

To: Federal Reserve System
Jennifer J. Johnston, Secretary Board of Governors
**Re: Request for Information Relating to Studies Regarding the Resolution of
Financial Companies Under the Bankruptcy Code [Docket Number OP-1418]**
Send to: Ann.Misback ; Dona.Faircloth ; Patricia.P.Yeh
Sophia.H.Allisor
Date: 31 May 2011
From: Professor Dr. Bob Wessels, The Netherlands

My name is Bob Wessels. I am an independent (international) legal counsel and professor of law in the Netherlands. See for a Statement of Experience the Attachment to this note.

I am responding to your solicitation for comments and information, as published in Federal Register 24024/24025 (April 29, 2011), in addition to a conference call of May 24 you had with an expert group of Insol International in which I participated. Below you will find my personal views.

My comments are limited to your request regarding Section 217 of the Dodd-Frank Act. You have raised four questions:

- (i) The extent to which international coordination currently exists;
- (ii) Current mechanisms and structures for facilitating international cooperation;
- (iii) Barriers to effective international coordination; and
- (iv) Ways to increase and make more effective international coordination of the resolution of financial companies, so as to minimize the impact on the financial system without creating moral hazard.

Where you required any studies or research on the aforementioned questions I will refer to these studies, including the websites where to find these.

Ad (i). For matters of insolvency (or: bankruptcy) you will be aware that U.S.A enacted (in Chapter 15 of the U.S. Bankruptcy Code) in October 2005 its version of the UNCITRAL Model Law on Cross-Border Insolvency. In addition, the U.S.A is a party to the North-American Free Trade Association (NAFTA), with Canada and Mexico. For cross-border insolvency matters within this area, the American Law Institute has created Principles of Cooperation (the "ALI NAFTA Principles"), which are the result of the "Transnational Insolvency Project", conducted between 1995 and 2000, for which the Reporter was Professor Jay L. Westbrook (University of Texas). The objective of that Project was to provide a non-statutory basis for cooperation in international insolvency cases involving two or more of the NAFTA states. Appendix B of the ALI NAFTA Principles contain a set of Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases ("Court-to-Court Guidelines"). Having laid the groundwork for a wider dissemination of the ALI NAFTA Principles and their accompanying Guidelines, the American Law Institute (ALI) and the International Insolvency Institute (III) considered that it would be timely and appropriate to undertake a systematic evaluation of the possibility of adapting them so as to provide a standard statement of principles suitable for application on a global basis in international insolvency cases. In February 2006 ALI appointed Reporters for the project, now titled "Global Principles for Cooperation in International Insolvency Cases", being Prof. Ian Fletcher (University College London) and myself (Prof. Bob Wessels (University of Leiden, Leiden Law School, Netherlands).

This ALI-III Project "Global Principles for Cooperation in International Insolvency Cases" is presently (May 2011) in its final stages. In April 2011 the Second Preliminary Draft of the Global Principles for Cooperation in International Insolvency Cases has been published. As they currently stand these Global Principles reflect a non-binding statement, drafted in a manner to be used both in civil-law as well as common-law jurisdictions, and aim to cover all jurisdictions in the world. The initial Preliminary Draft contains over 260 pages, with around 130 000 words (text including footnotes), published on my weblog under 2011-04-doc3 (www.bobwessels.nl). The present Second Preliminary Draft covers 39 Global Principles for Coordination of International Insolvency Cases, 18 Global Guidelines for Court-to-Court Communication in International Insolvency Cases, and 23

Global Rules on Conflict of Laws Matters in International Insolvency Cases. Discussion have taken place over the years. The last sections of this Draft will be discussed June 15, 2011, during a one day seminar at Columbia University, New York. The Reporters hope they are able to finalise the Guidelines in the autumn of 2011.

It has not been the Reporters' pretention of these proposals to deal with financial institutions. For the four questions raised you may however find several descriptions, analysis or recommendations, which may serve in the area of financial distress of financial institutions or some of its entities.

Ad (ii). The most notable features within current mechanisms and structures for facilitating international cooperation in general insolvency matters are that these are based on specific role players (insolvency office holders and courts) using ad hoc instruments, such as Protocols", as global conventions are absent. Obstacles in general are the sovereign and impartial positions courts (justifiably) have within their own jurisdiction, which sometimes do not allow (or at least do not codify) a court's power to cooperate internationally. I refer to my article (in proof) explaining that – opposite to some five years ago – judges in France, the Netherlands and Germany are presently welcoming the possibility to efficiently cooperate. See www.bobwessels.nl (weblog document 2011-05-doc5).

