

March 18, 1999

Appendix I: Survey of Relevant Laws¹

Australia

1. Central Bank: Reserve Bank of Australia

Indemnity. A person is not subject to any action, claim or demand by, or any liability to, any person in respect of anything done or omitted to be done in good faith and without negligence in connection with the exercise of powers or performance of functions under this Act or in compliance with obligations imposed by this Act.

Banking Act 1959 (Cth), Sec. 70A. [Consolidated as in force on 1 July 1998].

These protections cover not only bank supervisors, but also external auditors who are placed under an obligation to provide information about a bank being audited in certain circumstances. See Part II, Division 2A, Section 16B of the Banking Act 1959. Similarly, under the protections for APRA (defined below) set forth in paragraph 2 below, auditors who have been appointed to perform a task by APRA may be protected by that provision as well.

2. Financial Regulator: Australian Prudential Regulation Authority ("APRA")

APRA, a Board member, an APRA staff member, or any agent of a Board member or APRA staff member, is not subject to any liability to any person in respect of anything done, or omitted to be done, in good faith in the exercise or performance of powers, functions or duties conferred or imposed on APRA, the Board or a Board member under this Act or any other law of the Commonwealth. Australian Prudential Regulation Authority Act 1998 (Cth), Sec. 58.

Canada

1. Central Bank: Bank of Canada

No liability if in good faith. No action lies against Her Majesty, the Minister, the Bank, any officer or employee of the Bank or any person acting under the direction of the Governor of the Bank for anything done or omitted to be done in good faith in the administration or discharge of any powers or duties that under this Act are intended or authorized to be executed or performed.

Payment Clearing and Settlement Act, 1996, S.C. 1996, c. 6 [assented to 29th May, 1996], Sec. 20.

2. Banking Regulator: Office of Superintendent of Financial Institutions

No action lies against Her Majesty, the Minister, the Superintendent, any Deputy Superintendent, any officer or employee of the Office or any person acting under the direction of the Superintendent for anything done or omitted to be done in good faith in the administration or discharge of any powers or duties that under any Act of Parliament are intended or authorized to be executed or performed.

The Financial Institutions and Deposit Insurance System Amendment Act, R.S. 1985, c. 18 (3rd Supp.) [assented to 30th June, 1987], Sec. 24.

3. Deposit Insurance Company: Canada Deposit Insurance Corporation

No liability for acts in good faith

45.1(1) The Corporation, its directors, officers and employees and any persons acting on the behalf of the Corporation are not liable to any member institution, depositor with, or creditor or shareholder of, any member institution, or to any other person, for any damages, payment, compensation or indemnity that any such member institution, depositor, creditor, shareholder or other person may suffer or claim by reason of anything done or omitted to be done, in good faith, in the exercise, execution or performance of any powers, duties and function that by this Act are intended to be exercised, executed or performed.

Obligation remains

(2) Nothing in subsection (1) shall be construed to relieve the Corporation from the obligation to make payment in respect of a deposit insured under this Act.
Canada Deposit Insurance Corporation Act, R.S. c. C-3.

Denmark

Under Danish law, all government employees, including those of the Danish Financial Supervisory Authority and Danish Deposit Insurance and Investor Protection Fund, are protected.²

The employer shall be liable for damage caused wilfully or through negligence by an employee performing work or a task for the employer. The employer may demand compensation from the employee.

Danish Law, Book 3, Ch.19, Sec. 2 (the Danish Royal Act of 1683).

* * *

The Liability of an Employee

Section 23. Where an employer has been obliged to pay damages as a consequence of an employee's negligent behaviour, a right of recourse against the employee exists only to the extent to which it is found equitable in the light of the negligence exercised, the employee's position, and other circumstances.

Subsection 2. An employee's liability in relation to the injured person may be mitigated, or may lapse, where it is found equitable, having regard to the circumstances mentioned in subsection 1 and to the interest of the injured person. An employee who has been obliged to pay damages has a right of recourse against the employer to the extent to which liability shall finally rest with the employer under subsection 1.

Subsection 3. The provision of subsection 1 is likewise applicable to an employer's claim on compensation against the employee for damage otherwise inflicted upon the employer during the employment.

