Released: 18 February 2015

<u>NLS Trilegal International Arbitration Moot Court Problem 2015</u>

A. The Background

The Mythland Republic

The small Mythland Republic (***Mythland***) is located on the shores of the Mediterranean. Mythland has traditionally been a modest economy, mainly comprising the shipping and tourism sectors and some light manufacturing. Following the dissolution of the USSR, Mythland emerged as an offshore banking centre and a favoured destination for private investors (especially from the erstwhile USSR countries) for transacting varied international businesses. During the 1990s and early 2000s, the economy grew continuously, but erratically. Large swings in annual growth rates indicated a country highly sensitive to regional and global economic swings, frequently in unforeseen ways.

In 2004, Mythland acceded to the European Union (***EU***) as a full member. On 1 January 2008, it adopted the Euro as its official currency.

By 2009, the services sector, including financial services, contributed to almost 80% of GDP and employed more than 70% of the labour force. In financial services, the country was home to a large number of shell corporations of all sorts, engaged in all kinds of non-Mythlandic businesses. The offshore banking sector in particular had grown spectacularly. It dwarfed the rest of the economy, demonstrated by the amount of foreign cash (and foreign debt) held by Mythlandic banks compared to the country's GDP value. Mythlandic banks held cash deposits totalling €161 billion (or 827% of Mythland's GDP), mainly from foreign depositors. These banks were also large-scale lenders, having amassed a total of €84 billion in debt (or 431% of Mythland's GDP), mostly non-Mythlandic debt. These deposit-to-GDP and debt-to-GDP ratios were well above Eurozone averages, indicating a country with a bulging financial sector.

Nearly 50% of the money deposited in Mythlandic banks belonged to private entities from two erstwhile USSR countries. By far, the largest depositors were from Big Bear, the most powerful state to emerge from the dissolution of the USSR, one that had longstanding frosty relations with the EU. The second largest group of depositors was from Little Bear, a state sharing common borders and a common – but complicated – history with Big Bear.

The Mythlandic banks' debt profile was similarly geographically concentrated. Citizens and private entities from Olive Garden, a neighbouring Euro-Mediterranean country, owed almost half of the total debt owned by Mythlandic banks. Olive Garden government bonds comprised another 20%. Olive Garden was a long-standing EU member state whose official currency was the Euro.

Mythland's Banking Sector Crisis

Following the Great Recession that began in 2007-08, foreign depositors began to withdraw their money from Mythland. Overall, foreign deposits declined by nearly 20% during 2008-2009. This annual decline has continued since then at low double-digit rates. After more than three decades of unbroken growth, the Mythlandic economy contracted for the first time in 2009, registering a negative GDP growth rate of 1.9%. Tourism fell, shipbuilding orders dwindled, manufacturing facilities migrated and real estate values declined. Faced with declining revenues but heightening welfare demands from an increasingly unemployed public, public sector borrowing increased dramatically. Beginning in 2009 and until 2014, although the economy contracted annually between –0.5% and –1.5%, year-on-year government borrowing increased. Whereas Mythland's government's debts in 2008 stood at 60% of GDP, by 2014 this percentage had soared to above 110%.

At the same time as foreign deposits were declining and government borrowing increasing, beginning in 2009, Olive Garden became embroiled in deep problems of its own. It too was suffering an economic crisis – a far deeper one – mainly brought about by the inability of both the government and citizens of Olive Garden to pay their existing debts. Salaries were unpaid, unemployment rates soared and prices of staples quadrupled. This led to political instability. Rising on a wave of populism and civic unrest, a radical left-wing party swept the municipal polls between 2009-2012, and then, having won the national election in 2014, took the reins of Olive Garden's government. Their campaign message very publicly and virulently asserted that they would stand by their citizens against evil foreign capitalistic predatory lenders. The value of Olive Garden bonds – private debt and government bonds alike – plummeted.

In May 2011, Mythland lost access to international markets due to significant deterioration in its public finances as well as its large exposure to the Olive Garden crisis. In October 2011, large blocks of Olive Garden debt instruments held by Mythlandic banks started to become impaired under international accounting standards. The bad loans of Mythland's banks skyrocketed. On 23 December 2011, after a series of credit downgrades, Mythland entered into an agreement with Big Bear for an emergency loan of €2.5 billion to be paid back over 4.5 years with an interest rate of 4.5%. A condition of this loan was that Mythland authorities would not, in any case of financial restructuring, prejudice the position of Big Bear depositors and creditors.

In June 2012, Mythland's Prime Minister acknowledged in a speech that his government would be unable to rescue its enormous banking system, where losses were mounting, and requested financial assistance from Eurozone partners. Prior to this speech, only one form of limited assistance had been provided to Mythlandic banks from European bodies. This was assistance provided by the European Central Bank (***ECB***) since 2008 under the TARGET2 mechanism. TARGET2 is an intra-European bank clearing system. In essence, the ECB permitted the intra-European liabilities of Mythlandic banks to be cleared even though individual Mythlandic banks did not have the full amounts at hand. By June 2012, the Mythlandic banks owed around €10.5 billion in TARGET2 unpaid (but pre-cleared) liabilities. The ECB booked these liabilities to the account of Mythland's Central Bank (***MCB***), the country's banking licensing authority, regulator, and banker of last resort.

European Banking Sector Rescue Practice and Policy

Beginning with the Great Recession of 2007-08, European practice of rescuing banks has been ad hoc. An overarching policy developed incrementally, alongside the practice.

In 2009, the G-20 countries agreed to adhere to the policies developed by the Financial Stability Board (***FSB***), an arm of the Bank for International Settlements (***BIS***). Banking system rescue policies were subsequently established in the US, UK, New Zealand, Australia, and Canada. At the September 2009 G-20 summit, the G-20 nations committed to act together to "create more powerful tools to hold large global firms to account for the risks they take" and more specifically, to "develop resolution tools and frameworks for the effective resolution of financial groups to help mitigate the disruption of financial institution failures and reduce moral hazard in the future."

To coordinate and expedite assistance in worsening economic conditions, the European countries established the European Financial Stability Facility (***EFSF***) in June 2010. EFSF was created as a temporary crisis resolution mechanism. Established as a Luxembourg company, EFSF was a €440 billion fund to "safeguard the financial stability in Europe by providing financial assistance" to Eurozone states. Upon the receipt of a request for EFSF assistance from a Eurozone state, a so-called "Troika" – comprising the European Commission (***EC***), the ECB, and the International Monetary Fund (***IMF***) – negotiates a country program with the requesting country, that is then formalized as a Memorandum of Understanding (***MoU***), approved by the EFSF governing board, following which funds are disbursed. The disbursement may take a variety of forms: direct loans to the requesting country; extending lines of credit as a precautionary facility; purchase of specially issued government bonds on the primary market; purchase of outstanding government bonds on the secondary market; or by acting as guarantor of specially issued government bonds sold on the secondary market to third party buyers.

At the November 2010 summit, the G20 endorsed the FSB Report titled "Reducing the moral hazard posed by systemically important financial institutions" which recommended that "all jurisdictions should undertake the necessary legal reforms to ensure that they have in place a resolution regime which would make feasible the resolution of any financial institution without taxpayer exposure to loss from solvency support while protecting vital economic functions through mechanisms which make it possible for shareholders and unsecured and uninsured creditors to absorb losses in their order of seniority."

