume such agreement; provided, that the Receiver can reasonably make such service agreements available to the Assuming Bank. The Assuming Bank shall be deemed by the Receiver to have assumed agreements for which no notification is timely given. The Receiver agrees to assign, transfer, convey, and deliver to the Assuming Bank all right, title and interest of the Receiver, if any, in and to agreements the Assuming Bank assumes hereunder. In the event the Assuming Bank elects not to accept an assignment of any lease (or sublease) or negotiate a new lease for leased Bank Premises under Section 4.6 and does not otherwise occupy such premises, the provisions of this Section 4.8(a) shall not apply to service agreements related to such premises. The Assuming Bank agrees, during the period it has the use or benefit of any such agreement, promptly to pay to the Receiver or to appropriate third parties at the direction of the Receiver all operating costs with respect thereto and to comply with all relevant terms of such agreement.
- (b) The provisions of Section 4.8(a) shall not apply to (i) agreements pursuant to which the Failed Bank provides mortgage servicing for others or mortgage servicing is provided to the Failed Bank by others, (ii) agreements that are subject to Sections 4.1 through 4.7 and any insurance policy or bond referred to in Section 3.5(a) or other agreement specified in Section 3.5, and (iii) consulting, management or employment agreements, if any, between the Failed Bank and its employees or other Persons. Except as otherwise expressly set forth elsewhere in this Agreement, the Assuming Bank does not assume any liabilities or acquire any rights under any of the agreements described in this Section 4.8(b).

**4.9 Informational Tax Reporting.** The Assuming Bank agrees to perform all obligations of the Failed Bank with respect to Federal and State income tax informational reporting related to (i) the Assets and the Liabilities Assumed, (ii) deposit accounts that were closed and loans that were paid off or collateral obtained with respect thereto prior to the Bank Closing Date, (iii) miscellaneous payments made to vendors of the Failed Bank, and (iv) any other asset or liability of the Failed Bank, including, without limitation, loans not purchased and Deposits not assumed by the Assuming Bank, as may be required by the Receiver.

**4.10 Insurance.** The Assuming Bank agrees to obtain insurance coverage effective from and after the Bank Closing Date, including public liability, fire and extended coverage insurance acceptable to the Receiver with respect to owned or leased Bank Premises that it occupies, and all owned or leased Furniture and Equipment and Fixtures and leased data processing equipment (including hardware and software) located thereon, in the event such insurance coverage is not already in force and effect with respect to the Assuming Bank as the insured as of the Bank Closing Date. All such insurance shall, where appropriate (as determined by the Receiver), name the Receiver as an additional insured.

**4.11 Services for Receiver and Corporation.** For the period commencing on the day following Bank Closing and ending on the one hundred eightieth (180th) day thereafter, the Assuming Bank agrees to provide to the Receiver and the Corporation, without charge, adequate and suitable office space (including parking facilities and vault space), furniture, equipment (including photocopying and telecopying machines), email accounts, network access and technology resources (such as shared drive) and utilities (including local telephone service and fax machines) at the Bank Premises occupied by the Assuming Bank for their use in the discharge of their respective functions with respect to the Failed Bank. In the event the Receiver and the Corporation determine that the space provided is inadequate or unsuitable, the Receiver and the Corporation may relocate to other quarters having adequate and suitable space and the costs of relocation and any rental and utility costs for the balance of the period of occupancy by the Receiver and the Corporation shall be borne by the Assuming Bank. Additionally, the Assuming Bank agrees to pay such bills and invoices on behalf of the Receiver and Corporation as the Receiver or Corporation may direct for the period beginning on the date of Bank Closing and ending on Settlement Date. Assuming Bank shall submit it requests for reimbursement of such expenditures pursuant to Article VIII of this Agreement.

#### **4.12 Agreement with Respect to Continuation of Group Health Plan Coverage for Former Employees of the Failed Bank.**

- (a) The Assuming Bank agrees to assist the Receiver, as provided in this Section 4.12, in offering individuals who were employees or former employees of the Failed Bank, or any of its Subsidiaries, and who, immediately prior to the Bank Closing Date, were receiving, or were eligible to receive, health insurance coverage or health insurance continuation coverage from the Failed Bank (“Eligible Individuals”), the opportunity to obtain health insurance coverage in the Corporation’s FIA Continuation Coverage Plan which provides for health insurance continuation coverage to such Eligible Individuals who are qualified beneficiaries of the Failed Bank as defined in Section 607 of the Employee Retirement Income Security Act of 1974, as amended (respectively, “qualified beneficiaries” and “ERISA”). The Assuming Bank shall consult with the Receiver and not later than five (5) Business Days after the Bank Closing Date shall provide written notice to the Receiver of the number (if available), identity (if available) and addresses (if available) of the Eligible Individuals who are qualified beneficiaries of the Failed Bank and for whom a “qualifying event” (as defined in Section 603 of ERISA) has occurred and with respect to whom the Failed Bank’s obligations under Part 6 of Subtitle B of Title I of ERISA have not been satisfied in full, and such other information as the Receiver may reasonably require. The Receiver shall cooperate with the Assuming Bank in order to permit it to prepare such notice and shall provide to the Assuming Bank such data in its possession as may be reasonably required for purposes of preparing such notice.
- (b) The Assuming Bank shall take such further action to assist the Receiver in offering the Eligible Individuals who are qualified beneficiaries of the Failed Bank the opportunity to obtain health insurance coverage in the Corporation’s FIA Continuation Coverage Plan as the Receiver may direct. All expenses incurred and paid by the Assuming Bank (i) in connection with the obligations of the Assuming Bank under this Section 4.12, and (ii) in providing health insurance continuation coverage to any Eligible Individuals who are hired by the Assuming Bank and such employees’ qualified beneficiaries shall be borne by the Assuming Bank.
- (c) This Section 4.12 is for the sole and exclusive benefit of the parties to this Agreement, and for the benefit of no other Person (including any former employee of the Failed Bank or any Subsidiary thereof or qualified beneficiary of such former employee). Nothing in this Section 4.12 is intended by the parties, or shall be construed, to give any Person (including any former employee of the Failed Bank or any Subsidiary thereof or qualified beneficiary of such former employee) other than the Corporation, the Receiver and the Assuming Bank any legal or equitable right, remedy or claim under or with respect to the provisions of this Section.

**4.13 Agreement with Respect to Interim Asset Servicing.** At any time after the Bank Closing Date, the Receiver may establish on its books an asset pool(s) and may transfer to such asset pool(s) (by means of accounting entries on the books of the Receiver) all or any assets and liabilities of the Failed Bank which are not acquired by the Assuming Bank, including, without limitation, wholly unfunded Commitments and assets and liabilities which may be acquired, funded or originated by the Receiver subsequent to the Bank Closing Date. The Receiver may remove assets (and liabilities) from or add assets (and liabilities) to such pool(s) at any time in its discretion. At the option of the Receiver, the Assuming Bank agrees to service, administer, and collect such pool assets in accordance with and for the term set forth in Exhibit 4.13 “Interim Asset Servicing Arrangement”.

**4.14 Agreement with Respect to Option to Purchase Loan Pools.** The Receiver hereby grants to the Assuming Bank an exclusive option for the period of 30 days commencing the day after the Bank Closing Date to establish and purchase loan pools at Book Value. The Assuming Bank shall give written notice to the Receiver within the option period of its election to establish and purchase any of the established pools. The pools shall be purchased pursuant to the FDIC’s loan sale agreement.

# Article V

## Duties with Respect to Depositors of the Failed Bank

**5.1 Payment of Checks, Drafts and Orders.** Subject to Section 9.5, the Assuming Bank agrees to pay all properly drawn checks, drafts and withdrawal orders of depositors of the Failed Bank presented for payment, whether drawn on the check or draft forms provided by the Failed Bank or by the Assuming Bank, to the extent that the Deposit balances to the credit of the respective makers or drawers assumed by the Assuming Bank under this Agreement are sufficient to permit the payment thereof, and in all other respects to discharge, in the usual course of conducting a banking business, the duties and obligations of the Failed Bank with respect to the Deposit balances due and owing to the depositors of the Failed Bank assumed by the Assuming Bank under this Agreement.