General Rule of Mitigation

Section 24. Liability may be mitigated or lapse where liability would involve an unreasonable burden on the party liable or where very special circumstances otherwise make it reasonable. In deciding the issue due regard shall be had to the extent of damage, the type of liability, the situation of the tort-feasor, the interest of the injured person, existing insurance, and other circumstances.

The Damages Liability Act No. 228 of May 23, 1984, Ch. 3.

Ecuador

Ecuadorian law contains procedural protections for certain officials of both the Central Bank and the Deposit Guarantee Agency, as follows:

Article 25 - Recourse. The decisions taken in the exercise of authorities conferred in the present law as well as their execution, subject to the requirements of the Political Constitution, can be subject to legal actions and recourses³ envisioned in the normal legislation.

The contention of civil and criminal matters would be examined, in the first instance, before the President of the Supreme Court of Justice and those of administrative matters before the Administrative District Court; in the second instance of such contention,⁴ before the respective Bench of the Supreme Court of Justice.

The interposition of these recourses and their procedures will not suspend the execution of the indictment of recovery and without prejudice of the legal responsibilities of the acts performed by the Deposit Guarantee Agency or by the natural or judicial persons hired by it. While the actions or recourses are not resolved, they will have full judicial validity.

Criminal actions that are presented against the members of the Board of Directors and the General Manager of the Deposit Guarantee Agency, the Board of Directors of the Central Bank of Ecuador and the Members of the Banking Board, that originate in Title II of this Law, will require a formal accusation of those who have voting rights in the financial institution affected, or by demand of the Attorney General, the same accusation and demand, that could only be established in the favorable report presented by a commission of experts in banking, accounting and auditing matters, made up of a representative designated by the Private Bankers Association, one by the Deposit Guarantee Agency and one by the Attorney General.

Law of New Regulation on Economic Matters in the area of Financial Taxation (1998).

Germany

The basis for liability of government employees is found in the German Civil Code, as follows:

Sec. 839 [Liability for breach of official duty]

(1) If an official willfully or negligently commits a breach of official duty incumbent upon him as against a third party, he shall compensate the third party for any damage arising therefrom. If only negligence is imputable to the official, he may be held liable only if the injured party is unable to obtain compensation elsewhere.

(2) If an official commits a breach of his official duty in giving judgment in an action, he is not responsible for any damage arising therefrom, unless the breach of duty is punished with a public penalty to be enforced by criminal proceedings. This provision does not apply to a breach of duty consisting of refusal or delay in the exercise of the office.

(3) The duty to make compensation does not arise if the injured party has willfully or negligently omitted to avert the injury by making use of a legal remedy.

The Basic Law (1949), Germany's constitution, in effect transfers the liability of government employees to the state or government agency, and thereby protects all government employees, as follows:

Article 34 (Liability for neglect of duty). Should anybody, in exercising a public office, neglect their (sic) duty towards a third party⁵ liability shall rest in principle with the state or the public body employing them. In the event of wilful intent or gross negligence remedy

may be sought against the person concerned. In respect of claims for compensation or remedy recourse to the ordinary courts shall not be precluded.⁶

Hong Kong

The banking laws of Hong Kong protect employees of the banking regulator, the Monetary Authority, as follows:

Indemnity

(1) No liability shall be incurred by-

- (a) any public officer;
- (b) any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap 66) to assist the Monetary Authority; (Replaced 94 of 1993 s. 29)
- (c) the Advisor of an authorized institution or any person appointed under section 53G(5) by the Advisor; (Replaced 49 of 1995 s. 39)
- (d) the Manager of an authorized institution or any person appointed under section 53G(5) by the Manager; or (Replaced 49 of 1995 s. 39)
- (e) any person appointed under section 117(2),

as a result of anything done or omitted to be done by him bona fide⁷ in the exercise or purported exercise of any functions conferred or imposed by or under this Ordinance.

(2) No liability shall be incurred by any chief executive, director, manager or employee of an authorized institution as a result of anything done or omitted to be done by him in good faith in the carrying out or purported carrying out of any directions given to him by the Manager of the institution. (Added 49 of 1995 s. 39)

Banking Ordinance, Cap 155, Sec. 127.

India

The banking laws of India protect the government, the Reserve Bank and individual officers of the Reserve Bank, as follows:

54. Protection of action taken under the Act.--(1) No suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for anything which is in good faith done or intended to be done in pursuance of this Act.