In another article (forthcoming) I am providing some background to the use of "protocols" (or what UNCITRAL now calls: cross-border insolvency agreements). In the second part of this article I have made some remarks in relation to the rather troublesome, uncertain position of such an agreement in a (international) contractual context itself. See my weblog, 2011-05-doc7.

Ad (iii). Barriers as mentioned have been analyses in the documents referred to above. These contain also – again in the general context of international insolvency matters in international business – some solutions. See too my Leiden inaugural lecture of 2008, a short version can be found at my weblog, document 2009-06-doc3.

Ad (iv). Related to the financial system in Europe, I recently analysed the fragmented state of affairs concerning resolution and winding up of financial institutions in general in Europe and laid down some views and thoughts for a (global) solution for the insolvency of multinational banks. See www.bobwessels.nl, weblog, document: 2011-04-doc8.

If you may require further information please do not hesitate to contact me.

Regards,

Bob Wessels

Prof. Dr. B. Wessels

STATEMENT OF EXPERIENCE

Bob Wessels (1949) is an independent Dutch legal counsel.

Professor of International Insolvency Law, Leiden University, since September 2007 (one day a week); Professor of Civil and Commercial Law, Vrije University Amsterdam (1988-1995 full time; 1996 - 2008 one day a week).

1988 Ph.D – Natural obligations. Civil law and tax law consequences of unenforceable obligations (in Dutch).

Since 1987 Deputy Justice at the Court of Appeal, The Hague (presently in “Trade and Insolvency” chambers).

Selection of publications (in English)

International Insolvency Law (series Wessels Insolvency Law, Volume X), Deventer: Kluwer 2006, CXXXII + 670 pp.

EU Banking and Insurance Insolvency, Gabriel Moss and Bob Wessels (eds.), Oxford University Press, 2006, LIV + 622 pp.

Judicial Coordination of Cross-border Insolvency Cases, Inaugural lecture, University of Leiden Law School, 6 June 2008, Deventer: Kluwer 2008, 47 pp.

International Cooperation in Bankruptcy and Insolvency Matters, Oxford University Press Inc., New York, 2009 (co-authors Hon. Bruce A. Markell and Jason J. Kilborn), XVI and 268 pages.

Harmonisation of Insolvency Law at EU Level, report produced for the European Parliament, 2010 (co-author)

Selection of publications (in Dutch)

Published hundreds of articles in leading legal journals and some twenty-five books.

Author of Wessels, “*Insolventierecht*” (Insolvency Law), a 10 Volume series, 2nd ed. (appr. 3000 pages), published between 2006-2009, by Kluwer, The Netherlands. Since 2010 the 3rd edition is published (in May 2011 six books from the third edition will have been published).

Practical experience

Many of my clients since the second half of the 70s always have been and still are lawyers from other firms (in the Netherlands and abroad) or court appointed insolvency administrators seeking my advice or opinion in matters of contract law, corporate law, financial law, (international) insolvency law. In insolvency related matters I advised in questions concerning UBS (Switzerland), Royal Fokker Aircraft, United Pan-Europe Communications (UPC), Yukos Oil (proceedings in New York), BenQ Holding, Elektrim / Vivendi (proceedings in London), OOO Promnefstroy, ICESAVE (Dutch branch of Iceland’s Landsbanki HF), Belvedere / Sobieski (proceedings in Warsaw), Banco de la República de Colombia / Bank of New York Mellon (proceedings in New York), Lehman Brothers Treasury, Micron Technology & Ors / Qimonda AG (proceedings in Alexandria, Va., USA), A-Tec Industries (proceedings in Vienna), Bel Air / Sevastakis (proceedings in Rhodes, Greece) and International Insurance Corporation (IIC) N.V. (Ineas).

I acted as Special Technical Consultant to the IMF, the World Bank and the European Commission (TAIEX) advising in Indonesia (Jakarta), Georgia (Tbilisi) and Estonia (Tallinn) on implementing their new insolvency laws.

In 2010 I assisted to create the Athens Guidelines for Out-of-Court Corporate Restructuring.

Other functions / memberships

* 2010 appointed by the European Commission as member of the Insolvency Law Expert Group (ILEG) to advise on an EU Framework for Crisis Management in the Financial Sector

* since 2010 Chairman of the Committee on Banking Affairs (Socio-Economic Council, *Sociaal-Economische Raad, SER*), prime advisory committee for the Netherlands’ government

* 2007 – 2010 Chairman of the Academic Forum of INSOL Europe

* 2004 – 2009 Member of the Netherlands Royal Committee on Renewal of the Dutch Insolvency Act

* Member of the American Law Institute

* Fellow of the American College of Bankruptcy Law