Unravelling the Mystery behind Bank Insolvencies in the East African Community (EAC) – The case for Uganda, Kenya and Tanzania

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1.0 Introduction

Bank insolvency in the East African Community (EAC) is no longer breaking news on media platforms and outlets as it is a common occurrence in the region. Since the last global financial crisis of 2007 – 2008, over 25 banks have been liquidated by Central Banks in Uganda, Kenya and Tanzania. In the last five years, over 15 banks have been liquidated, including the recent high profile liquidations of Dubai Bank, Imperial Bank and Chase Bank in Kenya, Crane Bank, National Bank of Commerce and Global trust Bank Ltd in Uganda and a total of 7 banks liquidated by the Central Bank in Tanzania in 2018 alone. These included the high profile liquidations of Bank M, coupled with Covenant Bank, Kagera Farmers' Co-operative Bank, Njombe Community Bank Ltd, Efatha Bank Ltd and Meru Community Bank Ltd.[1]

Regulation and supervision of commercial banks in these Member States is mandated to the Central Banks. Corrective measures prescribed by banking laws and regulations in these Member States encompass optional and flexible remedial measures to be taken by Central Banks while dealing with financially struggling banks. However, these remedial measures are discretionary which risks permissiveness and laxity in supervisory and regulatory proficiency by the Central Banks.[2] Very often, the preferred remedial measures taken by Central Banks do not consider the rescue of the financially struggling, but viable banks and financial institutions, as the main priority, preferring receivership and liquidation measures.[3]

This chapter analyses the collapse of banks and financial institutions in Uganda, Kenya and Tanzania, three of the key Member States of the EAC. The causes and impact of bank insolvencies in these Member States' banking sectors are examined. The chapter begins with an historical overview of banking and its evolution in these Member States prior to the 2007 – 2008 global financial crisis, and the response to this crisis, examining the safeguards that were implemented by these Member States to combat subsequent financial crises. This is followed by an analysis of the factors that have inhibited the functionality of these safeguards, leading to a high number of bank insolvencies in these Member States. The chapter concludes by

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[1] Beatrice Materu, "Panic as Tanzania Closes Five Banks" *The East African*, (Nairobi, 06 January 2018) <https://www.theeastafrican.co.ke/business/Panic-as-Tanzania-closes-five-banks/2560-4253830-yd7mr9z/index.html> (accessed 12 March 2021).

[2] Hamiisi Junior Nsubuga. "The Role of the Central Bank in Financial Distress Management and Resolution in Developing Economies" (2020) 35(5) *J.I.B.L.R*, 208, 214.

[3] M. Brownbridge, "Resolving Bank Failures in Uganda: Policy Lessons from Recent Failures" (2002) (20) (3) *Development Policy Review*, 279, 291.

calling for a regional cross-border banking and resolution framework across the EAC as a measure that would combat bank insolvencies in the region.

2. Historical overview of banking in the EAC

2.1 Uganda

Uganda’s banking sector is tiered into commercial banks, credit institutions and microfinance deposit-taking institutions under the regulation and supervision of the Central Bank of Uganda (CBU). The CBU has the mandate to supervise and regulate all operations of commercial banks and financial institutions in the country.[4] This mandate is enshrined in legislations such as the Bank of Uganda Act 1969, Bank of Uganda Act 2000, Financial Institutions Act 2004, Financial Institutions Amendment Act 2016, Micro Deposit Taking Institutions Act 2003 and Tier 4 Microfinance Institutions Money Lenders Act 2016.[5] As at 30 June 2019, commercial banks accounted for 95.2 percent of the banking sector total assets of USh.31.8 trillion.[6]

Almost 80 percent of banks and financial institutions in Uganda are foreign owned, with bigger financially stable banks from South Africa, Kenya, India etc., acquiring/opening subsidiaries as part of their wider banking groups. These include for example, Standard Chartered Bank, Stanbic Bank, Development Finance Company of Uganda Bank Ltd (DFCU), Equity Bank, Bank of Africa among other banks. This played out to the detriment of Uganda when the global financial crisis hit its banking sector in 2007/2008. The concern was that because of the foreign ownership parent banks would make huge withdrawals from subsidiaries in Uganda to offset other liquidity deficits in parent banks or other subsidiaries within the EAC region.[7]

At the turn of the millennium in year 2000, Uganda’s banking sector witnessed a significant evolution where a majority of indigenous commercial banks and financial institutions experienced financial difficulties and were either declared insolvent and taken over by the Central Bank, or sold to other stronger banks.[8] For example, International Credit Bank (ICB), Greenland Bank, Cooperative Bank, Global Trust Bank and National Bank of Commerce, with

[4] These institutions include but not limited to commercial banks, credit institutions, micro finance deposit taking institutions (MDIs) and forex bureaus.

[5] These Acts of Parliament and other operational regulations are listed on the Bank of Uganda website at, <https://www.bou.or.ug/bou/supervision/supervision_acts_regulations.html> (accessed 11 January 2021).

[6] Bank of Uganda, *Financial Stability Report*, (30 June 2019) < https://www.centralbanking.com/central-banking/official-record/1592844/bank-uganda-financial-stability-report>(accessed 02 January 2021).

[7] World Bank, Financial System Stability Assessment (FSSA): East African Community (2013).

[8] M. Brownbridge, “Resolving Bank Failures in Uganda: Policy Lessons from Recent Failures” (2002) (20) (3) *Development Policy Review*, 279, 291.

assets worth Ush164 billion ($42.8 million) were sold and liquidated by the CBU.[9] Other banks, were ultimately sold to foreign-owned banking conglomerates. These included for example, Nile Bank Uganda Limited - sold to British-owned Barclays Plc., in 2007 that merged with the already existing subsidiaries of Barclays Bank (Uganda), and Uganda Commercial Bank (UCB) – the then stronghold of Uganda's banking sector, sold to Standard Bank of South Africa, giving birth to the present Stanbic Bank Uganda Ltd.[10]

Following the 2007/2008 global financial crisis, like any other sectors of the economy, Uganda's banking sector was also gravely impacted as a majority of banks went through a readjustment period.[11] A majority of commercial banks declared financial difficulties and while corrective measures were taken by the CBU to address these difficulties, not many of the banks could be supported/rescued by the CBU and were liquidated. In 2012, the CBU liquidated and closed down National Bank of Commerce (Uganda), selling some of its assets to Crane Bank (U) Ltd, the then fastest growing commercial bank in the country. However, Crane Bank did not also survive for long, as in 2016, it was also taken-over by the CBU, placed under receivership and formally liquidated in 2018.[12]

2.2 Kenya

Kenya's banking crisis can be traced back to as early as five decades but the 1986 – 1989 and the 1993/1994 – 1998 were heralded as one of the worst in Kenya's banking history in recent years. Thirteen banks collapsed in 1993 alone and 5 banks collapsed between 1996 and 1999 and the main causes for such failures were premised on under-regulated insider lending and corporate governance failings.[13] The most recent banking crisis took place between October 2015 and early 2018 but the most critical period was between August 2015 – April 2016 when

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[9] Dicta Asiimwe, "Report Indicts BOU for Illegal Closure of Banks" *The East African*, (Kampala, 22 September 2018) <https://www.theeastafrican.co.ke/business/Report-indicts-BoU-for-illegal-closure-of-banks/2560-4772380-c1y0t7z/index.html> (accessed January 2021).