(2) Save as otherwise expressly provided by or under this Act, no suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act.

Banking Regulation Act, 1949.

Ireland

The Central Bank of Ireland and its employees are subject to the following protections:

(1) The Bank or any employee of the Bank or any member of its Board or any authorised person or authorised officer appointed by the Bank for the performance of its statutory functions shall not be liable for damages for anything done or omitted in the discharge or purported discharge of any of its statutory functions under this Act unless it is shown that the act or omission was in bad faith.

(2) Without prejudice to the generality of subsection (1) --

(a) the authorisation or revocation of authorisation or supervision or regulation of any person under any of its statutory functions shall not constitute a warranty as to the solvency or performance of a person and neither the State nor the Bank shall be liable for any losses incurred through the insolvency, default or performance of such person,

(b) the approval or revocation of approval or supervision or regulation of any exchange or the approval, amendment, revocation or imposition of rules or the consent or refusal of consent to amendments of rules under any of its statutory functions shall not constitute a warranty as to the solvency or performance of any exchange or member of any exchange and neither the State nor the Bank shall be liable for any losses incurred through the insolvency, default or performance of any exchange or member of any exchange.

Central Bank Act, 1989 (as inserted by Sec. 69 of Central Bank Act, 1997), Sec. 25A.

Japan

Japanese law protects all national and municipal government officials, as follows:

Should any public officials of either national or municipal government for the exercise of public authority cause damages to a third party illegally on purpose or by negligence in the performance of their duties, the national or municipal government shall be liable for the damages to the third party.

Under the first paragraph, if the officials have acted on purpose or by gross negligence, the national or municipal government may have a claim for the expenses due to the said liability to the said officials.

Government Compensation Law (October 27, 1947), Article 1.

Malaysia

(1) No action, suit, prosecution or other proceeding whatsoever shall lie or be brought, instituted, or maintained in any court or before any other authority against-

(a) the Government of Malaysia or a State Government;

(b) the Bank;

(c) any officer or employee of any such Government or of the Bank, either personally or in his official capacity; or

(d) any person lawfully acting on behalf of any such Government, or on behalf of the Bank, or on behalf of any such officer or employee, either personally or in his capacity as a person acting on such behalf,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of, this Act, or any order in writing, direction, instruction, notice or other thing whatsoever issued under this Act:

Provided that such act or such statement was done or made, or was omitted to be done or made, in good faith.

(2) For the purposes of this section-

(a) any member of the administration of the Government of Malaysia or a State Government shall be deemed to be an officer of the respective Government; and

(b) the Governor, Deputy Governor, any director of the Bank, any member of the Advisory Panel, any person appointed by the Bank pursuant to section 3(3) or section 73(1)(E) or (2)(a), and any receiver or manager appointed by the High Court pursuant to section 73(2)(b) or (c), shall be deemed to be an officer of the Bank.

(3) In subsection (2) "member of the administration" has the meaning assigned to it in Article 160(2) of the Federal Constitution.

Banking and Financial Institutions Act 1989, Sec. 114.

New Zealand

Employees of the Reserve Bank of New Zealand have the following protections:

179. Directors and employees not personally liable

A director or employee of the Bank is only personally liable in his or her capacity as a director or employee for

(a) Exercising or purporting to exercise, in bad faith, a power conferred by this Act:

(b) Omitting, in bad faith, to exercise a power conferred by this Act.

Reserve Bank of New Zealand Act 1989

In addition, in certain limited cases an indemnity also would be applicable, as follows:

146. Indemnity

(1) The Bank, every statutory manager of a registered Bank, every person appointed under section 99 or section 101 of this Act and every member of an advisory committee shall be indemnified by the Crown in respect of any liability arising from the exercise or purported exercise of, or omission to exercise, any power conferred by this Part of this Act unless it is shown that the exercise or purported exercise of, or omission to exercise, the power was in bad faith.

(2) Any money required for the purposes of this section shall be paid out of the Crown Bank Account without further appropriation than this section.

(3) The indemnity conferred by subsection (1) of this section extends to legal costs incurred in defending a proceeding.