**5.2 Certain Agreements Related to Deposits.** Subject to Section 2.2, the Assuming Bank agrees to honor the terms and conditions of any written escrow or mortgage servicing agreement or other similar agreement relating to a Deposit liability assumed by the Assuming Bank pursuant to this Agreement.

### 5.3 Notice to Depositors.

- (a) Within seven (7) days after the Bank Closing Date, the Assuming Bank shall give (i) notice to depositors of the Failed Bank of its assumption of the Deposit liabilities of the Failed Bank, and (ii) any notice required under Section 2.2, by mailing to each such depositor a notice with respect to such assumption and by advertising in a newspaper of general circulation in the county or counties in which the Failed Bank was located. The Assuming Bank agrees that it will obtain prior approval of all such notices and advertisements from counsel for the Receiver and that such notices and advertisements shall not be mailed or published until such approval is received.
- (b) The Assuming Bank shall give notice by mail to depositors of the Failed Bank concerning the procedures to claim their deposits, which notice shall be provided to the Assuming Bank by the Receiver or the Corporation. Such notice shall be included with the notice to depositors to be mailed by the Assuming Bank pursuant to Section 5.3(a).
- (c) If the Assuming Bank proposes to charge fees different from those charged by the Failed Bank before it establishes new deposit account relationships with the depositors of the Failed Bank, the Assuming Bank shall give notice by mail of such changed fees to such depositors.

# Article VI

## Records

### 6.1 Transfer of Records.

- (a) In accordance with Section 3.1, the Receiver assigns, transfers, conveys and delivers to the Assuming Bank the following Records pertaining to the Deposit liabilities of the Failed Bank assumed by the Assuming Bank under this Agreement, except as provided in Section 6.4:
  - (i) signature cards, orders, contracts between the Failed Bank and its depositors and Records of similar character;
  - (ii) passbooks of depositors held by the Failed Bank, deposit slips, cancelled checks and withdrawal orders representing charges to accounts of depositors; and the following Records pertaining to the Assets:
  - (iii) records of deposit balances carried with other banks, bankers or trust companies;

- (iv) Loan and collateral records and Loan Files and other documents;
  - (v) deeds, mortgages, abstracts, surveys, and other instruments or records of title pertaining to real estate or real estate mortgages;
  - (vi) signature cards, agreements and records pertaining to Safe Deposit Boxes, if any; and
  - (vii) records pertaining to the credit card business, trust business or safekeeping business of the Failed Bank, if any.
- (b) The Receiver, at its option, may assign and transfer to the Assuming Bank by a single blanket assignment or otherwise, as soon as practicable after the Bank Closing Date, any other Records not assigned and transferred to the Assuming Bank as provided in this Agreement, including but not limited to loan disbursement checks, general ledger tickets, official bank checks, proof transactions (including proof tapes) and paid out loan files.

**6.2 Delivery of Assigned Records.** The Receiver shall deliver to the Assuming Bank all Records described in (i) Section 6.1(a) as soon as practicable on or after the date of this Agreement, and (ii) Section 6.1(b) as soon as practicable after making any assignment described therein.

**6.3 Preservation of Records.** The Assuming Bank agrees that it will preserve and maintain for the joint benefit of the Receiver, the Corporation and the Assuming Bank, all Records of which it has custody for such period as either the Receiver or the Corporation in its discretion may require, until directed otherwise, in writing, by the Receiver or Corporation. The Assuming Bank shall have the primary responsibility to respond to subpoenas, discovery requests, and other similar official inquiries with respect to the Records of which it has custody.

**6.4 Access to Records; Copies.** The Assuming Bank agrees to permit the Receiver and the Corporation access to all Records of which the Assuming Bank has custody, and to use, inspect, make extracts from or request copies of any such Records in the manner and to the extent requested, and to duplicate, in the discretion of the Receiver or the Corporation, any Record in the form of microfilm or microfiche pertaining to Deposit account relationships; provided, that in the event that the Failed Bank maintained one or more duplicate copies of such microfilm or microfiche Records, the Assuming Bank hereby assigns, transfers, and conveys to the Corporation one such duplicate copy of each such Record without cost to the Corporation, and agrees to deliver to the Corporation all Records assigned and transferred to the Corporation under this Article VI as soon as practicable on or after the date of this Agreement. The party requesting a copy of any Record shall bear the cost (based on standard accepted industry charges to the extent applicable, as determined by the Receiver) for providing such duplicate Records. A copy of each Record requested shall be provided as soon as practicable by the party having custody thereof.

## Article VII

### Bid; Initial Payment

[ \*\*\*NOTE TO ACQUIRER: The following will be modified to reflect the transaction consummated.]

The Assuming Bank has submitted to the Receiver a [positive] [negative] bid of [\_\_\_\_\_] % of the Assumed Deposits for the Assets purchased and Liabilities Assumed hereunder (the “Bid Amount”). The Deposit bid will be applied to the total of all Assumed Deposits except for brokered, CDARS, and any market place or similar subscription services Deposits. On the Payment Date, the Assuming Bank will pay to the Corporation, or the Corporation will pay to the Assuming Bank, as the case may be, the Initial Payment, together with interest on such amount (if the Payment Date is not the day following the day of the Bank Closing Date) from and including the day following the Bank Closing Date to and including the day preceding the Payment Date at the Settlement Interest Rate.

# Article VIII

## Adjustments

**8.1 Pro Forma Statement.** It is understood that the determination of the Initial Payment is based on the Receiver's best estimate of the Liabilities Assumed and the Assets at the Bank Closing Date. The Receiver, as soon as practicable after the Bank Closing Date, in accordance with the best information then available, shall provide to the Assuming Bank a pro forma statement reflecting any adjustments of such liabilities and assets as may be necessary. Such pro forma statement shall take into account, to the extent possible, (i) liabilities and assets of a nature similar to those contemplated by Section 2.1 or Section 3.1, respectively, which at the Bank Closing Date were carried in the Failed Bank's suspense accounts, (ii) accruals as of the Bank Closing Date for all income related to the assets and business of the Failed Bank acquired by the Assuming Bank hereunder, whether or not such accruals were reflected on the Accounting Records of the Failed Bank in the normal course of its operations, and (iii) adjustments to determine the Book Value of any investment in an Acquired Subsidiary and related accounts on the "bank only" (unconsolidated) balance sheet of the Failed Bank based on the equity method of accounting, whether or not the Failed Bank used the equity method of accounting for investments in subsidiaries, except that the resulting amount cannot be less than the Acquired Subsidiary's recorded equity as of the Bank Closing Date as reflected on the Accounting Records of the Acquired Subsidiary. Any Loan purchased by the Assuming Bank pursuant to Section 3.1 which the Failed Bank charged off shall be deemed not to be charged off for the purposes of the pro forma statement, and the purchase price shall be determined pursuant to Section 3.2.

### 8.2 Correction of Errors and Omissions; Other Liabilities.

- (a) In the event any bookkeeping omissions or errors are discovered in preparing any pro forma statement or in completing the transfers and assumptions contemplated hereby, the parties hereto agree to correct such errors and omissions, it being understood that, as far as practicable, all adjustments will be made consistent with the judgments, methods, policies or accounting principles utilized by the Failed Bank in preparing and maintaining Accounting Records, except that adjustments made pursuant to this Section 8.2(a) are not intended to bring the Accounting Records of the Failed Bank into accordance with generally accepted accounting principles.
- (b) If the Receiver discovers at any time subsequent to the date of this Agreement that any claim exists against the Failed Bank which is of such a nature that it would have been included in the liabilities assumed under Article II had the existence of such claim or the facts giving rise thereto been known as of the Bank Closing Date, the Receiver may, in its discretion, at any time, require that such claim be assumed by the Assuming Bank in a manner consistent with the intent of this Agreement. The Receiver will make appropriate adjustments to the pro forma statement provided by the Receiver to the Assuming Bank pursuant to Section 8.1 as may be necessary.

**8.3 Payments.** The Receiver agrees to cause to be paid to the Assuming Bank, or the Assuming Bank agrees to pay to the Receiver, as the case may be, on the Settlement Date, a payment in an amount which reflects net adjustments (including any costs, expenses and fees associated with determinations of value as provided in this Agreement) made pursuant to Section 8.1 or Section 8.2, plus interest as provided in Section 8.4. The Receiver and the Assuming Bank agree to effect on the Settlement Date any further transfer of assets to or assumption of liabilities or claims by the Assuming Bank as may be necessary in accordance with Section 8.1 or Section 8.2.