In October 2011, the FSB issued a directive titled "Key Attributes of Effective Resolution Regimes for Financial Institutions". The aim of the document is to establish 12 features essential to "resolve financial institutions in an orderly manner without taxpayer exposure to loss from solvency support, while maintaining continuity of their vital economic functions." The November 2011 G-20 summit endorsed this document as the basis for all existing and future banking sector rescue policies.

By December 2011, €250 billion of EFSF funds had already been disbursed or otherwise committed. On 1 February 2012, the European countries signed an agreement establishing the European Stability Mechanism (***ESM***). The ESM is an international financial institution that was intended to replace the temporary EFSF. The ESM has a €700 billion fund whose purpose, by Article 3 of the ESM Treaty, is:

> To mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. For this purpose, the ESM shall be entitled to raise funds by issuing financial instruments or by entering into financial or other agreements or arrangements with ESM Members, financial institutions or other third parties.

By Article 13, the Troika assesses a request for stability support made by an ESM member, negotiates a country program, and draws up the necessary MoU setting out the scope of the ESM support to be provided and the policy and financial commitments (the "conditionality") undertaken by the requesting state. The MoU is signed between the EC and the requesting state. Articles 14 to 18 of the ESM Treaty set out the five different kinds of support programs that may be offered: (i) precautionary credit line; (ii) direct loans to the requesting state for the sole purpose of recapitalising private financial institutions; (iii) direct loans to the requesting state for macro-economic adjustment; (iv) primary market purchases of government bonds of the requesting state; and (v) mobilising funds to support the government on the secondary market (by purchasing outstanding bonds or by acting as guarantor on new government bonds).

Mythland is a party to the ESM Treaty, which entered into force on 16 September 2012. The ESM absorbed the EFSF and, barring ongoing EFSF programs where funds had already been disbursed, all forms of European financial assistance began to be channelled through ESM.

On 25 June 2012, even before the ESM Treaty entered into force, Mythland was the first country to make an official request for ESM assistance. It requested total financial assistance worth €17 billion, or the equivalent of the country's annual GDP, to be disbursed in two tranches: one, an ESM loan under Article 16 of the ESM Treaty to cover regular public expenditures, and the second, as financial assistance for recapitalisation of financial institutions under Article 15 of the ESM Treaty. Over the summer of 2012, the Troika undertook the necessary assessments required by Article 13 of the ESM Treaty and confirmed that Mythland fulfilled the eligibility criteria for receiving financial assistance from the ESM under Articles 15 and 16. It confirmed that Mythlandic banks have approximately €152 billion in outstanding loans or other money at risk (i.e., foreign short term deposits). This was eight times the country's GDP.

B. The Facts

Chronology of Events: 2004 to 2009

Mythlandic banks are supervised by the MCB, an independent regulator established by its own charter law. Executive authority in the MCB is vested in the Governor, a person appointed by the Minister of Finance at his discretion. The Governor serves a fixed five-year term, although the Minister of Finance has residual powers to replace a sitting Governor prior to the term expiring for reasons of national interest. Parliamentary approval for this action is not required. The MCB staff is professionally recruited and, although considered civil servants for labour law purposes, does not report to any government body outside of the MCB. The MCB issues licenses to engage in the business of banking, supervises banks, sets interest rates, and serves as banker of last resort. In 2004, the term of the incumbent Governor was renewed for a second five-year term. Apart from the MCB as the primary bank regulator, the Ministry of Finance regulates all other non-banking financial business. All publicly traded companies are also subject to regulation by the Securities and Exchange Commission (***SEC***).

Lucky Bank, Mythland's largest bank, and Bhangi Bank, the second largest, were both publicly traded. In 2006, a group of 10 Olive Garden nationals acquired 20.2% of Bhangi Bank's shares both individually as well as jointly through their investment vehicle Olively S.A. (***Olively***), a company incorporated in Olive Garden. They acquired this strategic stake from a group of British financial institutions for €527 million. Bhangi Bank's remaining shareholding comprised various financial institutions (39.8%), Mythlandic state owned companies (20%), and the general public (20%). Lucky Bank's shareholding pattern is: various financial institutions (23%), Mythlandic state owned companies (42%), and the general public (35%).

Following the Olively group acquisition, one of their group, Mr. Panicos, was appointed Chairman and CEO of Bhangi Bank. Under this new management, Bhangi Bank converted from a conservative bank with under 100 branches and a presence in 4 other Southern European countries to a more dynamic bank with broader horizons. The pace of international expansion increased. By the end of 2008, Bhangi Bank had a presence in 11 countries (through branch offices or wholly owned local banks in Southern Europe, West Asia, and the former USSR). All in all, Bhangi Bank had more than 500 branches. At the official day-to-day level, relations between Bhangi Bank's management and the government of Mythland agencies and officials were cordial and professional.

In 2007-2009, when foreign depositors began withdrawing money from Mythlandic banks, the MCB Governor and the Minister of Finance had repeatedly praised the Bhangi Bank management for operating a well-capitalised bank able to withstand the withdrawals, as well as for their dynamism in finding new sources of capital. Mr. Panicos was hailed as a visionary business leader and was considered an authority on global banking and Southern European economies. He became a frequent attendee and speaker at the Davos World Economic Forum and other such gatherings, where he was treated as the "face" of Mythland. In recognition of his exemplary services to the Republic, the President of Mythland awarded Mr. Panicos with a national medal of honours and conferred honorary citizenship on him in a fanfare-filled ceremony in August 2009. During this period, Bhangi Bank offered no-charge bank accounts to all civil servants provided they used their accounts to receive their direct debit government salaries. In addition, Bhangi Bank halved the management fees for government pension funds investing in the Bank's treasury products. The Bank also hosted numerous social galas felicitating the top echelons the national and provincial governments for their good work. Mr. Panicos and his wife were politically active too, providing diverse but strategic financial contributions to political parties, candidates and causes.

In December 2009, when the effects of the Olive Garden crisis were starting their spill-over into Mythland, the Minister of Finance appointed Mr. Confusicos as the Governor of the MCB as the post had become vacant in the regular manner. Prior to this, Mr. Confusicos was the chief economist of Bhangi Bank for the last three years, which position he came to after having spent ten years at the helm of the Mythlandic Banks Forum (***MBF***, the premier banking industry association), interspersed with various positions at the BIS, IMF and ECB. Mr. Confusicos acted vigorously to tackle inflation and unemployment. As to the banking sector, he adopted a set of "light touch" regulatory principles, which encouraged self-regulation by the banking industry itself.

Under the earlier Governor, the regular reports filed by individual banks were each rigorously scrutinized and bank "stress tests" or special audits were conducted two to four times a year. Under Mr. Confusicos the scrutiny of reports was conducted based on "risk assessment" methodologies (randomly selecting reports or scrutinizing reports of banks with particular track records that cross certain MCB technical thresholds). Further, although an annual bank "stress test" was maintained, the number of auditing visits was reduced to randomized visits. As a result of these efficiencies, and to show his strong stance in favour of austerity, Mr. Confusicos shrank the MCB staff by 15%.

Chronology of Events: Calendar Year 2010

Over 2010, Bhangi Bank's regular filings were never selected for detailed scrutiny under the risk assessment methodology framework. A bank "stress test" scheduled for June 2010 was postponed two or three times on account of scheduling difficulties between MCB officials and Bhangi Bank staff. It did not occur. No audits were conducted. As far as Lucky Bank was concerned, the same risk assessment methodology selected twelve of its regular filings for detailed scrutiny (resulting in Lucky Bank having to divest portions of its portfolio of Olive Garden debt); a "stress test" was conducted in April 2010 (revealing that the Bank was in a precarious position – but not irreparably so – and needed to act urgently and quickly to preserve asset value); and three audit visits took place that year (establishing a plan with defined benchmarks that needed to be achieved for Lucky Bank to improve itself before the next stress test).