[10] Honest P. Ngowi, "The 2008 Economic Crisis: Implications and Responses in the Banking Sector" (2015) 3(1) *African Journal of Economic Review*, 100 - 115.

[11] World Bank, Uganda's Economic Update: Step by Step – Lets Solve the Finance Puzzle to Accelerate Growth and Shared Prosperity, (7 February 2017). <https://openknowledge.worldbank.org/handle/10986/26038?locale-attribute=en > (accessed 10 March 2021).

[12] B. Busulwa, "Uganda's Central Bank Takes Control over Crane Bank" *The East African*, (Kampala, 20 October 2016), <https://www.theeastafrican.co.ke/business/Uganda-central-bank-takes-control-of-Crane-Bank/2560-3423876-108c3v0z/index.html> (accessed January 2021).

[13] A. KithinJi and N.M. Waweru, "Merger Restructuring and Financial Performance of Commercial Banks in Kenya" (2007) 2 (4) *Economic, Management and Financial Markets Journal*, 9-39.

major commercial banks such as Dubai bank were put under receivership, followed by Imperial Bank and Chase bank in April 2016.[14]

The banking sector in Kenya is governed and regulated by the Central Bank of Kenya (CBK).[15] According to the CBK's directory of licenced commercial banks and financial institutions, the number of commercial banks and financial institutions as of 30 March 2021 stood at 42, with 28 classified as domestic and 14 as foreign owned.[16] These banks and financial institutions are further classified into tiers, Tier 1 – consisting of large banks with huge financial and asset base, and therefore, low risks to financial instability, Tier 2 – consisting of medium-sized banks and Tier 3 – consisting of smaller banks with low capital and asset bases.

Prior to the 2007/2008 global economic recession, about 11 multinational and Kenyan owned banks were using Kenya as their regional hub/headquarters to expand their operations into the EAC region by opening up subsidiaries. These bank included for example, KCB Bank (with branches in Rwanda, Tanzania and Uganda), Equity Bank (with branches in Tanzania, Uganda, Rwanda and South Sudan), Fina Bank (with branches in Rwanda and Uganda), and the Commercial Bank of Africa (with branches in Tanzania, Rwanda and Uganda). These banks had in total, 63 branches/subsidiaries outside Kenya (16 in Tanzania, 31 in Uganda and 16 in Rwanda).

However, this rapid growth has continually been set aback by banking and financial institutions instabilities as recently witnessed by the collapse of Chase Bank, Dubai Bank and Imperial Bank between 2015 and 2018 thereby affecting customer confidence in the banking sector.[17] Established in 1982, Dubai bank was one of the fastest growing but small high street bank in Kenya, headquartered in Nairobi, with other branches in Nairobi, Nakuru and Mombasa. However, on 14 August 2015, management of the bank was taken-over by the CBK and placed under receivership for one year.[18]

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[14] Robert M. Gathaiya, "Analysis of Issues Affecting Collapsed Banks in Kenya from Year 2015 – 2016" (2017) 7(3) *International Journal of Management and Business Studies*, 9-15.

[15] This power is mandated to the Central Bank of Kenya courtesy of the Central Bank of Kenya Act Chapter 491, Laws of Kenya, and as provided for its establishment under the Constitution of Kenya 2010, Art.231.

[16] Central Bank of Kenya, Directory of Licenced Commercial Banks, Mortgage Finance Institutions and NOHCs <https://www.centralbank.go.ke/wp-content/uploads/2020/01/Directory-of-Licensed-Commercial-Banks-Mortgage-Finance-Institutions-Bank-NOHCs.pdf> (accessed 10 March 2021).

[17] Nanjala Nyabola, "What the Collapse of a Major Bank says about the rise of Kenya's Powerful Social Media Spaces'' *Yahoo Finance*, (Nairobi, 13 March 2019) <https://finance.yahoo.com/news/collapse-major-bank-says-rise-170115778.html> (accessed 10 March 2021).

[18] Allan Olinga, "Central Bank of Kenya Names Liquidator for Dubai Bank". *The EastAfrican*. (Nairobi, 24 August 2015) <https://www.theeastafrican.co.ke/tea/news/east-africa/central-bank-of-kenya-names-liquidator-for-dubai-bank--1339704> (accessed 18 March 2021).

The CBK appointed the Kenya Deposit Insurance Cooperation (KDIC) as the main receiver to oversee to the receivership process courtesy of sections 53(2) and 54(1) (a) of the Kenya Deposit Insurance Act, 2012.[19] In its report on the financial condition of the bank to the CBK on 24 August 2015, the KDIC as the main receiver, concluded that the bank was beyond rescue and recommended that liquidation of the bank was the most feasible option.[20] According to the CBK, the bank was suffering from capital and liquidity deficiencies as it had failed to fulfil its financial commitments and obligations, including *inter alia*, inability to meet daily cash reserve ratio (CRR), honouring loan commitments, such as that with Bank of Africa Kenya and other regulatory non-compliance and managerial failings.[21]

Another bank, Chase Bank Ltd, was placed into receivership by the CBK on 7 April 2016, citing among other reasons, failure to meet the statutory banking ratios and administrative under-reporting of vital information, particularly, of insider loans and other financial products.[22] It was reported that the bank had made huge amounts of insider loans to directors totalling to Kshs. 13.62 billion without due-diligence and compliance with corporate governance requirements. Chase Bank was itself a product of the failed United Bank (Kenya) which had been put in receivership and was under statutory management by the CBK in 1995. However, in 1996, United Bank rebranded to Chase Bank Ltd following several stakeholders acquiring over 60 percent shareholding in the failed United Bank Kenya. However, within a decade in operation, Chase Bank found itself subject to financial difficulties, struggling to maintain its place within Kenya's banking sector. Like was the case with Dubai Bank, the CBK later appointed the KDIC as the statutory receiver to take over the management of Chase Bank.

Following two years in receivership, Chase Bank was taken over by a Mauritius based SMB Bank in 2018 while other parts of the loans/assets were still under management of the KDIC.[23] On 7 April 2021, KDIC submitted the receiver's report to CBK in which it recommended that Chase Bank in receivership be liquidated. The decision was premised on the bank's weak and susceptible financial position to sustain its presence in the banking/financial market and therefore, liquidation was the only feasible option. The CBK later confirmed that it had

[19] Kenya Deposit Insurance Act, 2012, ss.53(2) and 54(1) (a).
[20] Anon Reporter, "Receiver KDIC Says Dubai Bank Kenya Should Be Wound Up" *Business Daily Africa*. (Nairobi, 24 August 2015) <https://www.businessdailyafrica.com/bd/economy/receiver-kdic-says-dubai-bank-kenya-should-be-wound-up-2094720> (accessed 10 March 2021).
[21] See, Central Bank of Kenya Press Release on 14 August 2015 "Dubai Bank Kenya Ltd under Receivership" https://www.centralbank.go.ke/images/docs/media/2015/DubaiBankpressrelease.pdf> (accessed 14 March 2021).
[22] See, "Agony of Depositors as CBK closes Chase Bank over Sh16 billion Loans'' *The Standard* (Nairobi, 8 April 2016) <https://www.standardmedia.co.ke/business/article/2000197518/pain-and-agony-as-chase-bank-depositors-fail-to-access-their-money > (accessed 17 January 2021).
[23] Otiato Guguyu, "Chase Bank Officially Transforms to SBM Kenya" *The Standard*, (Nairobi, 20 August 2018) <https://www.standardmedia.co.ke/business-news/article/2001292696/chase-bank-is-now-officially-sbm-kenya> (accessed 18 March 2021).

