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Seminar

A Lack of Resolution

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1:00 - 2:00 pm

Room 303, 3/F, KK Leung Building, University of Hong Kong

Resolving a financial institution imposes the death penalty on it - a dramatic government act that requires a nationalization of the bank, a guarantee of some of the obligations of its depositors, and perhaps its other creditors, and a return of the reorganized institution to the market, usually over the course of a weekend. All of this is done with no pre-deprivation process and little post-deprivation compensation. This talk on resolution authority proposes domestic solutions to protect against government overreach, and an international context to deal with the problem of underreach. It proposes that the government make an ex ante public list of potentially nationalizable institutions and, ex post, provide the owners of seized institutions a brief window in which to buy their institution back from the government. This proposal would add both a process check and a market check to this most severe form of decisionmaking. At the same time, an internationalization of the context of the decision to use resolution authority, to the expert multinational committees of regulators who are insulated from ordinary domestic politics, at least to some degree, is more likely to encourage the appropriate resolution of the largest institutions than is any solely domestic approach.

David Zaring is Assistant Professor of Law at the Wharton School of Business. His research is focused on international economic regulation and administrative law. He has published articles in the NYU, Michigan, Virginia, and UCLA law reviews, and in peer-reviewed journals including the *Annual Review of Law & Social Science*, the *Journal of Tort Law* and the *Journal of Empirical Legal Studies*. He clerked on the D.C. Circuit, worked at the Department of Justice, and was educated at Harvard Law School and Swarthmore College.

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