Chronology of Events: Calendar Year 2011

By June 2011, Bhangi Bank had amassed €3.4 billion in Olive Garden debt. Lucky Bank had amassed €2.4 billion of the same. Both banks failed the stress test conducted in July 2011, but Lucky Bank had better scores as a consequence of its actions taken over 2010. The biggest and most imminent risk was common to both banks: their levels of Olive Garden debt holdings. In both cases, the banks' holdings of Olive Garden debt were larger than their holdings of all other debt classes. Part of this total Olive Garden debt was directly owned by the Mythlandic-incorporated Bhangi Bank and Lucky Bank entities, while the remainder was owned by their respective wholly owned Olive Garden subsidiaries, which operated the banks' branches in Olive Garden.

Throughout 2010 and 2011, the EU Troika had been negotiating with Olive Garden to rescue that country's economy. According to contemporaneous internal corporate communications and records, Bhangi Bank staff and management widely believed this time that EU official financing would be provided to Olive Garden with no impact on the private sector holders of Olive Garden debt. The same view that the private sector would not be required to participate in any EU-Olive Garden financing arrangement was also widespread in Mythland's national financial press. The issue, however, was hotly debated in the rest of the European financial media.

In July 2011, the EU Troika agreed a program with Olive Garden to provide financing "together with voluntary contributions from the private sector". At this time, the EU countries expanded the powers of the EFSF: by enabling it to make short-term loans and provide funds specifically to recapitalize banks, and even directly buy debt owned by a country's private financial institutions in exceptional circumstances. The EU program entered into with Olive Garden provided it with EFSF financing subject to the private sector holders of Olive Garden debt participating by taking a loss – proposed at 21% of the face value of their debt. The July 2011 program was expanded on 27 October 2011 and private investors came under heavy pressure from European leaders to agree to take a 50% cut in the face value of their debt, instead of the 21% envisaged in July. In November 2011, the Olive Garden Prime Minister resigned and an interim coalition government was formed under a soft-spoken economist.

The MBF strongly opposed the terms of the October 2011 EU-Olive Garden agreement. It made several representations to Mythland's officials, politicians, and bureaucrats that Mythland's leaders should reject the agreement or, at least, not impose it on Mythland's banks. On the afternoon of 27 October 2011, Mr. Confusicos made a televised speech. Referring to the requirement of private sector participation in Olive Garden's debt restructuring, he stated that: "The fatty olive blooming in the gardens of Europe will kill the delicate Mythlandical flower." This was widely taken by the public as him opposing the EU-Olive Garden plan for the impact it would have on Mythland's banks.

Nonetheless, on the evening of 27 October 2011, the Ministry of Finance issued Decree No. 59/2011 requiring private Mythlandic financial institutions to scrupulously adhere to EU-negotiated rescue plans and giving the relevant directives the force of Mythlandic law. Further, as an additional "supervisory measure" and not required by any EU directive or plan, Decree No. 59/2011 converted the Olive Garden operations of Mythlandic banks into branch office operations of the Mythlandic entities. This meant all the accounts present in the Olive Garden books of the banks' Olive Garden subsidiary companies were transferred onto their own Mythlandic books. The banks could no longer rid themselves of liabilities by bankrupting or selling the Olive Garden subsidiaries.

The knock-on effect on Mythlandic banks was immediate. Bhangi Bank and Lucky Bank immediately booked a 50% loss on their Olive Garden debt holdings on 27 October 2011, with other Mythlandic banks taking smaller, but still significant, losses. Bhangi Bank was hurt most – it incurred direct losses of €1.7 billion while Lucky Bank incurred losses of €1.2 billion. The media began questioning Bhangi Bank's ability to cover its deposits and settle overnight interbank loans. Public panic ensued and depositors started lining up to withdraw money. After three days of a bank run, when the country's ATM's had been depleted and Bhangi Bank's electronic money transfer facility disabled, and following repeated public calls for calm from Mythland's political leaders, the panic subsided. By then, around 30% of Bhangi Bank's deposits stood withdrawn.

An internal presentation to the board of directors in Bhangi Bank dated 28 October 2011 (01:00) records that the discussion was over Bhangi Bank's very survival. The document states, first, that the Bank faced an immediate liquidity problem and needed immediate assistance from the MCB. The minimum required was set at €2.2 billion. Receiving urgent liquidity assistance meant only that the Bank would remain on the brink of bankruptcy without going over the edge: the amount would allow the Bank to discharge its overnight interbank loan liabilities and other immediate liquidity requirements. If this liquidity was not provided, the Bank faced imminent bankruptcy by 09:00 on the same day, when the other banks would open and the overnight loans became due.

Second, the document states, this was still not enough. The liquidity assistance would only allow the Bank to clear its overnight liabilities and cover day-to-day operations. However, in order to step away from the brink of bankruptcy, the Bank needed to recapitalise itself. This required additional financing. Three options for recapitalisation financing were identified: (a) direct injection by the MCB or the Ministry of Finance from national Mythlandic funds; (b) EU funds through the EFSF mechanism following a request from the Mythlandic government; and (c) transferring some assets from Lucky

Bank into Bhangi Bank or merging Lucky into Bhangi. If this refinancing were not provided, Bhangi Bank's prospects would remain persistently unstable and soon become unsustainable.

The board of directors, after due consideration, instructed the CEO to: (i) immediately seek urgent liquidity assistance from the MCB; and (ii) vigorously pursue all avenues for recapitalisation funding with a prioritised emphasis on securing EFSF funds. The decision to prioritise EFSF funding was taken, the board minutes record, because it was the option considered most likely to succeed as: (a) it would most likely be supported by all Mythlandic banks as the funds would benefit all during these difficult times and were therefore considered to be in the national interest; (b) EFSF funding had been made easier in July 2011 by an amendment to its rules and was already being disbursed to Olive Garden; and (c) the European bureaucrats in charge of EFSF had indicated that they were sympathetic to the Mythlandic banks' plight.

Mr. Panicos and his team immediately got to work putting the board's decisions into effect. At 04:30 on 28 October 2011, Mr. Confusicos directed that the MCB provide Bhangi Bank be with Emergency Liquidity Assistance (***ELA***). ELA is an exceptional short-term line of credit made available to individual Eurozone private banks by a Eurosystem national central bank. Although it is governed by European guidelines and procedures, these were not written down until October 2013. At the time of these events, ELA funds were to be provided by a national central bank to a private bank for immediate liquidity purposes when the private bank's assets would not qualify as collateral acceptable to the ECB. The loans are given at the discretion of the national central bank but have to be approved by the ECB. ECB approval can be sought up to two business days after ELA funds have been disbursed. If the ELA funds to be provided exceed €500 million for one bank, ECB approval must be sought "as early as possible prior to the extension of the intended assistance". If more than €2 billion is to be provided, the ECB may set a threshold for the whole country and not object to individual ELA operations that are below that threshold. ELA loans sit on the balance sheet of the national central bank and national governments are ultimately responsible for any losses from ELA provided by their central banks. At 05:00 on 28 October 2011, ECB provided its approval and by 06:00 the MCB extended ELA to Bhangi Bank. The amount was set at €1 billion. The ELA was to be provided for a 30-day period, which would automatically renew for the same period. Each party could request its termination at any time, in which case it would terminate at the end of the term during which the request was made. At this time, Bhangi Bank became the only bank in Mythland receiving ELA.