assessed the KDIC recommendation and concluded that liquidation was the only option to facilitate the orderly resolution of residual assets and liabilities of the collapsed bank.[24]

Imperial Bank also collapsed in 2015. Established in 1992 as a finance and securities company, it transformed into a commercial bank in 1996 and licenced by the CBK to operate financial and banking services in Kenya. Prior to its demise in 2015, the bank's total asset base was recorded at US$498 million (equivalent to Kshs. 43 billion), with shareholders' equity of approximately US$66.2 million (equivalent to Kshs. 5.719 billion) in December 2013, making it one of the financially stable medium sized banks in Kenya.[25]

However, in October 2015 the bank was put under statutory receivership by the CBK and on 21 June 2016, NIC Bank was appointed as its asset and liabilities consultant, to work alongside the CBK.[26] Consequently, NIC Bank was allowed *inter alia*, to acquire some of Imperial Bank's assets and assumption of some liabilities including satisfaction of customer deposits.[27] NIC Bank became responsible for returning funds to the failed bank's deposit customers, while other assets were sold to KCB Bank. Amidst all of this, the CBK appointed the KDIC as the official receiver of Imperial Bank and liquidation proceedings were initiated.[28]

2.3 Tanzania

Like Kenya and Uganda, Tanzania's banking sector comprises of a mix of commercial banks community banks, micro-finance institutions and Savings and Credit Co-Operative Societies (SACCOs). These banks are both domestic and foreign owned. Until 1991, Tanzania's banking sector was mainly state-controlled with two of the leading state-owned banks; the Cooperative Rural Development Bank (CRDB) and the National Micro-finance Bank (NMB) accounting for over 40 percent of deposits and 35 percent of total assets.[29]

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[24] Patrick Alushula, "CBK Okays Liquidation of Chase Bank" *Business Daily Africa*, (Nairobi, 16 April 2021). <https://www.businessdailyafrica.com/bd/markets/capital-markets/cbk-okays-liquidation-of-chase-bank-3364896> (accessed 18 April 2021).

[25] Robert M. Gathaiya, "Analysis of Issues Affecting Collapsed Banks in Kenya from Year 2015 – 2016" (2017) 7(3) *International Journal of Management and Business* Studies, 9-15.

[26] Standard Reporter, "NIC Appointed Asset and Liability Consultant for Closed Imperial Bank" *The Standard*, (Nairobi, 21 June 2016) <https://www.standardmedia.co.ke/business-news/article/2000206031/nic-appointed-asset-and-liability-consultant-for-closed-imperial-bank> (accessed 21 March 2021).

[27] Gathaiya, (n 25) at 11.

[28] Macharia Kamau, "KDIC Opens Door for other Lenders to buy Imperial Bank'' *The Standard*, (Nairobi, 16 November 2019) <https://www.standardmedia.co.ke/business-news/article/2001349613/kdic-opens-door-for-other-lenders-to-buy-imperial-bank> (accessed 19 March 2021).

[29] Wagh et al, "Scaling-up Regional Financial Integration in the East African Community" (2012) World Bank Working Paper No. 69337 <http://hdl.handle.net/10986/13031> (accessed 30 March 2021).

However, the banking sector underwent a privatisation drive in mid-1990s that witnessed a host of foreign banking groups, such as the South African banking group, Absa Group Limited, acquiring a majority stake in the National Bank of Commerce (NBC) in 1997 and Rabobank of the Netherlands acquiring 49 percent in NMB Bank. In late 2000s, that is, prior to the global financial crisis in 2007/2008, a host of several new banks such as Exim Bank, Access Bank, Azania Bank, and other regional banks from the EAC Member States, such as Equity Bank, Ecobank, Citi Bank etc joined Tanzania's formal banking sector. As of 31 March 2021, there are 36 commercial banks, 5 community banks, 2 development banks and 4 micro-finance institutions in Tanzania.[30]

Between 2015 and 2019, Tanzania's banking sector experienced an economic slump that did not only affect the economy at large, but the banking sector in particular, experiencing a systemic shock. This shock was precipitated by *inter alia*, risky and aggressive lending without adequate Know Your Client (KYC) checks, uncontrolled insider lending and other corporate governance non-compliance that further amplified the reporting of non-performing loans across the banking sector.[31] For instance, in 2017 alone, the NPL ratio in Tanzania's banking sector was peaking at 11.5 percent, the highest to be recorded in over a decade, with the worst affected banks reporting an NPL ratio of over 55 percent.[32]

In an IMF Report released on 4 December 2018 on the Tanzania's financial systems stability assessment, it was reported that more than half of commercial banks in Tanzania's banking sector were highly susceptible to financial shocks and harboured a high risk of future insolvency.[33] The susceptibility to market/financial shocks was mainly caused by high rise in NPL ratios, risky lending/loans, high dollarisation amplifying vulnerabilities to liquidity shocks, among other factors.[34] This Report was released at a time, when Tanzania's banking sector was going through a banking crisis where, a total of 8 banks were experiencing financial difficulties in a single year.

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[30] The list of banks and financial institutions in Tanzania is maintained and updated by the Central Bank of Tanzania. See: <https://www.bot.go.tz/Publications/Filter/1> (accessed 14 April 2021).

[31] Preetam Kaushik, "A Cautionary Tale of Banking in Tanzania and the Dangers of Inadequate KYC", *Arachnys*, (Online, 16 October 2109) <https://www.arachnys.com/a-cautionary-tale-of-banking-in-tanzania-and-the-dangers-of-inadequate-kyc/> (Accessed 21 April 2021).

[32] John Mitchell, "Tanzania's Banking Sector Returns to Stability" *The Banker*, (Online, 1 May 2019) <https://www.thebanker.com/World/Africa/Tanzania/Tanzania-s-banking-sector-returns-to-stability?ct=true> (accessed 20 April 2021).

[33] International Monetary Fund, United Republic of Tanzania: Financial Sector Assessment Programme 2018, IMF Country Report No. 18/346, at 11.

[34] Ibid, at 12 – 13.

In January 2018, the Central Bank of Tanzania (CBT) placed five banks under receivership courtesy of the Banking and Financial Institutions Act 2006,[35] by appointing the Deposit Insurance Board of Tanzania as official receiver to oversee to the liquidation processes. These banks included Covenant Bank For Women Ltd, Efatha Bank Ltd, Njombe Community Bank Ltd, Kagera Farmers' Co-operative Bank Ltd and Meru Community Bank Ltd.[36] According to the then governor of the CBT, Professor Benno Ndulu, the closures were mainly precipitated by persistent undercapitalisation – inability to maintain Tanzanian Shillings – (Tshs. 2 billion (equivalent to $891,180), non-compliance with other liquidity requirements and the high rates of non-performing loans.[37]

On 2 August 2018, Bank M, which had been incorporated and licenced by the CBT in 2007 to operate as a commercial bank was also placed under statutory receivership by the CBT due to failure to meet capital liquidity requirements.[38] In January 2019, Bank M's assets and liabilities estimated at about US$500 million at the time, were transferred to Azania Bank by the CBT, officially, liquidating Bank M.