**8.4 Interest.** Any amounts paid under Section 8.3 or Section 8.5, shall bear interest for the period from and including the day following the Bank Closing Date to and including the day preceding the payment at the Settlement Interest Rate.

**8.5 Subsequent Adjustments.** In the event that the Assuming Bank or the Receiver discovers any errors or omissions as contemplated by Section 8.2 or any error with respect to the payment made under Section 8.3 after the Settlement Date, the Assuming Bank and the Receiver agree to promptly correct any such errors or omissions, make any payments and effect any transfers or assumptions as may be necessary to reflect any such correction plus interest as provided in Section 8.4.

# Article IX

## Continuing Cooperation

**9.1 General Matters.** The parties hereto agree that they will, in good faith and with their best efforts, cooperate with each other to carry out the transactions contemplated by this Agreement and to effect the purposes hereof.

**9.2 Additional Title Documents.** The Receiver, the Corporation and the Assuming Bank each agree, at any time, and from time to time, upon the request of any party hereto, to execute and deliver such additional instruments and documents of conveyance as shall be reasonably necessary to vest in the appropriate party its full legal or equitable title in and to the property transferred pursuant to this Agreement or to be transferred in accordance herewith. The Assuming Bank shall prepare such instruments and documents of conveyance (in form and substance satisfactory to the Receiver) as shall be necessary to vest title to the Assets in the Assuming Bank. The Assuming Bank shall be responsible for recording such instruments and documents of conveyance at its own expense.

### 9.3 Claims and Suits.

- (a) The Receiver shall have the right, in its discretion, to (i) defend or settle any claim or suit against the Assuming Bank with respect to which the Receiver has indemnified the Assuming Bank in the same manner and to the same extent as provided in Article XII, and (ii) defend or settle any claim or suit against the Assuming Bank with respect to any Liability Assumed, which claim or suit may result in a loss to the Receiver arising out of or related to this Agreement, or which existed against the Failed Bank on or before the Bank Closing Date. The exercise by the Receiver of any rights under this Section 9.3(a) shall not release the Assuming Bank with respect to any of its obligations under this Agreement.
- (b) In the event any action at law or in equity shall be instituted by any Person against the Receiver and the Corporation as codefendants with respect to any asset of the Failed Bank retained or acquired pursuant to this Agreement by the Receiver, the Receiver agrees, at the request of the Corporation, to join with the Corporation in a petition to remove the action to the United States District Court for the proper district. The Receiver agrees to institute, with or without joinder of the Corporation as coplaintiff, any action with respect to any such retained or acquired asset or any matter connected therewith whenever notice requiring such action shall be given by the Corporation to the Receiver.

**9.4 Payment of Deposits.** In the event any depositor does not accept the obligation of the Assuming Bank to pay any Deposit liability of the Failed Bank assumed by the Assuming Bank pursuant to this Agreement and asserts a claim against the Receiver for all or any portion of any such Deposit liability, the Assuming Bank agrees on demand to provide to the Receiver funds sufficient to pay such claim in an amount not in excess of the Deposit liability reflected on the books of the Assuming Bank at the time such claim is made. Upon payment by the Assuming Bank to the Receiver of such amount, the Assuming Bank shall be discharged from any further obligation under this Agreement to pay to any such depositor the amount of such Deposit liability paid to the Receiver.

**9.5 Withheld Payments.** At any time, the Receiver or the Corporation may, in its discretion, determine that all or any portion of any deposit balance assumed by the Assuming Bank pursuant to this Agreement does not constitute a “Deposit” (or otherwise, in its discretion, determine that it is the best interest of the Receiver or Corporation to withhold all or any portion of any deposit), and may direct the Assuming Bank to withhold payment of all or any portion of any such deposit balance. Upon such direction, the Assuming Bank agrees to hold such deposit and not to make any payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. The Assuming Bank agrees to maintain the “withheld payment” status of any such deposit balance until directed in writing by the Receiver or the Corporation as to its disposition. At the direction of the Receiver or the Corporation, the Assuming Bank shall return all or any portion of such deposit balance to the Receiver or the Corporation, as appropriate, and thereupon the Assuming Bank shall be discharged from any further liability to such depositor with respect to such returned deposit balance. If such deposit balance has been paid to the depositor prior to a demand for return by the Corporation or the Receiver, and payment of such deposit balance had not been previously withheld pursuant to this Section, the Assuming Bank shall not be obligated to return such deposit balance to the Receiver or the Corporation. The Assuming Bank shall be obligated to reimburse the Corporation or the Receiver, as the case may be, for the amount of any deposit balance or portion thereof paid by the Assuming Bank in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance the payment of which was withheld pursuant to this Section.

## 9.6 Proceedings with Respect to Certain Assets and Liabilities.

- (a) In connection with any investigation, proceeding or other matter with respect to any asset or liability of the Failed Bank retained by the Receiver, or any asset of the Failed Bank acquired by the Receiver pursuant to this Agreement, the Assuming Bank shall cooperate to the extent reasonably required by the Receiver.
- (b) In addition to its obligations under Section 6.4, the Assuming Bank shall provide representatives of the Receiver access at reasonable times and locations without other limitation or qualification to (i) its directors, officers, employees and agents and those of the Acquired Subsidiaries, and (ii) its books and records, the books and records of the Acquired Subsidiaries and all Loan Files, and copies thereof. Copies of books, records and Loan Files shall be provided by the Assuming Bank as requested by the Receiver and the costs of duplication thereof shall be borne by the Receiver.
- (c) Not later than ten (10) days after the Put Notice pursuant to Section 3.4 or the date of the notice of transfer of any Loan by the Assuming Bank to the Receiver pursuant to Section 3.6, the Assuming Bank shall deliver to the Receiver such documents with respect to such Loan as the Receiver may request, including without limitation the following: (i) all related Credit Documents (other than certificates, notices and other ancillary documents), (ii) a certificate setting forth the principal amount on the date of the transfer and the amount of interest, fees and other charges then accrued and unpaid thereon, and any restrictions on transfer to which any such Loan is subject, and (iii) all Loan Files, and all documents, microfiche, microfilm and computer records (including but not limited to magnetic tape, disc storage, card forms and printed copy) maintained by, owned by, or in the possession of the Assuming Bank or any Affiliate of the Assuming Bank relating to the transferred Loan.

**9.7 Information.** The Assuming Bank promptly shall provide to the Corporation such other information, including financial statements and computations, relating to the performance of the provisions of this Agreement as the Corporation or the Receiver may request from time to time, and, at the request of the Receiver, make available employees of the Failed Bank employed or retained by the Assuming Bank to assist in preparation of the pro forma statement pursuant to Section 8.1.

# Article X

## Condition Precedent

The obligations of the parties to this Agreement are subject to the Receiver and the Corporation having received at or before the Bank Closing Date evidence reasonably satisfactory to each of any necessary approval, waiver, or other action by any governmental authority, the board of directors of the Assuming Bank, or other third party, with respect to this Agreement and the transactions contemplated hereby, the closing of the Failed Bank and the appointment of the Receiver, the chartering of the Assuming Bank, and any agreements, documents, matters or proceedings contemplated hereby or thereby.