At 09:00 on 28 October 2011, the Minister of Finance issued Decree No. 66/2011 "with immediate effect" relieving Mr. Confusicos of his post as Governor of the MCB in the "national interest". In his place, the Minister appointed Mrs. Fixitforus as Governor. Mrs. Fixitforus, a well-respected and fiery leftist academic, had been an outspoken critic of the oversized banking industry (she called them "fat bankers"). Her hitherto published academic record advocated firm banking regulation. In her public remarks accepting the job, at 10:30 on the same day, she stated that any bank rescue plan would have to have to be based on two principles: (a) reducing the moral hazard that banks will engage in risky conduct in expectation of a bailout; and (b) the burden should not be on the taxpayer but on the banks shareholders, bondholders, and depositors. She added that she was a good European and a good Mythlander.

In the morning of 29 October 2011, Mr. Panicos and the Chairman of Lucky Bank held a joint meeting with Mrs. Fixitforus and the Permanent Undersecretary of the Ministry of Finance. The official minutes prepared by the MCB staff record only that "the private sector bankers requested that the MCB apply for EFSF funds as they were in urgent need of it. The Governor agreed to consider the request as one among many options the MCB was considering." According to the eyewitness testimony of Mr. Panicos (and corroborated by other Bhangi Bank staff who were present), representatives of the country's top ten largest banks attended the meeting. The bankers unanimously urged Mrs. Fixitforus and the Ministry of Finance in the strongest possible terms to apply for EFSF financial assistance funds for bank recapitalisation purposes. The bankers petitioned that they faced catastrophic consequences in the absence of an EFSF rescue package. The banks impressed on the Governor that the EFSF was the only viable plan and that nobody could predict the consequences of not recapitalising the banks. They pointed out that EFSF funds had been disbursed to Olive Garden and the early results were encouraging.

For her part, according to the eyewitnesses, the Governor was hostile in her demeanour and gave the private bankers a dressing down. She claimed that they had "destroyed the country", that they did not deserve "bailouts and bonus top ups", and that she "had to teach a lesson". She singled out Mr. Panicos, blaming him for causing the mess. She indicated that the EFSF mechanism was not on the top of her list of priorities and she was considering various options, including letting banks fail. In a calmer moment of the discussion, she conceded to not knowing the economic consequences of letting the banks fail and that the slogan was more a political statement than a policy prescription. She concluded the meeting by stating that she would think about it but advised the banks to come up with other options and not pin their plans on the MCB requesting EFSF funds. She asked Mr. Panicos "not to rock the boat" as "the ELA concept is, after all, temporary." He took this to mean that if he pressed hard for the EFSF funds, it would put Bhangi Bank's ELA at risk as she would terminate it.

In the afternoon of 29 October 2011, EFSF administrators telephoned Mrs. Fixitforus. They said they rang at the behest of the European Banking Association, of which MBF was a part. The European officials stated that they were concerned about the situation in Mythland and that they had assembled a "rapid response" team available to consider any application the MCB may wish to make. Mrs. Fixitforus replied that she was grateful but that Mythland was a sovereign country and would take a decision after due consideration.

In the evening of 29 October 2011, the MBF – which counted all Mythlandic banks as members – convened under the chairmanship of Mr. Panicos. This extraordinary meeting issued a resolution by unanimous vote calling on the MCB and government of Mythland to urgently apply for EFSF funds. These funds were necessary, the resolution stated, in the "national interest" and to "preserve essential stability". The MBF warned of dire macro economic consequences if EFSF funding was not received. In the press conference given immediately after, MBF's press officer complimented and praised the new Governor but at one point stated that: "the new Governor needs to gain confidence by acting boldly and decisively." This phrase spread widely on twitter and other social media with the label #lifeisfasterthanuniversity. It became an instant news item in the national Mythlandic press. The news of the EFSF-MCB phone call also circulated.

In the night of 29 October 2011, Mrs. Fixitforus telephoned Mr. Panicos. In his witness testimony, Mr. Panicos states that during this call Mrs. Fixitforus appeared "distraught" and "furious", claiming that: he was "trying to manipulate and put pressure" on her; she would "never be in a banker's pocket"; he was "a despicable character"; and she "will finish" him, "just wait and watch". Mr. Panicos testifies that in this call he gently requested Mrs. Fixitforus to calm down, apologized that she may be under a grave misunderstanding, and said he would visit her in person in the morning to clear things up.

MCB staff declined all Mr. Panicos' subsequent requests for a meeting. Stories began appearing in the left wing press, quoting "informed sources", that Mr. Panicos "had lost the confidence of the banking industry as well as his own shareholders". Rumours of large-scale layoffs at Bhangi Bank started to circulate, fuelled by a speculative media. For three nights a nationally popular daily television talk show featured a left leaning guest in the political/economic sphere. Each claimed that Mrs. Fixitforus was the right person to "clean up the internal rot" at "Bhangi Bank HQ" that had "spread through the country" and that "this is a test of whether the new Governor will do what is required and preserve our national honour and sovereignty."

On 4 November 2011, with 30 minutes notice, the MCB convened a meeting of the country's twenty biggest banks. According to the eyewitness testimony of Mr. Panicos of this meeting, and widely reported in the local media, the Governor unveiled the "Banking and Mythland" Plan (***BAM Plan***). Under the BAM Plan, the MCB would not request EFSF funds to recapitalise the banks at the present time.

Instead, the BAM Plan had two parts: liquidity in the banking sector and recapitalisation of the banks. For immediate liquidity, the BAM Plan made emergency credit available to any bank that might need it. It did so by lowering the thresholds individual banks needed to fulfil before becoming eligible to access ELA. The proposed thresholds were set at a level that all twenty banks present at the meeting immediately fulfilled them and could therefore seek ELA "on demand". For ELA requests that were not approved by the ECB, the Ministry of Finance would provide necessary bridging loans at zero interest. This levelled the liquidity position between Bhangi Bank and its nineteen largest competitors.

On recapitalisation, Mrs. Fixitforus stated that the banks should themselves bear the burden of recapitalisation and not rely on the MCB compromising its sovereignty by accepting EFSF funds. She indicated that she had some ideas to help the banks. Immediately, the BAM Plan would offer the banks the right to retransfer large amounts of Olive Garden loans off their own books and back onto the books of their Olive Garden subsidiaries by repealing that part of Decree No. 59/2011 by which Olive Garden subsidiary operations were converted into Mythlandic branch operations. By repealing this provision, the Mythlandic banks would be free to "resubsidiarise" the Olive Garden debt and improve their own capital position. In the medium term, she committed, the MCB would assist the banks in every way possible short of requesting EFSF funds. The "resubsidiarisation respite" of improving bank capitalisation, achieved through a switching of accounts in their accounting books, meant that the nineteen large banks could survive without an external injection of funds. This was, however, not true for Bhangi Bank. Even if the accounts of the Bank were offloaded to its Olive Garden subsidiary to the entire extent possible, Bhangi Bank still needed additional recapitalisation financial assistance. Everyone in the room was aware of this fact.