On 19 November 2020, the CBT, once again, took-over and placed China Commercial Bank under statutory administration for 90 days as a resolution mechanism was being sought.[39] Incorporated in 2013, the bank had only been in operation just over six years. However, it had failed to fulfil minimal capital requirements in addition to other managerial con-compliance. In March 2021, the CBT decided to transfer all assets and liabilities of China Commercial Bank to NMB Bank Plc, one of the largest banks in the country, as liquidation proceeding ensued.[40]

However, a vital point to note in relation to bank insolvencies within the EAC region is that the key causes are all interlinked. These are in particular; high levels of Non-Performing Loans, corporate governance systemic failings and the absence of efficient banking resolution

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[35] Banks and Financial Institutions Act 2006, Section 56(1)(g)(i) and (iii).
[36] Beatrice Materu, "Panic as Tanzania Closes Five Banks" *The East African*, (Nairobi, 06 January 2018). <https://www.theeastafrican.co.ke/business/Panic-as-Tanzania-closes-five-banks/2560-4253830-yd7mr9z/index.html> (accessed 12 March 2021).
[37] See, "Real Reasons behind Closure of Five Banks" *The Citizen*, (Dar es Salaam, 06 January 2018), <https://www.thecitizen.co.tz/news/Real-reasons-behind-closure-of-five-banks/1840340-4252932-152kt97/index.html> (accessed 12 March 2021).
[38] C. Kidanka, "Tanzania's Bank M Placed Under Receivership" *The East African* (Nairobi, 02 August 2018) <https://www.theeastafrican.co.ke/tea/business/tanzania-s-bank-m-placed-under-receivership-1399560> (accessed 20 April 2021).
[39] Pursuant to the Banking and Financial Institutions Act 2006, s.56.
[40] Nuzulack Dausen, "Tanzania's Central Bank Transfers assets of local lender China Commercial Bank" *Reuters*, (Online, 04 March 2021) <https://www.reuters.com/article/uk-tanzania-banking-idUSKCN2AW1PB> (accessed 20 April 2021).

framework. These are the same key causes reported in Tanzania, Kenya and Uganda at large. These factors are analysed below, followed by suggested recommendation on how these causes may be countered/remedied to devise an efficient banking resolution framework that can be adopted across the EAC region.

3. Banks and financial institutions insolvency – the causes analysed

3.1 Non-performing loans

Non-Performing Loans (NPL) are globally linked to bank failure as well as financial crises but the term has no globally adopted definition as country definitions differ. This is because, it has been accepted that what is appropriately accepted/categorised as an NPL in one country may not be so in another.[41] However, a key feature of an NPL is that a loan is non-performing where payments of interest and/or principal are past due by 90 days or more, or interest payments equal to 90 days or more have been capitalised, refinanced, or delayed by agreement, or payments are less than 90 days overdue, but there are other good reasons—such as a debtor filing for bankruptcy—to doubt that payments will be made in full.[42]

Within the EAC, NPLs have been identified as one of the worst causes of bank failures, mainly precipitated by factors, such as imprudent lending policies and strategies, insider lending as almost half of the failed banks' losses were attributed to bad loans and high interest rate loans.[43] In Kenya, it had been highlighted that most of the so-called big local banks' financial difficulties and failures such as those of Continental Bank and Pan African Bank, were exacerbated by excessive insider lending, often to politicians.[44] The collapse/liquidations of other banks, such as Dubai Bank, Imperial Bank and Chase Bank were also blamed to a larger extent, on NPLs. For example, the report published following the collapse of Chase Bank indicated that NPLs within the bank had risen from Kshs. 3 billion in 2014 to Kshs. 11 billion in 2015, but mainly attributed to insider loans.[45]

In Uganda, the main reason given by the CBU for the liquidations of the National Bank of Commerce in 2012, Global Trust Bank in 2014 and Crane Bank Uganda Ltd in 2016 was high

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[41] H. Fafack, "Non-Performing Loans in Sub-Saharan Africa: Causal Analysis and Macroeconomic Implications" (2005) World Bank Policy Research Working Paper No. 3769.
[42] International Monetary Fund, *Compilation Guide on Financial Soundness Indicators*, (July 30, 2004) <https://www.imf.org/external/np/sta/fsi/eng/2003/051403.htm> (accessed 12 March 2021).
[43] M. Brownbridge, The Causes of Financial Distress in Local Banks in Africa and Implications for Prudential Policy, (1998), UNCTAD OSG/ DP/ 132.
[44] N. Waweru and V. M Kalani, "Commercial Banking Crisis in Kenya – Causes and Remedies" (2009) 4(4) *African Journal of Accounting, Economics, Finance and Banking Research* 12.
[45] Robert M. Gathaiya, "Analysis of Issues Affecting Collapsed Banks in Kenya from Year 2015 – 2016" (2017) 7(3) *International Journal of Management and Business Studies*, 9-15.

rate of NPL that affected the financial stability of these banks in addition to other corporate governance failings.[46] In its 2019 Annual Financial Stability Report, the CBU indicated that gross loans and advances within the commercial banking sector had increased by 11.2 percent, compared to the 11.0 percent in the year ending June 2018.[47] The report also highlighted that asset quality, as measured by the ratio of non-performing loans to total loans (NPL ratio), had worsened across the banking sector over the year ended September 2020. The commercial banks' aggregate NPL ratio rose from 4.4 percent in September 2019 to 5.1 percent in September 2020.[48]

In Tanzania, the 2020/2021 Monetary Policy Statement published by the CBT in June 2020, indicated that Tanzania's banking sector was stable as banks had enough capital reserves to sustain the impact COVID19 had caused to the financial sector in general.[49] The Statement also indicated that banks and financial institutions maintained appropriate liquidity levels as per minimum requirement of 20 percent. However, the Report highlighted that banks had reported a higher increase in NPLs as the ratio of the NPLs to gross loans was recorded at 11 percent as of April 2020 compared to 10.7 percent reported previously, in June 2019. This slight increase was largely attributed to the impact of COVID19 that slowed-down business transactions in the country and regional and international lockdowns.

Following the CBT's policy measures to tackle the effects of COVID-19, banks have restructured loans to their customers by reducing interest rates, extension of repayment periods, and moratoria relief (payment holidays of between 3 -6 months) to customers.[50] However, despite these strategies, customers were still struggling to services their loans due to economic

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[46] See, further, Hamiisi Junior Nsubuga, "The Role of the Central Bank in Financial Distress Management and Resolution in Developing Economies" (2020) 35(5) *J.I.B.L.R*, 208, 214 where I discuss the collapse of Crane Bank Uganda.