# Article XI

## Representations and Warranties of the Assuming Bank

The Assuming Bank represents and warrants to the Corporation and the Receiver as follows:

- (a) **Corporate Existence and Authority.** The Assuming Bank (i) is duly organized, validly existing and in good standing under the laws of its Chartering Authority and has full power and authority to own and operate its properties and to conduct its business as now conducted by it, and (ii) has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Assuming Bank has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and the performance of the transactions contemplated hereby.
- (b) **Third Party Consents.** No governmental authority or other third party consents (including but not limited to approvals, licenses, registrations or declarations) are required in connection with the execution, delivery or performance by the Assuming Bank of this Agreement, other than such consents as have been duly obtained and are in full force and effect.
- (c) **Execution and Enforceability.** This Agreement has been duly executed and delivered by the Assuming Bank and when this Agreement has been duly authorized, executed and delivered by the Corporation and the Receiver, this Agreement will constitute the legal, valid and binding obligation of the Assuming Bank, enforceable in accordance with its terms.
- (d) **Compliance with Law.**
  - (i) Neither the Assuming Bank nor any of its Subsidiaries is in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any State, municipality or other political subdivision or any agency of any of the foregoing, or any court or other tribunal having jurisdiction over the Assuming Bank or any of its Subsidiaries or any assets of any such Person, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of the business of the Assuming Bank or of any of its Subsidiaries, or the ownership of the properties of the Assuming Bank or any of its Subsidiaries, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or condition (financial or otherwise) of the Assuming Bank or the ability of the Assuming Bank to perform, satisfy or observe any obligation or condition under this Agreement.
  - (ii) Neither the execution and delivery nor the performance by the Assuming Bank of this Agreement will result in any violation by the Assuming Bank of, or be in conflict with, any provision of any applicable law or regulation, or any order, writ or decree of any court or governmental authority.
- (e) **Representations Remain True.** The Assuming Bank represents and warrants that it has executed and delivered to the Corporation a Purchaser Eligibility Certification and Confidentiality Agreement and that all information provided and representations made by or on behalf of the Assuming Bank in connection with this Agreement and the transactions contemplated hereby, including, but not limited to, the Purchaser Eligibility Certification and Confidentiality Agreement (which are affirmed and ratified hereby) are and remain true and correct in all material respects and do not fail to state any fact required to make the information contained therein not misleading.

# Article XII

## Indemnification

**12.1 Indemnification of Indemnitees.** From and after the Bank Closing Date and subject to the limitations set forth in this Section and Section 12.6 and compliance by the Indemnitees with Section 12.2, the Receiver agrees to indemnify and hold harmless the Indemnitees against any and all costs, losses, liabilities, expenses (including attorneys' fees) incurred prior to the assumption of defense by the Receiver pursuant to paragraph (d) of Section 12.2, judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with claims against any Indemnitee based on liabilities of the Failed Bank that are not assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank for which indemnification is provided hereunder in (a) of this Section 12.1, subject to certain exclusions as provided in (b) of this Section 12.1:

- (a)
- (1) claims based on the rights of any shareholder or former shareholder as such of (x) the Failed Bank, or (y) any Subsidiary or Affiliate of the Failed Bank;
  - (2) claims based on the rights of any creditor as such of the Failed Bank, or any creditor as such of any director, officer, employee or agent of the Failed Bank, with respect to any indebtedness or other obligation of the Failed Bank arising prior to the Bank Closing Date;
  - (3) claims based on the rights of any present or former director, officer, employee or agent as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank;
  - (4) claims based on any action or inaction prior to the Bank Closing Date of the Failed Bank, its directors, officers, employees or agents as such, or any Subsidiary or Affiliate of the Failed Bank, or the directors, officers, employees or agents as such of such Subsidiary or Affiliate;
  - (5) claims based on any malfeasance, misfeasance or nonfeasance of the Failed Bank, its directors, officers, employees or agents with respect to the trust business of the Failed Bank, if any;
  - (6) claims based on any failure or alleged failure (not in violation of law) by the Assuming Bank to continue to perform any service or activity previously performed by the Failed Bank which the Assuming Bank is not required to perform pursuant to this Agreement or which arise under any contract to which the Failed Bank was a party which the Assuming Bank elected not to assume in accordance with this Agreement and which neither the Assuming Bank nor any Subsidiary or Affiliate of the Assuming Bank has assumed subsequent to the execution hereof;
  - (7) claims arising from any action or inaction of any Indemnitee, including for purposes of this Section 12.1(a)(7) the former officers or employees of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank that is taken upon the specific written direction of the Corporation or the Receiver, other than any action or inaction taken in a manner constituting bad faith, gross negligence or willful misconduct; and
  - (8) claims based on the rights of any depositor of the Failed Bank whose deposit has been accorded "withheld payment" status and/or returned to the Receiver or Corporation in accordance with Section 9.5 and/or has become an "unclaimed deposit" or has been returned to the Corporation or the Receiver in accordance with Section 2.3;
- (b) provided, that, with respect to this Agreement, except for paragraphs (7) and (8) of Section 12.1(a), no indemnification will be provided under this Agreement for any:
- (1) judgment or fine against, or any amount paid in settlement (without the written approval of the Receiver) by, any Indemnitee in connection with any action that seeks damages against any Indemnitee (a "counterclaim") arising with respect to any Asset and based on any action or inaction of either the Failed Bank, its directors, officers, employees or agents as such prior to the Bank Closing Date, unless any such judgment, fine or amount paid in settlement exceeds the greater of (i) the Repurchase Price of such Asset, or (ii) the monetary recovery sought on such Asset by the Assuming Bank in the cause of action from which the counterclaim arises; and in such event the Receiver will provide indemnification only in the amount of such excess; and no indemnification will be provided for any costs or expenses other than any costs or expenses (including attorneys' fees) which, in the determination of the Receiver, have been actually and reasonably incurred by such Indemnitee in connection with the defense of any such counterclaim; and it is expressly agreed that the Receiver reserves the right to intervene, in its discretion, on its behalf and/or on behalf of the Receiver, in the defense of any such counterclaim;
  - (2) claims with respect to any liability or obligation of the Failed Bank that is expressly assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank;

- (3) claims with respect to any liability of the Failed Bank to any present or former employee as such of the Failed Bank or of any Subsidiary or Affiliate of the Failed Bank, which liability is expressly assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank;
- (4) claims based on the failure of any Indemnitee to seek recovery of damages from the Receiver for any claims based upon any action or inaction of the Failed Bank, its directors, officers, employees or agents as fiduciary, agent or custodian prior to the Bank Closing Date;
- (5) claims based on any violation or alleged violation by any Indemnitee of the antitrust, branching, banking or bank holding company or securities laws of the United States of America or any State thereof;
- (6) claims based on the rights of any present or former creditor, customer, or supplier as such of the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank;
- (7) claims based on the rights of any present or former shareholder as such of the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank regardless of whether any such present or former shareholder is also a present or former shareholder of the Failed Bank;
- (8) claims, if the Receiver determines that the effect of providing such indemnification would be to (i) expand or alter the provisions of any warranty or disclaimer thereof provided in Section 3.3 or any other provision of this Agreement, or (ii) create any warranty not expressly provided under this Agreement;
- (9) claims which could have been enforced against any Indemnitee had the Assuming Bank not entered into this Agreement;
- (10) claims based on any liability for taxes or fees assessed with respect to the consummation of the transactions contemplated by this Agreement, including without limitation any subsequent transfer of any Assets or Liabilities Assumed to any Subsidiary or Affiliate of the Assuming Bank;
- (11) except as expressly provided in this Article XII, claims based on any action or inaction of any Indemnitee, and nothing in this Agreement shall be construed to provide indemnification for (i) the Failed Bank, (ii) any Subsidiary or Affiliate of the Failed Bank, or (iii) any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates; provided, that the Receiver, in its discretion, may provide indemnification hereunder for any present or former director, officer, employee or agent of the Failed Bank or its Subsidiaries or Affiliates who is also or becomes a director, officer, employee or agent of the Assuming Bank or its Subsidiaries or Affiliates;
- (12) claims or actions which constitute a breach by the Assuming Bank of the representations and warranties contained in Article XI;
- (13) claims arising out of or relating to the condition of or generated by an Asset arising from or relating to the presence, storage or release of any hazardous or toxic substance, or any pollutant or contaminant, or condition of such Asset which violate any applicable Federal, State or local law or regulation concerning environmental protection; and
- (14) claims based on, related to or arising from any asset, including a loan, acquired or liability assumed by the Assuming Bank, other than pursuant to this Agreement.