Having laid out the BAM Plan, Mrs. Fixitforus stated that she wished to cooperate with the banking sector in the interest of stability. As a sign of good faith, she was willing to immediately proceed with the loosening of ELA eligibility regulations without any expectation for the banks to reciprocate or impose conditions on them. However, in these difficult circumstances of a moment of crisis, she desired that Mythland present a united front. She therefore needed all the banks to agree to the entirety of the BAM Plan – without exception – before it would be put into effect. She indicated that any individual bank's opposition to any part of the BAM Plan would not be conducive to the overall spirit of cooperation between the MCB and the banks as a whole. Such cooperation would be necessary for the MCB to do what it could to assist the banks more widely to recapitalise in the medium term. It was a "package" she said, "full plan and full agreement from the banks for full cooperation from the MCB."

Mrs. Fixitforus then put the BAM Plan to vote, asking the bankers to individually confirm their agreement with the BAM Plan. Bhangi Bank, most urgently in need of recapitalisation and already accessing ELA, opposed it. The remaining nineteen banks, with less pressing recapitalisation and liquidity priorities, all signed on. The Governor, however, concluded the meeting abruptly stating that unanimous agreement on the BAM Plan has not been reached and therefore it was not adopted at this time. The plan would not be put into effect. She walked out of the room without further pleasantry.

On 5 November 2011, the MBF passed an extraordinary resolution removing Mr. Panicos as the MBF Chairman. In the same resolution, they expressed "full faith and confidence" in the "wise leadership of the MCB", and endorsed the BAM Plan wholeheartedly.

On 7 November 2011, the MCB issued Administrative Regulation No. 17/2011 reformulating the ELA eligibility criteria and establishing the Ministry of Finance bridge loan standing facility for ELA requests that were not approved by the ECB. The Regulation further stated that all Mythlandic banks would be assessed according to the reformulated criteria starting from 10 November 2011. The assessment would take 7-10 business days and, during this period, all existing ELA disbursements and requests for ELA would be suspended until it was determined that a bank met the new criteria. A final clause provided that the Governor of the MCB may, by written order, exempt any Mythlandic bank from the assessment "if the individual bank's financial stability makes the exemption necessary".

Under this Regulation, Bhangi Bank, as the only Mythlandic bank receiving ELA, would lose this facility for 7-10 days while it was being (re)assessed. However, the Bank would not lose the facility if the Governor exempted it from the assessment procedure. Losing the ELA facility meant that Bhangi Bank was in real danger of defaulting on its overnight interbank loan commitments and becoming unable to carry out day-to-day transactions. That would make bankruptcy on the morning of 11 November an imminent possibility.

According to the testimony of Mr. Panicos, between 7-8 November 2011, a group of MCB officials engaged in a "whispering campaign" against him. He testifies that certain MCB officials verbally informed the senior management of Bhangi Bank's other significant shareholders (i.e., the non-Olively group) that the MCB Governor finds it "very difficult to deal with Mr. Panicos" and that they "do not hold much confidence she would favourably receive any requests from him". Mr. Panicos' own telephonic and letter requests to the MCB Governor's office for an urgent meeting were rebuffed on the grounds that the MCB Governor was in "very pressing consultations" elsewhere.

On 9 November 2011, at an extraordinary meeting jointly called by the Mythlandic state owned company shareholders and some financial institution shareholders, Mr. Panicos was removed as Chairman and CEO of Bhangi Bank. In his place, the shareholders appointed Mr. Onehitwonderous as CEO and Chairman of the board (nominated by the state owned company shareholders). At the time, Mr. Onehitwonderous was the president of an economic think-tank and part-time academic who had previously co-authored three books with Mrs. Fixitforus. They had been academic collaborators since their time together as University students. This person had been described in a US Embassy cable released by the website wikileaks as an "early bloomer" who had "ripened like an old fruit with time"; one who in more recent years had earned a reputation as a "rather dim-witted out-of-date dogmatic thinker" who is "disinclined towards action".

Immediately on assuming the CEO's office, Mr. Onehitwonderous paid a visit to the MCB. The Governor promptly received him. Following a fifteen-minute closed-door meeting, the MCB issued a press release stating that the Governor had issued orders exempting Bhangi Bank from the assessment procedure under Regulation No. 17/2011 and its ELA would remain uninterrupted.A second order increased Bhangi Bank's ELA from present levels of €1 billion to €1.9 billion. A third order, also issued at the same time, instituted a separate "supervisory review" of Bhangi Bank to be undertaken by the

MCB under the European Directive on Capital Requirements. This supervisory review is the first step towards a broader financial rescue plan.

On 10 November 2011, the MBF submitted to the MCB a unanimous resolution of all banks endorsing the BAM Plan. On 11 November 2011, the MCB issued a directive stating that the BAM Plan was in effect. On 12 November 2011, the Ministry of Finance repealed Decree No. 59/2011 in its entirety and instead issued Decree No. 129/2011 expressly recognising the "resubsidiarisation" principle. On 23 November 2011, the MCB's supervisory review set the shortfall in capital for Bhangi Bank at €3.1 billion. The MCB asked Bhangi Bank to develop plans to cover this deficit. On 25 November 2011, Bhangi Bank submitted to MCB a "recapitalisation recovery plan" comprised of two parts: (i) deleveraging its debt through "resubsidiarisation"; and (ii) a capital increase of €1.8 billion raised from private investors. On 28 November 2011, Mr. Onehitwonderous resigned from Bhangi Bank citing health reasons. On 1 December 2011, Mr. Sorryas, a former Ministry of Finance permanent undersecretary and deputy director of the MCB,took over as CEO and Chairman of the board. On the same date, the MCB approved Bhangi Bank's recovery plan of 25 November.

Mr. Sorryas's first act in office was to begin the resubsidiarisation process. In accordance with the applicable laws, the banking regulator in Olive Garden needed to approve the retransfer of the Olive Garden loan book back onto the books of the Olive Garden subsidiaries. On 15 December 2011, Bhangi Bank officially requested the approval of the relevant Olive Garden regulatory body to approve its resubsidiarisation plan and book the transfer of the debt onto the Olive Garden subsidiaries' books. Pending approval of the Olive Garden regulators, the MCB on 18 December 2011 consented to Bhangi Bank immediately removing the Olive Garden debt from its Mythlandic books on the grounds that it was "pending transfer". On 18 December 2011, Bhangi Bank filed its official financial records with the MCB showing an increase of €1.7 billion from the previous day's position and a massive improvement of €9 billion in its overall financial position. Its daily utilisation of ELA ceased. Neither Bhangi Bank, nor MCB, however, terminated the ELA. It thus continued to be available should Bhangi Bank ever require it.

Mr. Sorryas was hailed in the press and he, along with Mrs. Fixitforus, were awarded the highest national civilian medal of honours by the Prime Minister. At this ceremony, the Prime Minister declared: "Mission accomplished. Our banks are healthy." A photo of the ceremony showing the Prime Minister, Minister of Finance, and the MCB Governor, and Mr. Sorryas holding hands together widely circulated on social media with the label #awesomefoursome! and was published as the leading story on the front pages of the next day's papers with the same headline.

The government turned its attention towards its own problems. In May 2011, Mythland had been excluded from international debt markets and was unable to borrow money to discharge its liabilities. Over 2011, the country suffered a series of credit downgrades. By the end of the year, it had fallen into serious risk of failing to pay government wages and salaries, welfare payments, and defaulting on its contractual debts. The government was negotiating sovereign assistance both with the EU and with bilateral countries.

On 23 December 2011, Mythland entered into an agreement with Big Bear for an emergency loan of €2.5 billion to be paid back over 4.5 years with an interest rate of 4.5%. The money was for the government to discharge its public debts and liabilities. None of it was earmarked for banking sector recapitalisation. A condition included in this loan committed the Mythland authorities "to take no financial restructuring actions that would prejudice the present position and financial wellbeing of Big Bear depositors and creditors."

