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Verena Schipke

Die Weiterentwicklung des Bankeninsolvenz- rechts durch das Gesetz zur Reorganisation von Kreditinstituten

Weiterentwicklung Bankeninsolvenzrechts Gesetz Reorganisation Kreditinstituten

Yves Mauchle



Weiterentwicklung Bankeninsolvenzrechts Gesetz Reorganisation Kreditinstituten:

Die Weiterentwicklung des Bankeninsolvenzrechts durch das Gesetz zur Reorganisation von Kreditinstituten

Verena Schipke, 2015-07-02 Das Werk befasst sich mit den im Jahre 2010 eingeführten Neuregelungen des Gesetzes zur Reorganisation von Kreditinstituten. Die Arbeit hat eine rechtsvergleichende Ausrichtung. Die Regelungen des KredReorgG über das Sanierungs- und Reorganisationsverfahren werden den Vorschriften der Art 28 ff BankG betreffend das Schweizer Bankensanierungsverfahren gegenübergestellt. Kernfrage der Monografie ist, ob die Verfahrensregelungen des KredReorgG so ausgestaltet sind, dass sich die Planverfahren als praktisch operabel erweisen werden und damit wirksame Krisenbewältigungsmechanismen für Kreditinstitute in wirtschaftlicher Schieflage zur Verfügung stehen. Unter der Prämisse, dass Verfahrensregeln zum Umgang mit kriselnden Banken den Eintritt eines Vertrauensverlusts vermeiden und die Fortführung des Geschäftsbetriebs der Bank sowie eine umfassende wirtschaftliche Krisenbewältigung ermöglichen müssen, werden die Regelungen des KredReorgG einer umfassenden Wirksamkeitsanalyse unterzogen. Die Vorschriften werden daraufhin geprüft, ob sie eine rechtzeitige und schnelle Sanierung kriselnder Kreditinstitute ermöglichen, die abläuft ohne dass negative Publizitätseffekte entstehen. Dabei wird auch betrachtet, ob es mittels der Vorschriften des KredReorgG möglich ist, finanzielle Verluste des Kreditinstituts den Anteilsinhabern und Gläubigern zuzuweisen. Die Monografie verharret nicht bei einer kritischen Betrachtung der *lex lata*, sondern es wird auch eine Regelungsempfehlung für die Rechtslage *de lege ferenda* ausgesprochen.

Bail-In and Total Loss-Absorbing Capacity (TLAC) Yves Mauchle, 2016-06-01 As opposed to a bank bailout a bail in occurs when creditors are forced to bear some of the burden of bank failure. The principal aim of this restructuring tool is to eliminate some of the risk for taxpayers. Several jurisdictions including Switzerland and the European Union EU have adopted legal provisions regarding the bail in, but until this book literature on its implementation has been scarce. Offering a detailed and comparative analysis of EU and Swiss law relating to bail ins and their economic impact, this is the first book to provide in-depth coverage of this new method of dealing with the failure of systemically important banks. In its contextualisation and analysis of the bail in resolution tool, the book identifies and discusses the legal and economic issues that arise, including such aspects as the following: the legal and economic properties of bail in capital; the regulatory standard on total loss absorbing capacity TLAC issued by the Financial Stability Board FSB; the scope and sequence of liabilities subjected to bail in; the legal position of stakeholders affected by a bail in; strategies and procedures for the implementation of a bail in; the limited circumstances under which government rescues should be available; and cross-jurisdictional issues and aspects of international cooperation. As well as case studies and analyses of legal issues with particular reference to Swiss law and the European Bank Resolution and Recovery Directive 2014/59/EU, the author applies economic concepts to the analysis of the law. International developments in particular standards issued by leading regulatory bodies are also covered. This book will be welcomed by legal practitioners working in banks and in banking regulation and by policymakers seeking

information on the practical issues involved As a detailed analysis of a new and highly significant development in banking law it will also be of great interest to academics

Bail-in nach SAG und SRMR. Verteilung von Verlusten und Begrenzung des Ausfalls der Gläubiger Richard Jacob, 2016-02-19 Diplomarbeit aus dem Jahr 2015 im Fachbereich Jura Zivilrecht Handelsrecht Gesellschaftsrecht Kartellrecht Wirtschaftsrecht Note 14 Punkte Johann Wolfgang Goethe Universität Frankfurt am Main Sprache Deutsch Abstract Die Beleuchtung des Konzepts des Bail in und ein Überblick über das Verhältnis von dem Sanierungs und Abwicklungsgesetz SAG und der Single Resolution Mechanism Regulation SRMR hinsichtlich des Bail in Instruments führen in das Thema dieser Arbeit ein Anschließend wird der Bail in nach dem SAG analysiert indem die Tatbestandsseite und dabei insbesondere die erfassten Forderungen sowie die Rechtsfolgende mit ihren diskretionären Ausnahmen dargestellt werden Punkt B Ausgeklammert werden Sonderregelungen zu Derivaten sowie zu grenzüberschreitenden Sachverhalten und Konzernfragen Im weiteren Verlauf werden die Unterschiede des Bail in Instruments in der SRMR dargestellt und die Bedeutung der Unterschiede verdeutlicht Punkt C Bei der Untersuchung des Bail in Instruments wird in dieser Arbeit dem engen Verständnis von Art 2 Abs 1 Nr 57 der Bank Recovery and Resolution Directive BRRD gefolgt sodass die Umwandlung und Herabschreibung von relevanten Kapitalinstrumenten nach 89 SAG beziehungsweise Art 21 SRMR nicht näher beleuchtet wird Schließlich wird das Bail in Instrument hinsichtlich der Verteilung der Verluste auf die Gläubiger bewertet Punkt D

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