[47] Bank of Uganda, *Financial Stability Report*, (30 June 2019) < <http://www.publicnow.com/view/63BC580EE3B3FC0A2CF3F212F432471CBEFCB618 (accessed 02 January 2021).

[48] ibid.

[49] A. Ayub and T. Msinjilli, "Bank Of Tanzania's Monetary Policy And Non-performing Loans in Light of COVID-19" *Mondaq* (Online, 18 August 2020) <https://www.mondaq.com/fiscal-monetary-policy/976966/bank-of-tanzania39s-monetary-policy-and-non-performing-loans-in-light-of-covid-19> (accessed 21 April 2021).

[50] Bank of Tanzani, "Measures to Increase Credit to Private Sector and Containing Non-Performing Loans" Circular No. FA.178/461/01/02 <https://www.clydeco.com/Clyde/media/Awards/BOT-Circular-IRO-Measures-to-Increase-Credit-to-Private-Sector-Contain.pdf > (accessed 12 April 2021).

slow-down and business closures. As a result, NPLs were still recorded by banks and financial institutes at a level higher than the 5 percent targeted by the CBT by December 2020.[51]

Therefore, with NPLs being one of the major factors inhibiting banking and financial stability and efficiency across the EAC region, a coherent regulatory framework on bank governance, loan and credit supervision and prudential data/information sharing through a regional cross-border banking resolution framework ought to be adopted. This aspect is broadly analysed below at 4.0 – 4.2.4.

3.2 Corporate governance concerns

In the banking sector a key aspect of corporate governance is fiduciary duty and accountability by the board of directors and top management.[52] This is the need for directors and top management officers to ensure that good governance across all levels is maintained. This includes ensuring that stronger governance policies on financial reporting, capital and liquidity adequacy management and compliance, financial risk assessment and management and clear flow of information with insider and outsider constituents, such as the Central Bank is maintained.[53] This is to enable openness and transparency, within the bank/financial institution and the sector at large.

In the case of Chase Bank's collapse in Kenya, following an extended audit, it was reported that although the bank had attributed the biggest cause of its financial difficulties on poor accounting and management of its Islamic banking assets, there were more serious implications pointing towards governance failings. It was reported that the bank had made large amount of loans to its directors, in excess of Ksh.1.35 billion per director (equivalent USD 13.5 million) without adequate financial affordability assessments among other know your client (KYC) validation checks.[54] This activity further raised questions of bank directors' fiduciary duties

[51] Tenda Msinjili and Amreen Ayub, "Tanzania: COVID-19 Update On The Policy Measures introduced by the Bank of Tanzania'' *Mondaq*, (Dar es salaam, 21 May 2020) <https://www.mondaq.com/fiscal-monetary-policy/976966/bank-of-tanzania39s-monetary-policy-and-non-performing-loans-in-light-of-covid-19> (accessed 21 April 2020).
[52] S. Claessens and N. Horen, "Foreign Banks: Trends and Impact" (2014) 46(1) *Journal of Money, Credit and Banking*, 295–326.
[53] A.Koch and H. McDonald "Post-crisis Bank Liquidity Risk Management Disclosure" (2013) 5(1) *Qualitative Research in Financial Markets*, 65 – 84.
[54] Danielle Piskadlo, "Is Weak Governance to Blame for Bank Collapses in Kenya?" *Centre for Financial Inclusion*, (Nairobi, 25 April 2016) <https://www.centerforfinancialinclusion.org/is-weak-governance-to-blame-for-bank-collapses-in-kenya> (accessed 29 March 2020).

and obligations towards the bank itself and shareholders, especially, on how such huge loan amounts could be approved without due diligence.[55]

In Uganda, the recent collapse of Crane Bank Ltd exposed extensive corporate governance failings, especially in relation to the bank's mismanagement. A report compiled by accounting firm Price Waterhouse Coopers (PwC), in December 2016 on request by the CBU concluded that the board of directors of the bank, chaired by Mr Sam Muwanguzi, and Mr Ruparelia (the majority shareholder) failed in their primary responsibility and fiduciary duty to ensure that the bank was run efficiently.[56] The board was found to be complicit in the irregular shareholding of Mr Ruparelia who concealed his true shareholding in the bank and sanctioned irregular transfer of the bank's properties to other associated companies.[57]

Another corporate governance concern highlighted by the failed banks was in relation to structure and ownerships settings. In Uganda, Kenya and Tanzania, there are mainly two ownership structure types; concentrated ownership and dispersed ownership.[58] The major issue was that where ownership was concentrated either in a family controlled or business/banking group setting, the majority shareholders exercised more control with less scope for accountability from minority shareholders. This had the impact that governance failings such as unassessed insider loans or lending to connected parties, and noncompliance with lending regulations were side-stepped.[59] This was the case in Crane Bank's failings in Uganda, Dubai and Chase Banks in Kenya as discussed above.

In its Financial Systems Stability Assessment Report of 4 December 2018 on the state of Tanzania's financial systems, the IMF recommended that CBT should replace the Guidelines for Boards of Directors with a new Corporate Governance Regulation with a specific requirement for a Code of Conduct and Conflicts of Interest Policy.[60] The Report also recommended a requirement for bank, or group-wide compensation policies that incorporate

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[55] Ibid.

[56] Price Waterhouse Coopers, "Project Nyonyi Report on the Preliminary Forensic Review at Crane Bank" (16 December 2016) <https://www.coursehero.com/file/75698835/Project-Nyonyi-Forensic-audit-report-21-December-2016-1pdf/> (accessed on 21 April 2021).

[57] E. Mukiibi, "12 More Face Charges Over Crane Bank Mess" *Daily Monitor*, (Kampala, 31 July 2017) <https://www.monitor.co.ug/News/National/12-more-face-charges-Crane-Bank-mess/688334-4039854-8srh1uz/index.html> (accessed January 2021).

[58] E. Mang'unyi, "Ownership Structure and Corporate Governance and its effects on Performance: A Case of Selected Banks in Kenya" (2011) 2(3) *International Journal of Business Administration*, 1 - 18.

[59] ibid, at 8.

[60] International Monetary Fund, United Republic of Tanzania: Financial Sector Assessment Programme 2018, IMF Country Report No. 18/346, Principle 14 at 57.

current Basel l guidance on ensuring alignment of incentives with the long term best interests of the banks.[61]

3.3 Ineffective banking insolvency resolution framework

One of the key factors that impact the effectiveness of a banking resolution framework, especially in developing economies is the absence of, or/poor enforcement of contract and insolvency laws that establish contractual commitments on the one hand, and the enforcement of such contractual commitments on the other hand.[62] An efficient resolution framework, especially, in a cross-border setting can help incentivise amongst other things, the development of local and regional financial markets through effective policies that can hedge risk exposures, such as interest rate risks, or credit risks that may lead to defaults within the banking/financial sector. This can have the advantages of enhancing the flow and allocation of capital and opportunities for diversification of banking/financial portfolios across borders.[63]

However, despite the significance of an efficient banking resolution framework as revealed in the recent global financial crisis as being one of the key factors that exacerbated the global financial recession, most African countries, let alone regions/communities such as the EAC have not acted swiftly to either establish such resolution frameworks or improve the ones in place.[64] Yet, an efficient banking resolution framework can inhibit excessive risk-taking during the good financial health of banks/financial institutions and also, triggers cause for concerns upon signs of imminent financial difficulties. Where this is the case, banks/financial institutions become more risk-averse[65] to such issues and prompt corrective actions either by the banks themselves, or the central banks as the main supervisors/regulators may be taken.