Chronology of Events: Calendar Year 2012

Over the next few months, the bank problems worsened. In 2012, Lucky Bank group losses had risen to €1.5 billion. Bhangi Bank group losses had risen to €2.5 billion. More generally, by mid-2012 it was apparent that the temporary respite from the "resubsidiarisation" was coming to an end for a majority of the banks. Mythlandic banks needed large-scale recapitalisation assistance. In May 2012, a Cabinet Committee chaired by the Prime Minister decided to resolve the problems on a "dual track" basis: one track comprised the actions to be taken in respect of Lucky Bank and Bhangi Bank as a carve out; the second track comprised actions to be taken in respect of the rest of the smaller Mythlandic banks.

Bhangi Bank's efforts in the first half of 2012 on the second part of its recapitalisation recovery plan of 25 November– i.e., attracting private equity investors – had yielded no result. In May 2012, €1.2 billion of Olive Garden debt instruments held by Bhangi Bank were downgraded by the major credit rating agencies, drastically reducing their value. This led to Bhangi Bank's reactivation of its ELA and once-again daily dependence on it. Further, on 12 June 2012, the Olive Garden banking regulator replied to Bhangi Bank's request for resubsidiarisation (made in December 2011) by refusing to give approval and permit the retransfer of the Olive Garden off Bhangi Bank's books and onto the books of Bhangi Bank's Olive Garden subsidiary. Its reasoning was that the principle of "resubsidiarisation" is not recognised in Olive Garden law and that Bhangi Bank itself was to blame for transferring the accounts held in its subsidiary's name onto its own name in the first place. On 13 June 2012, Bhangi Bank commenced court proceedings in Olive Garden against the Olive Garden regulator's decision of 12 June 2012. It applied for a temporary injunction requesting a stay of the decision pending outcome of the case. Also on 13 June 2012, Bhangi Bank requested the MCB to continue to treat the debt as "pending transfer" and not modify its decision of 18 December 2012. By letter of the same date, the MCB approved this request. On 14 June 2012, Bhangi Bank's board of directors asked the Ministry of Finance to take an ownership stake in the bank.

On 20 June 2012, the Mythlandic Cabinet Committee (that had been set up in May 2012) decided that Bhangi Bank was in urgent need of external funding and that the government was willing to take an equity interest. By Prime Ministerial Decree No. 43/2012 of the same date, the Ministry of Finance was authorized to buy new issues of Class A shares of Bhangi Bank up to €1.8 billion. This amount meant the new issue of shares substantially diluted the existing shareholders. Olively and the Olive Garden investor group's combined shareholding of 25.2% was reduced to 0.3%. The Ministry of Finance became the owner of 84% of the shares of the Bank. The Minister of Finance appointed seven new directors. The board reaffirmed its "full confidence" in Mr. Sorryas and the Minister of Finance gave a press conference and, referencing him, expressed "our utmost support for one of our own" and "we are fully behind him". The board was tasked with drawing up a business plan that would convince the EU that the bank could be viable again.

At its first meeting on 20 June 2012, the reconstituted board of Bhangi Bank appointed Kerboodle and Kerboodle (***Kerboodle***), one of the big five international accounting firms, to help create a plan for Bhangi Bank to: cut costs, sell assets, recapitalise, and "ring fence" its Olive Garden operations so as to avoid the Olive Garden loan book from hurting the Mythland parent.

In a preliminary report dated 24 June 2012, Kerboodle reported that in addition to the adverse position in Bhangi Bank's accounting books and the €1.9 billion ELA liability, it had made a startling discovery. It had found that Bhangi Bank was also relying on the MCB for more than €9 billion of TARGET2 pre-clearance funding (an arrangement in place since 2008) that was being automatically renewed fortnightly. What this meant was that although the Bhangi bank had duly been paying its intra-European liabilities since 2008, €9 billion of these payments had been cleared by the ECB on the MCB's account and not Bhangi Bank's account as Bhangi Bank had not had the cash on hand to clear these payments at the relevant time. Consequently, Bhangi Bank still owed this amount to the MCB. This amount had been included in Bhangi Bank's account books until November 2011, but had been omitted ever since December of that year. The debt, however, always remained on the ECB's accounting books for the TARGET2 payment clearance system. The ECB's accounts showed that the ECB had cleared €9 billion of payments on behalf of Bhangi Bank on the MCB's account, €1 billion of payments on behalf of Lucky Bank, and €500 million of payments on behalf of all other banks.

Kerboodle indicated that in light of this discovery, even the most aggressive plan that drastically sold assets, cut costs, and put bad loans (including but not limited to the Olive Garden loan book) into an asset management company, would still not cover the shortfall. Kerboodle informed the board that it would be recommending that two additional actions must necessarily be included as essential elements of the recovery plan: (a) accessing EFSF/ESM recapitalisation funds; and (b) forcing losses on creditors who had bought "senior" bonds, a traditionally safe investment superior to all others. Mr. Sorryas resigned as CEO and Chairman and went abroad for medical treatment.

Although at no point in the preliminary report did Kerboodle mention imposing losses on depositors, massive deposit withdrawals followed publication of the news of this report.

In June and July 2012, there were €2 billion of deposit outflows from Bhangi Bank, mainly from its branches located in Olive Garden. The MCB increased the ELA provided to Bhangi Bank to €2.6 billion.

On 25 June 2012, international credit rating agencies further downgraded the Olive Garden debt held by Bhangi Bank to the lowest possible grade. This meant that it ceased to be acceptable as collateral by the ECB for monetary policy operations. The entirety of Bhangi Bank's outstanding debt owed to the ECB for all purposes automatically, in accordance ECB regulations, was transferred to the ELA line and booked onto the MCB's account. In this way, an additional €2.6 billion of Bhangi Bank's debt to the ECB was transferred to the ELA. Immediately before this occurred, Bhangi Bank was already fully utilizing its €2.6 billion-limited ELA. The ECB debt transfer meant that Bhangi Bank had massively exceeded its ELA line of credit facility maximum threshold.

In accordance with its regulations, the ECB allowed the MCB a one-time country-threshold of €13 billion on Mythland's total ELA utilisation meaning that the MCB was free to disburse funds below this amount however it deemed fit without individual ELA approvals required from the ECB. The ECB established this blanket ELA approval scheme for a period of six months at the end of which either the ECB would decrease the country-threshold amount to less than €13 billion (as this amount was double Mythland's permissible country limits under normal ECB accounting guidelines), or would end the program altogether (in which case individual ECB approvals would once again be required for ELA requests). The MCB increased Bhangi Bank's ELA to €7 billion.

Over the course of June 2012, the Mythlandic government had requested Big Bear for a new, bigger loan, this time to be used for bank recapitalisation. The opinion press in Big Bear opposed that country getting further entangled in "faraway places" when the European threat was bigger "in the near abroad". They calculated that the more time and money the EU spends in Southern Europe, the less resources it would have to devote to winning over countries on Big Bear's periphery. Around this time, a competition was going on between Big Bear and the EU to win over Little Bear with both competitors providing offers of significant financial benefit to help Little Bear face its own economic difficulties. On 24 June 2012, the government of Big Bear responded to the government of Mythland's request for a loan by stating that although it would be happy to adjust the present loan facility already in place to assist a friendly government meet its own needs, it was at present unable to provide funds for banking sector rescue. However, should the Mythlandic government be unable to find assistance elsewhere, Big Bear would be open to reconsidering the matter to further deepen the friendly relations between the two great nations. The letter ended with Big Bear's "every confident expectation that the Government of the Republic of Mythland will exert its utmost efforts, in all circumstances, to fulfil its commitments undertaken towards the Government of Big Bear in regard to the protection of the investments of Big Bear investors."