(4) Within 12 sitting days of the making of any payment under this section, the Minister shall lay before the House of Representatives a report which shall contain details of the circumstances giving rise to the liability of the Crown, the amount of the payment, the person to whom the payment was made and any other relevant matters.

Ibid.

Norway

Norwegian law protects all government employees, including those of the Banking, Insurance and Securities Commission of Norway, as follows:

Section 2-1 (Employer's liability for an employee)

1. The employer shall be liable for damage caused wilfully or through negligence by an employee performing work or a task for the employer, account being taken of whether the requirements the aggrieved party can reasonably make of the institution or service in question have been set aside. The employer's liability shall not encompass damage arising because the employee goes beyond what is reasonable to expect based on the nature of the institution's operations or the area of activity and the nature of the work or task in question.
2. "Employer" means the public authorities and any other person who for the purposes of business or otherwise has someone in his service.
3. "Employee" means any person who performs work or carries out a task in the service of the employer. The following are considered on a par with an employee: an ombudsman (parliamentary commissioner), officers and rank and file during military service and others during mandatory service of the public authorities, as well as inmates, patients etc., participating in work in prison service institutions, in health institutions, etc.

Section 2-2 (Modification of the employer's liability)

1. The employer's liability may be modified pursuant to section 5-2.
2. The employer's liability may also be modified if the damage is due to a decision of a public authority and the aggrieved party has without reasonable cause failed to attempt to have the decision changed.

Section 2-3 (Modification of the employee's liability)

1. Whoever has become liable for an employee pursuant to section 2-1 may demand compensation from the employee insofar as this is deemed reasonable taking into account the conduct shown by the employee, his financial capacity, his position and the circumstances in general.
2. The employee's liability towards the aggrieved party may be modified when circumstances mentioned in subsection 1 make such modification reasonable, and when such modification is also deemed appropriate taking into account any responsibilities of the aggrieved party. An employee who himself pays compensation for damage caused may claim reimbursement of the amount that should be borne by the employer pursuant to subsection 1.
3. The rule in subsection 1 shall apply correspondingly if the employer brings to bear a claim against an employee who has inflicted damage on the employer while in the employer's service.

Damages Act, Chapter 2

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Chapter 30 Cases related to actions of public agencies

Section 435

The provisions of this Act apply to lawsuits concerning

1. The lawfulness of decisions rendered by public agencies,
2. obligations of public agencies or claims for damages in the event of lawful circumstances in public agencies.

The provisions of this Act shall not apply to circumstances belonging exclusively in the domain of private law.

Actions brought under the first paragraph, subparagraph 1, may only be brought against the State, a local authority or a public agency. Actions under the first paragraph, subparagraph 2, may also be brought against a public employee.

Civil Procedure Act

Philippines

Philippine law contains a number of protections that would apply to banking supervisors, consisting of employees of the Central Bank, *Bangko Sentral ng Pilipinas* (“BSP”), the Monetary Board (“MB”), which is the governing body of BSP, and the Philippine Deposit Insurance Corporation (“PDIC”):

First, all government employees are protected by E.O. 292, the Administrative Code of 1987, which provides in relevant part as follows:

Sec. 38. *Liability of Superior Officers.* (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Sec. 39. *Liability of Subordinate Officers.* No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

Second, Philippine law also contains indemnity provisions for certain BSP and MB personnel. Section 15 of the Central Bank Act (the “CBA”), R.A. No. 7653, sets forth powers and responsibilities of the MB, including the following indemnification provision:

(e) indemnify its members and other officials of the *Bangko Sentral*, including personnel of the departments performing supervision and examination functions against all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which he may be, or is, made a party by reason of the performance of his functions or duties, unless he is finally adjudged in such action or proceeding to be liable for negligence or misconduct.

In the event of a settlement or compromise, indemnification shall be provided only in connection with such matters covered by the settlement as to which the *Bangko Sentral* is advised by external counsel that the person to be indemnified did not commit any negligence or misconduct.

The costs and expenses incurred in defending the aforementioned actions, suit or proceeding may be paid by the *Bangko Sentral* in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the member, officer, or employee to repay the amount advanced should it ultimately be determined by the Monetary Board that he is not entitled to be indemnified as provided in this subsection.