An efficient banking resolution framework can also strengthen the role of Central Banks as regulators of banking/financial sectors by sanctioning these institutions upon failure to adhere to the laws and regulations set by the resolution framework, which in turn reduces the necessity for bailouts.[66] Prior to the global financial crisis of 2007/2008, crisis management in the

[61] Ibid.
[62] A. Koch and H. McDonald "Post-crisis Bank Liquidity Risk Management Disclosure" (2013) 5 (1) *Qualitative Research in Financial Markets*, 65 – 84.
[63] I. Salami, "Derivatives Markets in Africa—Legal and Regulatory Issues" (2012) 27(10) *Journal of International Banking Law and Regulation*, 416–428.
[64] Beck, et al, Financing Africa: Through the Crisis and Beyond (Washington DC: The World Bank, 2011).
[65] A 'risk-averse' company or institution is one which chooses to invest in business transactions with known risks that may provide low returns than unknown risks with higher predictable returns.
[66] See for example; "Tanzanian Central Bank Fines Lender for Breaching Rules" *Reuters*, (Dar es salaam, 13 July 2019) <https://www.reuters.com/article/us-tanzania-banking/tanzanian-central-bank-fines-lender-for-breaching-rules-idUSKCN1U80DC> (accessed 21 April 2021).

banking sector was differently and minimally regulated globally, premised on extant national laws and policies, with less emphasis on the global or/ regional aspects of this area of law.[67]

This was because, the traditional view on bank insolvency and crisis management was mainly aimed at satisfying creditor interests and courts were looked at as the supervisors and arbiters of the process. However, post-global financial crisis, bank insolvency and crisis management and resolution has witnessed a paradigm shift towards a more inclusive approach. This approach considers not only creditor interests, but also, those of other interest holders, such as the bank itself, consumers/customers and the society at large.[68] This paradigm shift has impacted the evolution of bank insolvency and restructuring law as an area of interest, not only at a global, but also, at regional and national levels.[69]

As a result, many countries and regions across the world have either made amendments to existing laws or introduced new banking /insolvency laws on key aspects, such as capital requirements, supervisory and resolution regimes, regional cooperation and compliance. However, most African States and regions/communities have witnessed a slow approach to this aspect, yet these amendments or/new laws would take as a priority, coherent crisis management and preventive regimes as the main drivers that would shift the focus from the traditional creditor protection on insolvency, to a more inclusive model, taking into account, extant interest holders, including the economy and financial system.[70]

For instance, the European Union (EU) instigated a regional integration post-crisis through the introduction of the Banking Union to ensure that EU banks were stronger and better supervised with harmonised banking rules and regulations across Europe/Euro Zone.[71] This has to a certain extent, accelerated a European integration in the area of banking insolvency and restructuring law.[72] Although this would be a bit of a big ask for African nations/regional communities, such as the EAC to adopt, it must be submitted, the African response to bank

[67] Alexandria Carr, "Bank Structural Reform: Too Big to Fail, Too big to Save and Too Complex to Manage, Supervise and Resolve?" in Haentjens and Wessels (eds), *Research Handbook on Crisis Management in the Banking Sector* (2015), Ch. 12, pp.283–307.
[68] Matthias Haentjens and B. Wessels, "Three Paradigm Shifts in Recent Bank Insolvency Law" (2016) 31(7) *J.I.B.L.R*, 396- 400.
[69] Ibid.
[70] Federico Lupo-Pasini and Ross P. Buckly, "International Coordination in Cross-Border Bank Bail-ins: Problems and Prospects" (2015) 16(2) *European Business Organisation Law Review* 203.
[71] D. Busch and G. Ferrarini, *European Banking Union* (Oxford: Oxford University Press, 2015).
[72] Matthias Haentjens and Pierre de Gioia-Carabellese, *European Banking and Financial Law* (Abingdon: Routledge, 2015).

insolvencies has been relatively slow and this has led to the recent surge in bank insolvencies in EAC as discussed above.

4. Recommendation –for a regional cross-border banking and resolution framework

Cross-border banking in the EAC has seen a significant increase across Member States since the 2007/2008 global economic crisis with many banks across the region opening up branches. This increase has led to significant improvement in financial infrastructure needed to support financial services and financial markets, enhancing the development of cross-border payment systems, such as Mobile Money Services / M-PESA, clearing and settlement and credit registry systems.[73] Therefore, having a cross-border banking framework within the EAC would impact regional development and coordination to ensure banking and financial services provisions across the region are governed and regulated prudently.

The argument is that within the EAC, Kenya is heralded as one of the top countries with a modern banking and financial system in Sub-Saharan Africa, and the best in the EAC.[74] Therefore, Kenya's membership to the EAC may help impact and develop EAC's cross-border banking and resolution framework that can operate a more advanced cross-border model and can provide a platform upon which differences in legal and procedural frameworks could be reconciled/balanced to tailor a uniform regional banking resolution framework.[75]

For instance, if the CBU's policy approach to enforcement of mobile money tariffs for cross-border services transactions is significantly different to that of the KCB's, and therefore, impacting the regulation and supervision of such financial products/services in Kenya, it might be challenging to provide such a service across the region. This might not only impact customer services but also, efficient financial coordination and stability in the region which in turn, impacts the banking and financial sectors at large. There would therefore, be a need to devise a balanced cross-border banking resolution framework that would remedy these divergences.

In a 2005 IMF policy report on bank behaviour in developing countries, evidence from the EAC countries (Uganda, Kenya and Tanzania) premised on structure, performance, and role of banking systems, showed that large foreign international banks were more efficient and active in lending than domestic banks due to weaker institutional policies that did not impact

[73] Wagh et al, Scaling-up Regional Financial Integration in the East African Community (2012) World Bank Working Paper No. 69337 <http://hdl.handle.net/10986/13031> (accessed 30 March 2021).
[74] M. Brownbridge, "The Causes of Financial Distress in Local Banks in Africa and Implications for Prudential Policy", UNCTAD OSG/ DP/ 132, 2010, at 13.
[75] I. Salami, "Cross-border Banking in Africa: Legal and Regulatory Challenges" (2014) 29(12) *J.I.B.L.R*, 728-742.

competiveness and improved banking services provision.[76] Another study conducted by the IMF in 2013 highlighted that banks head-quartered in Uganda, Kenya and Tanzania but with subsidiaries in other EAC Member States had lower spreads and were more efficient than other private domestic banks with no subsidiaries in the region.[77] These banks (with regional branches/subsidiaries) were also recorded as being highly profitable in their domestic markets than other private banks due to liquidity support as part of a group that provided a sort of safety buffer from losses and financial shocks.[78]

4.1 Why a regional banking and resolution framework?

Some of the major impediments to attaining full regional banking and financial integration within the EAC have been cited as being: (i) the lack of a common tax regime; (ii) diverse national regulatory and supervisory frameworks prescribed by central banks (iii) poor regional infrastructure, such as IT connectivity within the banking and financial sectors (iv) the lack of a centralised data sharing network and (v) the existence of diverse capital movement polices, among other factors.[79] However, these impediments or/constrictions may be overcome by making good use of the EAC institutional framework to tailor a regional-integrated framework, especially within the banking and financial services sector.