On 25 June 2012, the Mythlandic government submitted its official request for EFSF/ESM assistance to the EU, requesting €17 billion (an amount equal to its annual GDP) to be disbursed in two tranches under Articles 15 and 16 of the ESM Treaty. The EU responded almost immediately. On 27 June 2012, the President of the Eurogroup gave a speech welcoming Mythland's request for assistance, undertook to provide assistance either through EFSF or ESM, and commissioned the Troika to undertake the necessary assessments required by Article 13 of the ESM Treaty.

On 1 July 2012, the Troika commission arrived in Mythland and commenced its assessment work. On 15 August 2012, the Troika reported that it had found Mythland eligible to receive ESM assistance in accordance with Article 13 of the ESM Treaty and recommended that Mythland receive financial assistance under both Articles 15 and 16. The ESM adopted this report and commissioned the Troika to report back on the amount of the two loans and the terms of conditionality to be attached to each. It authorised the Troika to negotiate with Mythland and prepare the necessary MoU.

The negotiations took place on two tracks: the fiscal track, tasked with the loan under Article 16 of the ESM Treaty and to be negotiated with the Ministry of Finance; and the financial sector track, tasked with the loan under Article 15 of the ESM Treaty to be negotiated with the MCB. On 18 November 2012, the (MCB) announced in a press release that it had reached agreement with the Troika on the Article 15 ESM program for the financial sector. However, as no agreement with the Ministry of Finance on Article 16 fiscal matters could be reached, the Troika negotiating team left Mythland on 22 November 2012. Bhangi Bank came under unprecedented pressure due to massive deposit outflows.

At a press conference that morning, Mrs. Fixitforus announced that she was recommending to the government of Mythland that it sign the MoU for the Article 15 financial sector recapitalisation loan even though agreement on the Article 16 loan matters was still pending. Within one hour, the government issued a press release stating that it had authorised the MCB Governor to enter into the MoU for the Article 15 loan without regard to progress on the Article 16 loan matters. The Troika team announced to the press that they were returning to Mythland and that the MCB was in "pre-ESM" status, indicating that only formal matters of signature remained. Two hours later, the ECB extended the deadline for expiry of its blanket country-threshold ELA approval decision (of 25 June 2012) until 31 January 2013. These actions calmed the market and prevented the collapse of Bhangi Bank and the systemic effects that would have caused.

Before the Article 15 MoU could be signed, however, independent diagnostic checks of Mythlandic banks had to be completed by a professional, neutral firm. The EU appointed Loss and Asset Liability Union (***LALU***), a California headquartered private financial institution, to perform the checks and identify the capital needs of Mythlandic banks.

Chronology of Events: Calendar Year 2013

On 1 January 2013, LALU reported to the Troika that the amount requested by Mythland was too large and risky and should not be paid entirely out of ESM funds. Rather, it proposed that the ESM fund around 60% of the request while Mythland itself fund the remaining 40%. It recommended that Mythland raise the 40% funding requirement by forcing losses on creditors who had bought "senior" bonds (like Kerboodle had previously suggested in the case of Bhangi Bank), but went further than Kerboodle by recommending that Mythland also force losses onto all those who held bank deposits in Mythlandic banks. LALU further recommended that Mythland's banking sector be downsized and restructured and that the Olive Garden operations of Mythland's largest two banks be carved out of any ESM financial assistance for "special restructuring". LALU's report was kept confidential. The Troika shared it only with the Prime Minister of Mythland and the MCB Governor on "eyes only" basis. It was not released to the public, although reports of its submission appeared in newspapers in Brussels and Mythland, essentially stating that the report's main recommendation was that "special restructuring" of Lucky and Bhangi Banks was necessary.

When LALU's findings were confidentially submitted in January 2013, national elections in Mythland were looming. Owing to this political situation, the Troika and EU deliberately abstained from taking any action that could serve or be interpreted as a political intervention. In line with this non-political intervention policy, the ECB extended the blanket country-threshold ELA approval until 21 March 2013. In making this decision, the ECB indicated that it expected the new government of Mythland and the EU to finalise the ESM country support program for both the Article 15 and Article 16 loans soon after Mythland's elections of February 2013.

On 28 February 2013, the MCB extended ELA to Lucky Bank in the amount of €1.3 billion for a one-month non-automatically renewing term.

On 7 March 2013, a new coalition government in Mythland was sworn in. Mr. Narcissimo, the just-inaugurated Prime Minister, was the leader of a new political party called Man-o-Man Party (***MMP***). MMP had done surprisingly well at the polls, coming in second overall but winning first in the politically all-powerful urban cities of Mythland. He was relatively young in age and his last regular job was as a former tax official, a job he held more than eight years previously. An ambitious man, during the intervening period he associated with a number of civil society groups, moving from one to the other with an increasingly senior job title. Two years ago, he had founded his own foundation called the Wheeling-Dealing Society, dedicated to enacting legislation that would eliminate all private vehicles from Mythland and compel all persons to take taxis or buses instead, which were to become wholly union owned. The rich would pay premium fares and with subsidises for the poor. He was also the second vice president of the Total Way Allowed Transport (***TWAT***) labour union that counted as its members, large numbers of the country's road taxi, bus, and water taxi workers. Mr. Narcissimo had come to recent public prominence in the past year through a highly media-savvy campaign screaming that the nation needed saving and alleging scandalous corruption on the part of the major political personalities of the established political parties. In this campaign, Mr. Narcissimo had aligned himself with the religious parties and guaranteed them additional public subsidies for carrying on their good god's work.

On 8 March 2013, the MCB Governor presented the new Prime Minister with the LALU report and informed him of the imminent expiry on 21 March of ECB's scheme allowing Mythland to maintain an artificially high country-threshold blanket ELA approval. The Prime Minister, in accordance with his campaign theme of transparency, was having all his meetings webcasted live, including this one. At the same time, an overzealous junior member of staff (to whom Mr. Narcissimo had palmed off the document that Mrs. Fixitforus had just handed him), scanned and uploaded it to the Prime Minister's website.

Widespread public disorder ensued. The Minister of Finance issued a decision replacing Mrs. Fixitforus as MCB Governor in the "national interest" for "concealing sensitive information". TWAT's chief economist was appointed in her place. Mrs. Fixitforus agreed to stay on as "special advisor" for a period of three months. On 9 March 2013, two of the three major credit rating agencies issued warnings of potential downgrades of Mythland's sovereign credit rating while the third agency officially downgraded it.

On 16 March 2013, the Eurogroup issued a decision stating that the depositors in Mythland's banks must share in the losses and that a financial levy needed to be imposed on all bank depositors to fund the country's banking system capital shortfall. A bank panic occurred and the government ordered banks to close for a five-day period. Following closed door negotiations, Mr. Narcissimo announced that he had agreed with the Troika on the terms of an agreement on the composite financial package totalling €16 billion. €10 billion was to be disbursed directly from ESM funds. The remaining €6 billion was to be raised in Mythland itself: by imposing a bank levy of 9.9% on uninsured deposits (i.e., deposits over €100,000) and 6.75% on insured deposits (i.e., deposits under €100,000). This would be the first time ever that Mythland – or any Eurozone country – has ever raised bank rescue funding from individual account holders rather than using external funds for the purpose. Mr. Narcissimo added that he would not sign any agreement to be entered into with the Troika until Parliament had approved.