**12.2 Conditions Precedent to Indemnification.** It shall be a condition precedent to the obligation of the Receiver to indemnify any Person pursuant to this Article XII that such Person shall, with respect to any claim made or threatened against such Person for which such Person is or may be entitled to indemnification hereunder:

- (a) give written notice to the Regional Counsel (Litigation Branch) of the Corporation in the manner and at the address provided in Section 13.7 of such claim as soon as practicable after such claim is made or threatened; provided, that notice must be given on or before the date which is six (6) years from the date of this Agreement;
- (b) provide to the Receiver such information and cooperation with respect to such claim as the Receiver may reasonably require;
- (c) cooperate and take all steps, as the Receiver may reasonably require, to preserve and protect any defense to such claim;
- (d) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Receiver the right, which the Receiver may exercise in its sole discretion, to conduct the investigation, control the defense and effect settlement of such claim, including without limitation the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of any such claim, all of which shall be at the expense of the Receiver; provided, that the Receiver shall have notified the Person claiming indemnification in writing that such claim is a claim with respect to which the Person claiming indemnification is entitled to indemnification under this Article XII;
- (e) not incur any costs or expenses in connection with any response or suit with respect to such claim, unless such costs or expenses were incurred upon the written direction of the Receiver; provided, that the Receiver shall not be obligated to reimburse the amount of any such costs or expenses unless such costs or expenses were incurred upon the written direction of the Receiver;

- (f) not release or settle such claim or make any payment or admission with respect thereto, unless the Receiver consents in writing thereto, which consent shall not be unreasonably withheld; provided, that the Receiver shall not be obligated to reimburse the amount of any such settlement or payment unless such settlement or payment was effected upon the written direction of the Receiver; and
- (g) take reasonable action as the Receiver may request in writing as necessary to preserve, protect or enforce the rights of the indemnified Person against any Primary Indemnitor.

**12.3 No Additional Warranty.** Nothing in this Article XII shall be construed or deemed to (i) expand or otherwise alter any warranty or disclaimer thereof provided under Section 3.3 or any other provision of this Agreement with respect to, among other matters, the title, value, collectibility, genuineness, enforceability or condition of any (x) Asset, or (y) asset of the Failed Bank purchased by the Assuming Bank subsequent to the execution of this Agreement by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank, or (ii) create any warranty not expressly provided under this Agreement with respect thereto.

**12.4 Indemnification of Corporation and Receiver.** From and after the Bank Closing Date, the Assuming Bank agrees to indemnify and hold harmless the Corporation and the Receiver and their respective directors, officers, employees and agents from and against any and all costs, losses, liabilities, expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any of the following:

- (a) claims based on any and all liabilities or obligations of the Failed Bank assumed by the Assuming Bank pursuant to this Agreement or subsequent to the execution hereof by the Assuming Bank or any Subsidiary or Affiliate of the Assuming Bank, whether or not any such liabilities subsequently are sold and/or transferred, other than any claim based upon any action or inaction of any Indemnitee as provided in paragraph (7) or (8) of Section 12.1(a); and
- (b) claims based on any act or omission of any Indemnitee (including but not limited to claims of any Person claiming any right or title by or through the Assuming Bank with respect to Assets transferred to the Receiver pursuant to Section 3.4 or 3.6), other than any action or inaction of any Indemnitee as provided in paragraph (7) or (8) of Section 12.1(a).

**12.5 Obligations Supplemental.** The obligations of the Receiver, and the Corporation as guarantor in accordance with Section 12.7, to provide indemnification under this Article XII are to supplement any amount payable by any Primary Indemnitor to the Person indemnified under this Article XII. Consistent with that intent, the Receiver agrees only to make payments pursuant to such indemnification to the extent not payable by a Primary Indemnitor. If the aggregate amount of payments by the Receiver, or the Corporation as guarantor in accordance with Section 12.7, and all Primary Indemnitors with respect to any item of indemnification under this Article XII exceeds the amount payable with respect to such item, such Person being indemnified shall notify the Receiver thereof and, upon the request of the Receiver, shall promptly pay to the Receiver, or the Corporation as appropriate, the amount of the Receiver's (or Corporation's) payments to the extent of such excess.

**12.6 Criminal Claims.** Notwithstanding any provision of this Article XII to the contrary, in the event that any Person being indemnified under this Article XII shall become involved in any criminal action, suit or proceeding, whether judicial, administrative or investigative, the Receiver shall have no obligation hereunder to indemnify such Person for liability with respect to any criminal act or to the extent any costs or expenses are attributable to the defense against the allegation of any criminal act, unless (i) the Person is successful on the merits or otherwise in the defense against any such action, suit or proceeding, or (ii) such action, suit or proceeding is terminated without the imposition of liability on such Person.

**12.7 Limited Guaranty of the Corporation.** The Corporation hereby guarantees performance of the Receiver's obligation to indemnify the Assuming Bank as set forth in this Article XII. It is a condition to the Corporation's obligation hereunder that the Assuming Bank shall comply in all respects with the applicable provisions of this Article XII. The Corporation shall be liable hereunder only for such amounts, if any, as the Receiver is obligated to pay under the terms of this Article XII but shall fail to pay. Except as otherwise provided above in this Section 12.7, nothing in this Article XII is intended or shall be construed to create any liability or obligation on the part of the Corporation, the United States of America or any department or agency thereof under or with respect to this Article XII, or any provision hereof, it being the intention of the parties hereto that the obligations undertaken by the Receiver under this Article XII are the sole and exclusive responsibility of the Receiver and no other Person or entity.

**12.8 Subrogation.** Upon payment by the Receiver, or the Corporation as guarantor in accordance with Section 12.7, to any Indemnitee for any claims indemnified by the Receiver under this Article XII, the Receiver, or the Corporation as appropriate, shall become subrogated to all rights of the Indemnitee against any other Person to the extent of such payment.

# Article XIII

## Miscellaneous

**13.1 Entire Agreement.** This Agreement embodies the entire agreement of the parties hereto in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties.

**13.2 Headings.** The headings and subheadings of the Table of Contents, Articles and Sections contained in this Agreement, except the terms identified for definition in Article I and elsewhere in this Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

**13.3 Counterparts.** This Agreement may be executed in any number of counterparts and by the duly authorized representative of a different party hereto on separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

**13.4 Governing Law.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE MAIN OFFICE OF THE FAILED BANK IS LOCATED.

**13.5 Successors.** All terms and conditions of this Agreement shall be binding on the successors and assigns of the Receiver, the Corporation and the Assuming Bank. Except as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any Person other than the Receiver, the Corporation and the Assuming Bank any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of the Receiver, the Corporation and the Assuming Bank and for the benefit of no other Person.

**13.6 Modification; Assignment.** No amendment or other modification, rescission, release, or assignment of any part of this Agreement shall be effective except pursuant to a written agreement subscribed by the duly authorized representatives of the parties hereto.

**13.7 Notice.** Any notice, request, demand, consent, approval or other communication to any party hereto shall be effective when received and shall be given in writing, and delivered in person against receipt therefor, or sent by certified mail, postage prepaid, courier service, telex or facsimile transmission to such party (with copies as indicated below) at its address set forth below or at such other address as it shall hereafter furnish in writing to the other parties. All such notices and other communications shall be deemed given on the date received by the addressee.

**Assuming Bank** \_\_\_\_\_

Attention: \_\_\_\_\_

with a copy to: \_\_\_\_\_

### Receiver and Corporation

Federal Deposit Insurance Corporation,  
Receiver of [Failed Bank], [Location]  
1601 Bryan St.  
Dallas, Texas 75201

Attention: Deputy Director (DRR-Field Operations Branch)

with copy to: Regional Counsel (Litigation Branch)

**and with respect to notices under Article XII:**

Federal Deposit Insurance Corporation  
Receiver of [Failed Bank], [Location]  
1601 Bryan St.  
Dallas, Texas 75201

Attention: Regional Counsel (Litigation Branch)

**13.8 Manner of Payment.** All payments due under this Agreement shall be in lawful money of the United States of America in immediately available funds as each party hereto may specify to the other parties; provided, that in the event the Receiver or the Corporation is obligated to make any payment hereunder in the amount of \$25,000.00 or less, such payment may be made by check.

**13.9 Costs, Fees and Expenses.** Except as otherwise specifically provided herein, each party hereto agrees to pay all costs, fees and expenses which it has incurred in connection with or incidental to the matters contained in this Agreement, including without limitation any fees and disbursements to its accountants and counsel; provided, that the Assuming Bank shall pay all fees, costs and expenses (other than attorneys' fees incurred by the Receiver) incurred in connection with the transfer to it of any Assets or Liabilities Assumed hereunder or in accordance herewith.