Within the EAC, banks and financial institutions have historically been ahead of the curve in assessing the potential of the EAC regional market. This is because several banks have to a certain degree adopted a regional business model incentivised by a range of factors including but not limited to; diverse client base, corporate structures, common currency model – (the Shilling) being the main regional currency in Uganda, Kenya and Tanzania.[80] This is in addition to close-linked infrastructure along the regional trade corridors, such as the Mombasa Port that serves the main region. In addition, Uganda, Kenya and Tanzania as the three founding members of the EAC share a somewhat long history of trade and administrative cooperation, traceable to over a century, knitted by a shared colonial history by the British, leading to a shared legal system based on English common law which is an added advantage.

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[76] M. Cihak and R. Podpiera, "Bank Behaviour in Developing Countries: Evidence from East Africa" (2005) IMF Working Papers 05/129.

[77] World Bank, Financial System Stability Assessment (FSSA): East African Community (2013).

[78] Ibid.

[79] I. Salami, "Cross-border Banking in Africa: Legal and Regulatory Challenges" (2014) 29 (12) *J.I.B.L.R*, 728-742.

[80] M. Cihak and R. Podpiera, "Bank Behaviour in Developing Countries: Evidence from East Africa" (2005) IMF Working Papers 05/129.

The EAC has a regional customs union adopted in 2005, and a Common Market Protocol adopted in November 2009 which have both strengthened regional trade cooperation.[81] These agreements map-out the agenda on liberalisation of trade in financial services (including banking) within the region which led to elimination of barriers to the free movement of capital in year 2015. In essence, EAC Member States have progressively, in accordance with the Schedule on the Removal of Restriction on the Free Movement of Capital: (i) removed restrictions on the movement of capital belonging to the persons resident in the EAC; (ii) removed discrimination based on the nationality or on the place of residence of the persons or on the place where the capital is invested; (iii) removed any existing restrictions on the movement of capital and on the current payments and transfers; (iv) removed restrictions relating to current payments connected with the movement of goods, persons, services or capital.[82]

Another important factor that would support the argument for the introduction of cross-border banking resolution framework across the EAC region is the regional legislative assembly, the East African Legislative Assembly – (EALA).[83] The EALA is the legislative organ of the EAC that has the mandate to legislate on all aspects of the law relating to the region, with power to pass laws over-riding national laws. The EALA is supplemented by the Judiciary and the Secretariat – with three top-level committees; the Monetary Affairs Committee (MAC) comprised of the central bank governors, with subcommittees covering banking and insurance issues, the Fiscal Affairs Committee, comprised of the Ministers of Finance, dealing with harmonisation of taxes and duties; and the Capital Markets Development Committee, dealing with securities regulatory affairs.[84]

Therefore, this would support the establishment of a regional (single) licensing regime/framework to govern/regulate banking and financial services across the region. This in turn, would remedy inherent barriers to regional inter-connectedness mainly caused by separate domestic laws and regulatory restrictions, such as capitalisation requirements for banks and their regional subsidiaries. This would further, enable cross-border

[81] Hamiisi Junior Nsubuga, "The Call for Harmonisation of Cross-border Insolvency Laws to enable Cross-border Filing and Litigation in the East African Community" (2019) 30 (12) I.C.C.L.R, 659-668.

[82] E. Binda, "Free Movement of Capital and East African Monetary Union" in Ugirashebuja *et al* (eds) *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (The Netherlands, Brill, 2017) Ch.13.

[83] Established under the Treaty for the Establishment of the East African Community, Art. 9(f).

[84] See further, W. Kaahwa, "The Institutional Framework of the EAC" in Ugirashebuja *et al* (eds) *East African Community Law: Institutional, Substantive and Comparative EU Aspects* (The Netherlands, Brill, 2017) Ch.2.

branching/subsidiaries, especially by powerful and stable banks across the region which is key to regional banking and financial integration.[85]

4.2 Benefits of an EAC regional banking and resolution framework

4.2.1 Cross-border harmonised legal and regulatory framework

One of the key challenges in regulating cross-border banking services is that these services are governed/guided by various national or/domestic banking systems, built on different legal and regulatory structures. Therefore, the coordination of these diverse banking regulations becomes particularly onerous as different regulatory frameworks in different jurisdictions require different compliance frameworks.[86] Financial reporting is one such requirement. In the EAC for example, banks have to comply with banking and financial reporting requirements for the different jurisdictions they operate in due to absence of a regional coordinated regulatory framework.[87]

For example, Ecobank operates in several of EAC Member States, with five branches in Tanzania, eighteen branches in Kenya, and fourteen branches in Uganda (plus its presence in other EAC Member States, Rwanda, Burundi and South Sudan). However, each of these Member States have their own set of banking and financial rules and regulations on financial reporting. Where certain regulatory changes, such as capital adequacy requirements are introduced by one Member State, other branches or subsidiaries in other Member States may need to either recapitalise or decapitalise to comply with new regulations. This has the impact of creating capital imbalances across the region that affects the economies of scale in maximising capital movement/profits to both the consumer and the Member States within the region. This can however, be remedied by adopting a harmonised cross-border regulatory framework that can be adopted by EAC Member States and used as regional regulatory framework.

Progress has been made between Uganda, Kenya and Tanzania to harmonise their bank payments transfer system by integrating their real time gross settlement systems (RTGS)[88] across borders. This harmonisation, if fully operative, would at least, lead to the adoption of

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[85] Wagh et al, Scaling-up Regional Financial Integration in the East African Community (Washington DC, 2012) World Bank Working Paper No. 69337 <http://hdl.handle.net/10986/13031> (accessed 30 March 2021).

[86] I. Salami, "Cross-border Banking in Africa: Legal and Regulatory Challenges" (2014) 29(12) *J.I.B.L.R*, 728-742.

[87] See, World Bank, Financial System Stability Assessment (FSSA): East African Community (2013).

[88] This is the payments/funds transfer system where the transfer of money or securities takes place from one bank to any other bank on a 'real-time' and on a 'gross' basis as soon as the payment made without subjecting such transaction to any waiting period.

a single-regional licensing framework across the EAC region that would significantly enhance regional coordination in cross- border banking services provision aided by a regional banking and resolution framework.

4.2.2 Mutual recognition of a single licensing regime

Adopting a single licensing regime would be an important aid to further regional banking integration within the EAC region. If introduced for banks and financial institutions, it would significantly and procedurally reduce cross-border transaction times and costs. A single-licensing regime would also lead or/improve regional mutual recognition of broadly defined regional policies and principles among domestic regulators, such as the Basle core principles for bank supervision,[89] that can be regionally adopted by the EAC Member States among other principles.