It should be noted that the first paragraph of Section 16 of the CBA tends to diminish the effectiveness of the protections for employees of the central bank, which paragraph provides as follows:

Members of the Monetary Board, officials, examiners and employees of the *Bangko Sentral* who willfully violate this Act or who are guilty of negligence, abuses or acts of malfeasance

or misfeasance or fail to exercise extraordinary diligence in the performance of his duties shall be held liable for any loss or injury suffered by the *Bangko Sentral* or other banking institutions as a result of such violation, negligence, abuse, malfeasance, misfeasance or failure to exercise extraordinary diligence.

Third, Section 9-A of the Philippine Deposit Insurance Corporation Act, R.A. No. 3591, as amended, provides protections for the PDIC and its employees, as follows:

The Corporation, its directors, officers, and employees shall not be subject to any action, claim or demand for or in connection with any act done or omitted to be done by them in good faith in the exercise of their functions or in connection with the exercise of the powers under this Section and Sections 9-B, 9-C and 12(c) of this Act.

Singapore

All employees of the Monetary Authority of Singapore (the "Authority") are protected as follows:

No suit or other legal proceedings shall lie against any member, officer or employee of the Authority or other person acting under the direction of the Authority for anything which is in good faith done or intended to be done in the execution or purported execution of this Act. Monetary Authority of Singapore Act (Chapter 186), Sec. 22.

South Africa

The South African Reserve Bank and its employees have the following protections:

No liability shall attach to the South African Reserve Bank or, either in his official or personal capacity, any member of the board of directors of the said Bank, the Registrar or any other officer or employee of the said Bank, for any loss sustained by or damage caused to any person as a result of anything done or omitted by such member, the Registrar or such other officer or employee in the *bona fide* performance of any function or duty under this Act.

The Banks Act, 1990 (Act No. 94 of 1990), Sec. 88.

Spain

Under Spanish law, government agencies are liable for damages caused by their employees,⁸ as follows:

Section 139. Principles of responsibility

1. Citizens will be entitled to receive an indemnification from the relevant Public Administrations in connection with any damage that they may suffer in any of their assets and rights, except in cases of force majeure, provided that damage arises as a result of the normal or abnormal operation of public services.⁹

2. In any event, any alleged damage shall have to be actual, financially assessable and individualized as to a person or group of persons.

3. Public Administrations will indemnify citizens following the application of non expropriatory legislative acts which the citizens are not under a legal obligation to endure, where it is so provided in the legislative acts and in the terms specified by said acts.

4. Financial responsibility of the State following the operation of the Administration of Justice will be governed by the Basic Act on the Judiciary.

Legal Procedure of Public Administrations and the Administrative Common Procedure Act of 26th November 1992.

Sweden

Under Swedish law, all government employees are protected, as follows:

Chapter 3. Damages liability for employers and the public

Sec. 1 Those having employees in their service shall compensate personal or property damage which the employee occasions through a fault or neglect in the service. The same shall correspondingly apply if an employee in the service occasions pure property damage through a crime.

In matters regarding damages liability for the state or municipality upon the exercising of authority, that which is stated below in this chapter shall apply.

Act on Damages (1972:207), Ch. 3, Sec. 1

Sec. 2 The state or municipality shall compensate for damage to persons, goods or financial assets which are caused by error or omissions in the execution of public authority in activities for whose performance the state or municipality is responsible.

That which is stated in the first paragraph regarding the municipality also applies in respect of the county authority, municipality association, congregation and church society.

Ibid., Sec. 2

* * *

Chapter 4 Employee's Damage Responsibility

Sec. 1 For damages which an employee causes due to error or omissions while in official service, he is responsible only to the extent that extraordinary circumstances exist with respect to the nature of the act, the position of the employee, the interest of the injured party and other circumstances.

Ibid., Ch. 4, Sec. 1.

Switzerland

Under Swiss law, all government employees are protected under the Federal Law on Liability of the Confederation, as follows:

Article 1

The provisions of this act apply to all persons who bear public office in the Confederation, namely:

* * *

e. Civil servants and other agents of the Confederation;

f. All other persons insofar as they are commissioned directly with duties under public law by the Confederation.

Federal Law on Liability of the Confederation (Law on liability) of 14 March 1958 (status as of 2 December 1997), RS 170.32, Article 1.