**13.10 Waiver.** Each of the Receiver, the Corporation and the Assuming Bank may waive its respective rights, powers or privileges under this Agreement; provided, that such waiver shall be in writing; and further provided, that no failure or delay on the part of the Receiver, the Corporation or the Assuming Bank to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege by the Receiver, the Corporation, or the Assuming Bank under this Agreement, nor will any such waiver operate or be construed as a future waiver of such right, power or privilege under this Agreement.

**13.11 Severability.** If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

**13.12 Term of Agreement.** This Agreement shall continue in full force and effect until the sixth (6th) anniversary of the Bank Closing Date; provided, that the provisions of Section 6.3 and 6.4 shall survive the expiration of the term of this Agreement. Provided, however, the receivership of the Failed Bank may be terminated prior to the expiration of the term of this Agreement; in such event, the guaranty of the Corporation, as provided in and in accordance with the provisions of Section 12.7 shall be in effect for the remainder of the term. Expiration of the term of this Agreement shall not affect any claim or liability of any party with respect to any (i) amount which is owing at the time of such expiration, regardless of when such amount becomes payable, and (ii) breach of this Agreement occurring prior to such expiration, regardless of when such breach is discovered.

**13.13 Survival of Covenants, Etc.** The covenants, representations, and warranties in this Agreement shall survive the execution of this Agreement and the consummation of the transactions contemplated hereunder.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
RECEIVER OF [FAILED BANK],  
[LOCATION]**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Attest:

\_\_\_\_\_

**FEDERAL DEPOSIT INSURANCE CORPORATION**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Attest:

\_\_\_\_\_

**[ASSUMING BANK - INSERT NAME]**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Attest:

\_\_\_\_\_

**SCHEDULE 2.1 - Certain Liabilities Assumed**

**SCHEDULE 3.1 - Certain Assets Purchased**

**SCHEDULE 3.1(e) - Loans Secured, In Whole Or In Part, By Assumed Deposits Or  
Deposits At Other Depository Institutions**

**SEE ATTACHED LIST TO BE FURNISHED POST CLOSING**

**SCHEDULE 3.1(i) - Acquired Subsidiaries**

**NONE**



**SCHEDULE 3.2 - Purchase Price of Assets**

(a) cash and receivables from depository institutions, including cash items in the process of collection, plus interest thereon:	Book Value
(b) securities (exclusive of the capital stock of Acquired Subsidiaries), plus interest thereon:	As provided in Section 3.2(b)
(c) federal funds sold and repurchase agreements, if any, including interest thereon:	Book Value
(d) Omitted	
(e) Loans purchased pursuant to Section 3.1(e):	Book Value
(f) credit card business, if any, including all outstanding extensions of credit:	Book Value
(g) Safe Deposit Boxes and related business, safekeeping business and trust business, if any:	Fair Market Value
(h) Records and other documents:	Book Value
(i) capital stock of any Acquired Subsidiaries:	Fair Market Value
(j) amounts owed to the Failed Bank by any Acquired Subsidiary:	Fair Market Value
(k) assets securing Deposits of public money, to the extent not otherwise purchased hereunder:	Fair Market Value
(l) Overdrafts of customers:	Book Value
<b>assets subject to an option to purchase:</b>	
(a) Bank Premises:	Fair Market Value
(b) Furniture and Equipment:	Fair Market Value
(c) Fixtures:	Fair Market Value
(d) Other Equipment:	Fair Market Value

**SCHEDULE 3.5(k) - Securities Not Purchased**

**AS SPECIFIED IN SECTION 3.5**

## Exhibit 4.13. Interim Asset Servicing Arrangement

- (a) With respect to each asset (or liability) designated from time to time by the Receiver to be serviced by the Assuming Bank pursuant to this Arrangement (such being designated as “Pool Assets”), during the term of this Arrangement, the Assuming Bank shall:
- (i) Promptly apply payments received with respect to any Pool Assets;
  - (ii) Reverse and return insufficient funds checks;
  - (iii) Pay (A) participation payments to participants in Loans, as and when received; and (B) tax and insurance bills on Pool Assets as they come due, out of escrow funds maintained for purposes;
  - (iv) Maintain accurate records reflecting (A) the payment history of Pool Assets, with updated information received concerning changes in the address or identity of the obligors and (B) usage of data processing equipment and employee services with respect to servicing duties;
  - (v) Send billing statements to obligors on Pool Assets to the extent that such statements were sent by the Failed Bank;
  - (vi) Send notices to obligors who are in default on Loans (in the same manner as the Failed Bank);
  - (vii) Send to the Receiver, Attn: Managing Liquidator, at the address provided in Section 13.7 of the Agreement, via overnight delivery: (A) on a weekly basis, weekly reports for the Pool Assets, including, without limitation, reports reflecting collections and the trial balances, transaction journals and loan histories for Pool Assets having activity, together with copies of (1) checks received, (2) insufficient funds checks returned, (3) checks for payment to participants or for taxes and insurance, (4) pay-off requests, (5) notices to defaulted obligors, and (6) data processing and employee logs and (B) any other reports, copies or information as may be periodically or from time to time requested;
  - (viii) Remit on a weekly basis to the Receiver, Attn: Division of Finance, Cashier Unit, Operations, at the address in (vii), via wire transfer to the account designated by the Receiver, all payments received on Pool Assets managed by the Assuming Bank or at such time and place and in such manner as may be directed by the Receiver;
  - (ix) prepare and timely file all information reports with appropriate tax authorities, and, if required by the Receiver, prepare and file tax returns and pay taxes due on or before the due date, relating to the Pool Assets; and
  - (x) provide and furnish such other services, operations or functions as may be required with regard to Pool Assets, including, without limitation, as may be required with regard to any business, enterprise or agreement which is a Pool Asset, all as may be required by the Receiver.

Notwithstanding anything to the contrary in this Section, the Assuming Bank shall not be required to initiate litigation or other collection proceedings against any obligor or any collateral with respect to any defaulted Loan. The Assuming Bank shall promptly notify the Receiver, at the address provided above in subparagraph (a)(vii), of any claims or legal actions regarding any Pool Asset.

- (b) The Receiver agrees to reimburse the Assuming Bank for actual, reasonable and necessary expenses incurred in connection with the performance of duties pursuant to this Arrangement, including expenses of photocopying, postage and express mail, and data processing and employee services (based upon the number of hours spent performing servicing duties).
- (c) The Assuming Bank shall provide the services described herein for an initial period of ninety (90) days after the Bank Closing Date. At the option of the Receiver, exercisable by notice given not later than ten (10) days prior to the end of such initial period or a renewal period, the Assuming Bank shall continue to provide such services for such renewal period(s) as designated by the Receiver, up to the Settlement Date.
- (d) At any time during the term of this Arrangement, the Receiver may, upon written notice to the Assuming Bank, remove one or more Pool Assets from the Pool, at which time the Assuming Bank's responsibility with respect thereto shall terminate.
- (e) At the expiration of this Agreement or upon the termination of the Assuming Bank's responsibility with respect to any Pool Asset pursuant to paragraph (d) hereof, the Assuming Bank shall:
  - (i) deliver to the Receiver (or its designee) all of the Credit Documents and Pool Records relating to the Pool Assets; and
  - (ii) cooperate with the Receiver to facilitate the orderly transition of managing the Pool Assets to the Receiver (or its designee).
- (f) At the request of the Receiver, the Assuming Bank shall perform such transitional services with regard to the Pool Assets as the Receiver may request. Transitional services may include, without limitation, assisting in any due diligence process deemed necessary by the Receiver and providing to the Receiver or its designee(s) (x) information and data regarding the Pool Assets, including, without limitation, system reports and data downloads sufficient to transfer the Pool Assets to another system or systems, and (y) access to employees of the Assuming Bank involved in the management of, or otherwise familiar with, the Pool Assets.