4.2.3 Strengthening cross-border supervision and coordination

Establishing strong regional links between banks and financial institutions between EAC Member States would strengthen regional regulatory and supervisory cooperation especially from Member States' central banks. In the banking and financial sectors, prudential domestic regulation and supervision is very important to ensure compliance. However, for regional integration and coordination, both domestic and regional consolidated financial supervision are important in ensuring enforcement of financial compliance and risk management.[90] This would ensure, for example, that weaknesses in one Member State's bank/financial institution with subsidiaries in other Member States do not put the regional financial system at risk. To this effect, data sharing on regional cross-border banking or trading in financial products/services would be enhanced to remedy the data-gap caused by Member States' procedural and regulatory restrictions that may obscure cross-border linkages that mask the benefits of regional integration.[91]

4.2.4 Establishment of a regional EAC College of Supervisors (CoS)

According to the Basel Committee on Banking Supervision,[92] College of Supervisors are multilateral working groups of relevant supervisors that are formed for the collective purpose

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[89] Basle Committee on Banking Supervision, *Good Practice Principles on Supervisory Colleges*, at <https://www.bis.org/publ/bcbs177.pdf> (accessed 10 March 2021).

[90] B. Wessels, "Giving Legal Effect to Foreign Resolution Measures in the Financial Sector" (2015) 28(3) *Insolvency Intelligence*, 44–45.

[91] A. Koch and H. McDonald "Post-crisis Bank Liquidity Risk Management Disclosure" (2013) 5 (1) *Qualitative Research in Financial Markets*, 65 – 84.

[92] Basle Committee on Banking Supervision, *Good Practice Principles on Supervisory Colleges*, at <https://www.bis.org/publ/bcbs177.pdf> (accessed 10 March 2021).

of enhancing effective and consolidated supervision of international banking groups. This is to ensure that both home and host supervisors work as effectively as possible by clearly outlining expectations in relation to college objectives, governance, communication and information, as well as potential areas for collaborative work.[93]

Where established, supervisory colleges would enable the home State supervisors to exercise effective supervision of groups and their subsidiaries on a consolidated basis, but also, affording host State authorities a chance to be adequately represented in the regulatory and supervisory cross-banking affairs across the region. However, despite the presence of large supervisory colleges in developed jurisdictions, particularly, in the Western European banking groups, supervisory colleges are somewhat a new phenomenon within the African banking groups.[94] Nevertheless, in the EAC region, Kenya has pioneered on this front by setting up a supervisory college for its largest cross-border banks - the Kenya Commercial Bank Supervisory College, launched in Nairobi in October 2012 assisted by the IMF East AFRITAC.[95] Arrangements were also made in 2014 by the KCB for the opening of three more supervisory colleges.[96]

It is also envisaged that once created, the structures of the supervisory colleges will not only provide for supervisors/personnel providing expertise during the good financial health of banks/financial institutions within the region, but will also, provide for supervisors/experts that would provide resolution and fiscal expertise in relation to financial crisis management, be it to individual banking groups within a Member State, or to a regional systemic banking/financial set-up. This would help to foster key information sharing, regional co-ordination and consolidated enforcement of banking/financial activities to combat imminent financial crises/bank insolvencies in the region.

The only concern perceived in respect to supervisory colleges lies in the fact that supervisory colleges are not statutory bodies with law making powers. This would raise the question as to whether such colleges would be in a position to pass biding decisions/resolutions to bind other

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[93] Ibid, principles 2, 3 and 4.

[94] I. Salami, *Financial Regulation in Africa: An Assessment of financial Integration Arrangements in Emerging and frontier Market* (London, Routledge 2016) Chs.2 and 3.

[95] East AFRITAC is a collaborative venture between the International Monetary Fund (IMF), the recipient countries (Eritrea, Ethiopia, Kenya, Malawi, Rwanda, Tanzania (including Zanzibar), and Uganda), and bilateral and multilateral development partners to increase technical assistance and capacity building. See, <https://www.eastafritac.org/aboutus?title=About%20us> (accessed 21 March 2021).

[96] See, Making Finance for Africa - Kenya: CBK Lines Up Three More Supervisory Colleges <https://www.mfw4a.org/news/kenya-cbk-lines-three-more-supervisory-colleges> (accessed 05 March 2021).

banking supervisors in other Member States. For instance, would a supervisory college in Kenya pass a decision/resolution, such as making changes to recapitalisation requirements impacting a subsidiary in Uganda that would be binding on the parent bank's supervisors in Uganda? yet such a decision lies with Uganda– the home State to the parent bank?

The answer to this question lies in the effectiveness of regional integration and coordination within the EAC. The presence of provisions like the Common Markets Protocol and Customs Union and organs such as the regional legislative assembly (EALA) may support binding resolutions, such as a directives and regulations at a regional level, with a binding effect to be adopted. Where this is the case, regional directives/regulations would guarantee a binding effect of the decisions of supervisory colleges across Member States, like is the case with the supervisory colleges set-up under the framework for micro prudential supervision in the European Union through the work of the European Banking Authority (EBA).[97]

5. Conclusion

Banking insolvency within the EAC has been a key topic of discourse amongst extant stakeholders for decades but such discourses have gained pace in the last decade as several high profile commercial banks and financial institutions across the region have been liquidated by respective Central Banks after suffering from irredeemable financial difficulties. The high profile liquidations of National Bank of Commerce in 2012, Global Trust Bank in 2014 and Crane Bank Uganda Ltd in 2016 in Uganda, coupled with the liquidation of Chase Bank, Dubai Bank and Imperial Bank between 2015 – 2018 in Kenya and the liquidation of Covenant Bank for Women Ltd, Efatha Bank Ltd, Njombe Community Bank Ltd, Kagera Farmers' Co-operative Bank Ltd and Meru Community Bank Ltd in 2018 alone further highlight the plight of banking insolvencies in the region.

The outbreak of the global COVID19 pandemic at the beginning of the year 2020 that prompted not only national, but regional and international lockdowns further exacerbated a fragile state of banking and financial services provisions within the EAC as the timing of the outbreak coincided with already existing banking crisis in the EAC region. As a result, COVID19 induced lockdowns measures have greatly impacted the flow of capital and movement across borders which have further impacted the financial performance of bank and consumers'

[97] The EBA set up guideline that provides *inter alia*: i) guidance on the operational functioning of colleges and (ii) guidance on the joint assessment of banks' risks, and joint decisions on the adequacy of cross border banks' capital for supervisory colleges. See, <https://www.eba.europa.eu/regulation-and-policy/colleges-of-supervisors> (accessed 01 April 2021).

abilities to service their loans with banks which has further contributed to high NPLs reporting across EAC banking sectors, pausing a major threat to banking insolvency in the region.

As discussed in this chapter, the key causes of these banking insolvencies have been identified as high levels of NPLs, corporate governance failings and lack of or/poor banking resolution frameworks within EAC Member States. After close analysis of these factors and efforts taken by these Member States to address these concerns, the chapter recommends adoption of a regional cross-border banking resolution framework across the EAC as measure that can tailor regional coordination in the banking and financial services sectors as way of attaining efficient supervision and regulation of banking and financial services provision in the region. The chapter has argued that as these Member States share somewhat similar/common problems in relation to banking insolvencies, they should adopt a concerted approach to remedy these concerns, which is through adoption of a regional banking resolution framework.