* * *

Article 3

1. The Confederation is liable for a tort committed unlawfully against a third party by a civil servant in the exercise of his duties, irrespective of the culpability of said civil servant.

2. When the liability on defined facts is stipulated by special laws, such laws will govern the Confederation's liability.

3. The victim has no action against the civil servant at fault.
4. When a third party claims for damages against the Confederation, the latter shall immediately inform the civil servant against whom it may exercise a right of recourse.
Ibid.

* * *

Article 7

Should the Confederation compensate the tort, it will have the right to take recursive action against the civil servant who committed the tort with deliberate intent or by gross negligence of his official duty.

Ibid.

Article 8

The civil servant will bear liability to the Confederation for the tort which he has caused directly by the deliberate or grossly negligent breach of his official duty.

Ibid.

United Kingdom

Under U.K. law, the Bank of England and its employees are protected in relation to things done or omitted to be done before June 1, 1998 when bank supervision was transferred to the Financial Services Authority (the "FSA"). Since June 1, 1998, the FSA and its employees are protected as are the Bank of England and its employees with respect to anything done by the Bank or its employees on or after June 1, 1998 in relation to proceedings arising from anything done or omitted to be done before that date.

1. Central Bank: Bank of England

Neither the Bank nor any member of its Court of Directors or who is, or is acting as, an officer or servant of the Bank shall be liable in damages for anything done or omitted in the discharge or purported discharge of the functions of the Bank under this Act unless it is shown that the act or omission was in bad faith.

The Banking Act 1987, Ch. 22, Sec. 1(4) read with the Bank of England Act 1998, Sch. 8, para. 1.

2. Banking Regulator: FSA

The FSA is covered by the above language, as follows:

(i) for the words from the beginning to "Bank", in the second place where it occurs, there is substituted "Neither the Authority nor any person who is, or is acting as, an officer or servant of the Authority", and

(ii) for "Bank", in the third place where it occurs, there is substituted "Authority".

The Bank of England Act 1998, Sch. 5, Part 1, Ch. 1, para. 2(c).

United States

Under U.S. law, all Federal government employees, including banking supervisors, are protected under the Federal Tort Claims Act (the "FTCA"), 28 U.S.C. Sec. 2671, et seq. The FTCA is a complex law that provides for a waiver of sovereign immunity by the U.S. in certain cases involving torts committed by government employees:

. . . the FTCA grants jurisdiction for actions seeking money damages for injury, property loss or death caused by the negligent or wrongful acts or omissions of federal employees. 28 U.S.C. Sec. 1346(b). . . . The government is only liable if the employee was acting within the scope of his office or employment. *Id.* The law of the place where the act or omission occurred will be borrowed to decide the question of whether the employee was acting within the scope of his employment. Axelrad, *Litigation under the Federal Tort Claims Act*, 8 *Litigation Mag.* 22 (Fall 1981). See also Axelrad, *Taking Uncle Sam to Court*, *The Brief* (Winter 1993) p. 19.

The FTCA contains a number of exceptions for torts that are not covered by the law and therefore no claim against the United States will be permitted, the most significant of which for bank examiners are as follows:

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

* * *

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system. 28 U.S.C. Sec. 2680.

Of these provisions, the 'discretionary function' exception in subsection (a) is the most often used to defend bank examiners: "While the immunity of the federal government was waived to some extent by the FTCA, bank regulators are still immune from claims arising from their exercise of a 'discretionary function.' Courts have found this . . . to be applicable to claims alleging negligence against bank regulators." Bates and Gilbert, *Claims Against U.S. Bank Regulators for their Conduct in Supervising and Liquidating Financial Institutions*, Presentation at 3rd International Insolvency and Creditors' Rights Seminar, London (June 1996).

¹Note that unofficial translations were used for Denmark, Ecuador, Germany, Japan, Norway, Spain, Sweden, and Switzerland.

²See also Norwegian and Swedish law, below, which provide similar protections.

³That is, appeals.

⁴That is, on appeal.

⁵The phrase "towards a third party" may be read as "incumbent upon him as against a third party" as used in Sec. 839(1) of the Civil Code.

⁶Official translation.

⁷The phrase "bona fide" is Latin for "in good faith."

⁸This law does not protect government employees from civil suits.

⁹This provision is based on Article 106(2) of the Spanish constitution.