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# Glossary<sup>1</sup>

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<b>Account hold</b>	An order placed on a deposit account by the deposit insurance agency to retain control of all or part of the depositor's account until some issue regarding the depositor can be resolved. The hold could be for an uninsured deposit, a delinquent loan, litigation, or other types of holds.
<b>Adjustable rate mortgage</b>	Any mortgage whose interest rate may increase or decrease periodically, along with monthly payments: usually offered at a rate lower than that of the fixed-rate mortgage.
<b>Appraised value</b>	A professional estimate of an asset's value (usually real estate).
<b>As of (a/o) date</b>	The effective date of an action, particularly a bank intervention. All institution data should reflect processing through this date.
<b>Asset management company (AMC)</b>	An entity established to manage and dispose of a significant number of distressed assets, usually acquired as part of a bank closing or restructuring.
<b>Asset valuation review</b>	A review of a failing bank's assets to estimate the liquidation value (used in least-cost analysis).
<b>Assuming bank</b>	The bank that acquires some or all of the assets and/or liabilities of a failed bank in a purchase and assumption transaction.
<b>Automated teller machine (ATM)</b>	A machine where customers can withdraw money from their deposit accounts and perform other activities such as balance inquiries and making deposits.
<b>Bank</b>	A company that, in the normal course of its business operations, accepts deposits and pays, processes, or transacts checks or other deposit accounts and performs related financial services for the public, generally making loans or advancing credit (may be minor variations depending on definition in applicable banking law).
<b>Bank intervention manager (BIM)</b>	The individual in charge of managing the bank intervention process until the operation is handed over to a conservator or receiver.
<b>Bank intervention team</b>	Individuals assigned as function managers or support personnel who perform the bank intervention function.
<b>Banker's acceptance</b>	A time draft drawn on and accepted by a bank, the customary means of effecting payment for merchandise sold in import-export transactions and a source of financing used extensively in international trade. With the credit strength of a bank behind it, the banker's acceptance usually qualifies as a money market instrument. The liability assumed by the bank is called its acceptance liability. See also Letter of credit.
<b>Bid list</b>	List of qualified potential acquirers for a P&A transaction.
<b>Book value</b>	The value at which an asset is carried on a bank's balance sheet.

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<sup>1</sup> Adapted in part from *Failed Financial Institution Closing Manual* (Federal Deposit Insurance Corporation, Washington, 2004), and *Resolutions Handbook* (Federal Deposit Insurance Corporation, Washington, 1998).

<b>Branch breakup</b>	A resolution strategy that provides bidders with the choice of bidding on the entire franchise or on individual or groups of branches of the failing bank.
<b>Bridge bank</b>	A temporary national bank established and operated by the authorities on an interim basis to acquire the assets and assume the liabilities of a failed bank until final resolution can be accomplished. Bridge banks are generally limited to situations in which more time is needed to accomplish the least costly resolution of a large or complex bank.
<b>Broker</b>	A person who acts as an agent for or an intermediary between a buyer and seller, and who usually charges a commission.
<b>Bulk sale</b>	Package of (usually similar) assets from failed banks sold on the “secondary market” for a percentage of its original or book value.
<b>Cash equivalents</b>	Assets of a bank that can be readily converted to cash (e.g., accounts due from other banks, all or a portion of required reserves, and some highly liquid investments).
<b>Cash flow</b>	Incoming and outgoing cash, representing the operating activities of a firm (bank). Also, the amount of money generated by an asset after the payment of expenses.
<b>Cashier’s check</b>	A check issued by a bank that represents a deposit obligation of the bank.
<b>Cease and desist order</b>	An order issued by a bank’s regulatory authority directing, with force of law, a bank to stop certain activities (e.g., certain lending, operating in an unsafe and unsound manner, etc.).
<b>Certificate of deposit (CD)</b>	A deposit account in a bank, usually with a minimum deposit amount, and with a maturity of usually greater than three days to several years, from which money usually cannot be withdrawn without loss of interest or other penalty and which earns interest at a rate established by law or the bank.
<b>Charge-off</b>	A loan that has been expensed as a loss (technically an off-book memorandum item, but still subject to collection or sale efforts).
<b>Claim</b>	An assertion of the indebtedness of a failed bank to a deposit insurance agency, depositor, general creditor, subordinated debt holder, or shareholder.
<b>Classified loan</b>	A loan considered doubtful, substandard, or a loss as determined by a supervisory authority’s examination.
<b>Closing</b>	See Intervention.
<b>Closing attorney</b>	The attorney assigned to advise the bank intervention manager, receiver, or conservator on matters regarding the failed bank. The closing attorney may also advise other members of the closing team, such as the asset manager.
<b>Confidentiality agreement</b>	Agreement between the supervisory authority and potential acquirers acknowledging the confidentiality of the information package and other bid documents and procedures. This agreement usually authorizes the potential acquirers to receive the information package and to perform on-site due diligence.
<b>Conservator</b>	A person appointed by a supervisory authority to operate a troubled bank in an effort to conserve, manage, and protect the troubled bank’s assets until the bank has been stabilized or closed. Usually a conservator is responsible for preparing a legitimate resolution plan for the bank, whether private, assisted, or a payout.
<b>Conservatorship</b>	The state of a bank being controlled by a conservator.
<b>Contingency funding plan (CFP)</b>	A plan developed by an illiquid bank or bank in conservatorship detailing how to fund operations.
<b>Contingent liability</b>	Potential claims on bank assets whose direct liability is dependent on some future event or circumstance, usually a result of off-balance-sheet activities such as loan commitments, letters of credit, pending litigation, etc.

<b>Conversion</b>	The process of transferring a closed bank's assets to another system, whether an assuming bank's or a receiver's.
<b>Credit review committee (CRC)</b>	A committee established by a liquidating office or a conservator to assist in analyzing and making decisions regarding disposition of assets (e.g., restructuring loans, discounted settlements, workouts, etc.).
<b>Customer information file</b>	The aggregation of a single customer's account at a bank, including deposits and loans.
<b>DBA</b>	Doing business as; also called an assumed name.
<b>Delegation of authority</b>	Authority given to specific individuals or committees to act in narrowly defined ways on behalf of a conservator or receiver.
<b>Demand deposit account (DDA)</b>	An account that can be drawn on by the depositor without prior notice to the bank.
<b>Deposit insurance agency (DIA)</b>	The entity that insures depositors' funds up to a certain amount, aiming to restore and ensure confidence in the banking system.
<b>Derivative</b>	Any security that derives its value from the price fluctuations of an underlying, separately traded financial asset (includes futures, forwards, options and swaps, etc.).
<b>Directors and officers (of a bank)</b>	May also refer to the liability insurance a bank carries against losses caused by its directors or officers.
<b>Dividend</b>	Distribution of income in excess of expenses to holders of approved receivers' certificates for a receivership, including the deposit insurance agency as subrogee of insured depositors, uninsured depositors, and general creditors, in accordance with the order of priorities for the receivership.
<b>Due diligence</b>	The review by a potential purchaser of a troubled bank's assets, liabilities, and franchise value.
<b>E-banking</b>	System permitting traditional banking functions to be performed by customers electronically.
<b>Errors and omissions</b>	Malpractice insurance provided to "professionals" such as lawyers, accountants, architects, and engineers.
<b>Estimated cash recovery</b>	An estimate of the cash recovery of an asset, along with timing involved.
<b>Federal Deposit Insurance Corporation (FDIC)</b>	The U.S. agency responsible for supervising banks, resolving a failing institution, reimbursing depositors in the event of a bank failure, and liquidating a failed bank's assets as receiver.
<b>Forbearance</b>	Temporary permission for a bank to operate in violation of regulatory standards (usually capital levels).
<b>Frozen account</b>	See Account hold.
<b>Funds flow analysis (FFA)</b>	Analysis of fund inflows and outflows developed by an illiquid bank or bank in conservatorship.
<b>Furniture, fixtures, and equipment</b>	A bank's real assets, such as office chairs and desks, computer equipment, etc.
<b>General creditors</b>	Any entity, including uninsured depositors, suppliers, contractors, etc., with unsecured claims against a failed bank.
<b>General ledger (G/L)</b>	Formal ledger containing all the financial statement accounts of a business—its control accounts summarize the details booked on separate subsidiary ledgers.
<b>Gross cash recovery</b>	A single amount reflecting the gross recovery anticipated over the remaining life of the asset.

<b>Indemnification</b>	Generally, a contract or assurance where one person (or entity) agrees to secure another person or entity against either anticipated financial losses or potential adverse legal consequences.
<b>Information package</b>	Detailed financial, operational, and demographic information for a particular problem bank, which is provided to qualified potential bidders for them to determine whether to bid.
<b>Information technology (IT)</b>	Term for a bank's computer system, including data processing, collection, storage, and retrieval.
<b>Insured deposit</b>	The amount of a deposit that is guaranteed to be paid by a country's deposit insurance agency.
<b>Interest earned not collected</b>	Accrual basis of income earned on an asset (e.g., loan or investment security), before it is actually collected.
<b>Internal rate of return</b>	True annual rate of earnings on an investment.
<b>Intervention</b>	Taking control of a bank's operations by the regulatory authority. Intervention can be to appoint a conservator or receiver, or for final resolution of a bank in conservatorship.
<b>Intervention action plan</b>	Detailed plan setting forth the actions of the various function areas for a bank intervention—developed in order to assure that as many risk areas as possible are covered.
<b>Judgments, deficiencies, and charge-offs (JDC)</b>	Assets, originally loans, where collection efforts have resulted in court judgments, collateral disposal at less than loan value, or write-offs.
<b>Least-cost test</b>	The calculation to determine the problem bank resolution method that is the least costly to a deposit insurance fund (or government budget) of all possible means of resolving the failed bank.
<b>Letter of agreement (LOA)</b>	An informal corrective measure imposed by the supervisory authority whereby a bank agrees to stop or correct some adverse action.
<b>Letter of credit (LOC)</b>	Instrument or document issued by a bank guaranteeing the payment of a customer's drafts up to a stated amount for a specified period.
<b>Liquidation</b>	The winding-down process of valuing, servicing, and converting the assets of a failed bank to cash to satisfy the claims of its creditors.
<b>Loan production office</b>	Bank office that processes loan applications. Generally does not accept deposits.
<b>Loans in process</b>	Extensions of credit approved but not funded as of the date of the closing of a bank.
<b>Loans serviced by others (LSBO)</b>	Loans owned by a bank that are serviced (payments collected, unpaid insurance, taxes force paid, payoffs calculated, etc.) by another bank or servicing company.
<b>Loans serviced for others (LSFO)</b>	Loans not owned by a bank but that are serviced (payments collected, unpaid insurance, taxes force paid, payoffs calculated, etc.) for another bank or investor.
<b>Loss sharing</b>	A purchase and assumption transaction option where the receiver agrees to share losses with the acquirer on certain types of loans (e.g., classified or nonperforming loans), with the idea that keeping these assets in the banking sector would produce a better net recovery.
<b>Management information system (MIS)</b>	The combination of effective accounting and information technology (computer systems and reporting) to support management decisions.
<b>Market discipline</b>	The forces in a free market that tend to control and limit the riskiness of a bank's investment, lending, and operational activities, represented by depositors' concern for funds safety and shareholders' concern for their bank's safety and soundness.
<b>Market value</b>	The price that a willing buyer and a willing seller agree to.

<b>Memorandum of understanding</b>	An official, though often not legally binding, agreement under which each of the parties commits to certain actions. Examples can include a supervisory authority's corrective measure with a problem bank, or an agreement on information sharing between a supervisory authority and a deposit insurer.
<b>Moral hazard</b>	The tendency to take greater risks with other people's money (i.e., depositors') than would be taken if only bank owners' funds are at risk.
<b>Nonsufficient funds check</b>	A check drawn on an account with insufficient funds to pay the check.
<b>Office of the Comptroller of the Currency</b>	The primary regulator and chartering authority of national banks in the United States.
<b>Office of Thrift Supervision</b>	The primary regulator and chartering authority of savings and loan associations in the United States.
<b>Open bank assistance (OBA)</b>	Provision of financial assistance (e.g., direct loans, asset purchases, deposit placement, etc.) to an open troubled bank (strongly discouraged).
<b>Operations review committee (ORC)</b>	A committee established by a liquidating office or a conservator to assist in analyzing and making decisions regarding nonasset-related matters (e.g., paying dividends on uninsured depositors' and creditors' claims, leasing additional office space, etc.).
<b>Other assets</b>	Bank assets other than cash, investments, loans, and banking premises.
<b>Owned real estate (ORE)</b>	Real estate owned by the failed bank and/or the receiver, through foreclosure or directly purchased, such as bank buildings.
<b>Payout or payoff</b>	The type of resolution in which the deposit insurance agency (DIA) is unable to arrange for the transfer of insured deposits to a healthy bank. The DIA makes payment directly to the insured depositors, and a receiver (which could be the DIA) liquidates the assets of the failed bank and distributes the proceeds to claimants.
<b>Pool</b>	Group of assets, usually loans, from failed bank(s) grouped for sale and/or managed by an outside servicer.
<b>Power of attorney</b>	An instrument by which one person, as principal, appoints another as his/her agent and confers upon him/her the authority to perform certain specified acts or kinds of acts on behalf of the principal.
<b>Present value</b>	Today's value of a future payment, or stream of payments, discounted at some appropriate compound interest, or discount rate; also known as the time value of money (a liquidator often uses present value to value an asset).
<b>Pro forma</b>	The financial statement as of a certain date (usually the closing date) of the failed bank; the pro forma is split between the deposit insurance agency as receiver and the assuming bank, if applicable.
<b>Prompt corrective action (PCA)</b>	Legislated provisions that require the supervisory authority to take certain actions once a bank's capital deteriorates to a certain threshold.
<b>Proof of claim</b>	Document used to file a claim (i.e., by the deposit insurance agency against a failed bank, general creditors against the receiver).
<b>Purchase and assumption agreement (P&amp;A)</b>	An agreement in which all or some of the failed bank's assets, but usually only the good ones, are purchased and all or some of the liabilities, but usually only the insured deposits, are assumed by a strong, healthy bank.
<b>Put option</b>	A provision in some purchase and assumption agreements that gives an assuming bank the option to require the receiver to repurchase certain loans within a specified time frame. Also called "cherry-picking."
<b>Real estate owned</b>	See Other real estate.



<b>Receiver</b>	A person or entity appointed by a chartering authority for a failed bank, to liquidate the assets of the failed bank and distribute the income from those assets to the approved creditors.
<b>Receivership</b>	The state of a failed bank being liquidated by a receiver.
<b>Repossessions (repo)</b>	Reclaimed items of collateral, commonly automobiles, that were pledged on defaulted loans.
<b>Repurchase agreement (repo)</b>	A contract giving the seller of securities (borrower bank) the right to repurchase them after a stated period at a higher price. The securities secure the transaction, and the price difference is the interest cost.
<b>Reserve price</b>	The minimum price for which one asset of a portfolio of assets can be sold (often expressed as a percentage of book value).
<b>Resolution</b>	The disposition plan for a failed bank, designed to (1) protect insured depositors and (2) minimize the losses to the resultant receivership estate and, consequently, claimants. Resolution methods include purchase and assumption agreements and payoffs.
<b>Resolution Trust Corporation</b>	The temporary receivership management company established in the United States to deal with the savings and loan crisis of the late 1980s and early 1990s.
<b>Reverse repo</b>	Contract giving the purchaser of securities (lender bank) the right to sell them back to the buyer at a higher price.
<b>Scrub</b>	A formal review of data for assets to determine accuracy and omissions.
<b>Settlement account transaction form</b>	A form used to record transactions between the receiver and the assuming bank.
<b>Society for Worldwide Interbank Financial Telecommunication (SWIFT)</b>	Secure international bank messaging system based in Brussels used by banks to transmit letter of credit information and conduct other international business with correspondents.
<b>Subrogation</b>	The process whereby a deposit insurance agency (DIA) is substituted as the claimant based on payment to insured depositors by the DIA.
<b>Subsidiary</b>	A separate entity owned or controlled by a failed bank placed in receivership. (Although the parent bank may be in receivership the subsidiary may still be an operating business. In that case, the receiver may have the responsibility to function as the board of directors and manage the assets and liabilities of the subsidiary.)
<b>Supervisory authority</b>	The institution responsible for licensing, regulating, and supervising banks, whether contained within the central bank or an independent body.
<b>Uninsured deposit</b>	The portion of any customer's deposit at an insured bank that exceeds the applicable deposit insurance agency (DIA) insurance coverage. It also describes excluded deposits, such as insider, interbank, or corporate deposits, according to applicable DIA legislation.
<b>Viewer files</b>	Files created for potential loan purchasers.
<b>Weighted average coupon</b>	The average interest rate of a group of loans with the weighting factor being the balance remaining on each loan.
<b>Weighted average maturity</b>	The average maturity of loans calculated by totaling the number of years remaining on all loans, divided by the total number of loans.