Following widespread public protests focused on the proposed bank deposit levy (especially on insured deposits), on 19 March 2013, the Mythlandic Parliament overwhelmingly rejected draft legislation designed to implement this agreement.

On 20 March 2013, Mythland and Big Bear held emergency talks and Big Bear agreed to extend the loan repayment terms to 2021 and reduced the interest rate to 2.5%. The clause protecting Big Bear investors was reiterated and strengthened. It provided:

> The Government of Mythland undertakes to fully protect the position and financial wellbeing of individual and enterprise investors of Big Bear in respect of all their investments in Mythland, irrespective of form. The Government of Mythland will afford them treatment at minimum equivalent to the treatment afforded to Mythland's citizens. The Government of Mythland will provide special treatment to individual and enterprise investors of Big Bear that own deposit accounts in Mythland's banks.

Also on the same date, the government order the banks that had been closed since 16 March to remain closed, indefinitely.

On 21 March 2013, the ECB took a decision that had two parts. First, it decided that Mythland's country-threshold blanket ELA approval scheme would terminate on 25 March 2013 unless an ESM scheme was agreed to and applied. Second, it terminated its approvals of Bhangi Bank's ELA and imposed a requirement to repay all of Bhangi Bank's outstanding ELA loans by 26 March 2013.

On the evening of 21 March 2013, Mrs. Fixitforus publicly stated on behalf of the MCB that the implementation of the ECB decision would mean bankruptcy of the country itself. She stated that implementation of the second part of this decision would lead to the disorderly bankruptcy of Bhangi Bank and to an immediate activation of the country's Bank Deposit Protection Scheme (***BDPS***) which insures all bank deposits in Mythland up to €100,000. Mythland's BDPS had only €125 million in funds. The shortfall would have resulted in a sovereign obligation of the Republic of Mythland to repay the €6.4 billion of insured deposits in Bhangi Bank. This would bankrupt the country itself. Repaying Bhangi Bank's €8 billion outstanding ELA usage would have the same effect. She urged the government and Parliament to pass a series of legislation, including a newly introduced bill for the "Resolution Committee of Banks", so that Bhangi Bank could be resolved immediately and avoid liquidation and dissolution.

On 22 March 2013, the Mythlandic Parliament enacted the following laws:

The Hope in Committees (HIC) Law of 2013 (Law No. 666 of 2013). This provided:

(i) The Governor of the MCB, along with the Minister of Finance and President of the SEC, were to constitute the "High Authority for Resolution" (***HAR***). HAR was in charge of the downsizing and recovery process of the Mythlandic banking sector. All decisions of HAR were to be taken by majority vote.

(ii) The MCB and the Ministry of Finance were empowered to make joint decisions aimed at restoring the Mythlandic banking sector for the purposes of: continuity of the banking sector, protecting secured depositors, and stabilizing the banking sector.

(iii) HAR was authorized to take steps in relation to any insolvent credit institution facing liquidity problems, including providing financial assistance, when steps were necessary in the public interest.

The Enforcement of Restrictive Measures (ERM) Law of 2013 (Law No. 666-1 of 2013). This provided:

(i) A ban was imposed on cashless payments or transfers of deposits/funds from Mythland to accounts held outside Mythland.

(ii) A ban was imposed on the termination of fixed term deposits before their maturity unless the purpose of doing so was to repay a pre-existing loan to a Mythlandic bank.

(iii) Capital controls were imposed on individuals: limiting daily withdrawals from banks and ATMs to €300; limiting the amount of cash that could be taken out of the country to €2,000 per month; restrictions on debit, credit and pre-paid card transactions; and a prohibition on the cashing of cheques.

(iv) A ban was imposed on opening new accounts other than for existing clients.

This was the first time capital controls were ever introduced in an EU member.

On 25 March 2013, Mr. Narcissimo announced that a "new and improved agreement was reached between the EU Troika and myself". Under this agreement, €10 billion in ESM funds was offered to Mythland in return for its commitment to raise €4 billion by itself. This was to be done through an increase of tax rates on capital gains and a further corporate tax increase; privatisation of state assets; and imposing bank levies on uninsured bank account deposits (i.e., deposits over €100,000). The ESM funds were to be disbursed in two tranches: under Article 16 of the ESM Treaty (€5.5 billion) and Article 15 of the ESM Treaty (€4.5 billion). This agreement also contained a commitment by Mythland to reduce the size of its banking industry to half its current size by 2018 and below the EU average. Specific provisions related to immediate actions to be taken with regard to Lucky Bank and Bhangi Bank.

As regards Bhangi Bank, the agreement provided that:

(i) The bank be closed and be run down over time with full contribution of equity shareholders, bondholders, and uninsured depositors under the HIC Law.

(ii) All the bank's insured deposit accounts (up to €100,000) be protected.

(iii) All the bank's uninsured deposit accounts (over €100,000) be levied at 100%.

(iv) All the bank's bondholders be required to contribute 100% of the value of their bonds towards the debts of the bank (rendering the bonds worthless).

(v) All the bank's good assets and insured deposits transfer to Lucky Bank.

As regards Lucky Bank, the agreement provided that:

(i) All the bank's insured deposits (up to €100,000) be protected.

(ii) The bank be recapitalised by imposing a 47.5% levy on every uninsured deposit account (over €100,000).

(iii) 15% of uninsured deposits could be withdrawn by depositors.

(iv) The remaining 37.5% of these uninsured deposits be split equally into three separate fixed term deposits, with maturity periods of 6, 9 and 12 months with the bank having the option to renew these deposits once for the same time periods upon the expiry date coming due.

Also on 25 March 2013, Mythland's government announced that banks would remain closed until 28 March to prevent a run on the banks. On 28 March 2013 the banks reopened. On 29 March 2013, Mythland's Parliament enacted Law Number 100/2013 (in relation to Lucky Bank) and Law Number 101/2013 (in relation to Bhangi Bank). These two legislations incorporated the terms of the 25 March agreement.

More than 3,000 legal challenges in the form of administrative actions were commenced at once against the validity of Laws Number 100/2013 and 101/2013. These claims were filed by depositors of Bhangi Bank and Lucky Bank (including all members of the Olively group) against: (i) the MCB; (ii) the Governor of the MCB; and (iii) the Republic of Mythland (in the person of its Finance Minister). In summary, they claimed that the impugned laws breached the right to property enshrined in Article 1 of the First Protocol of the European Convention on Human Rights and the principle of free movement of capital enshrined in Article 63 of the Treaty on the Functioning of the European Union. The courts registered these cases as consolidated Case No. 702 of 2013.

On 24 April 2013, the EC and Mythland's government signed the composite MoU setting out the policy package that Mythland must adopt in order to receive the ESM funds. This package required that the resolution of Bhangi Bank be carried out immediately in accordance with Law Number 101/2013; that Lucky Bank absorb selected assets and liabilities of Bhangi Bank; and that Lucky Bank be fully recapitalised through a debt to equity conversion without the use of public money or ESM funds. A separate Financial Assistance Facility Agreement (***FFA***) was also agreed that set out the timing and modalities of disbursement of the ESM funds.

On 30 April 2013, after a fierce vote in Parliament, the 25 March agreement, MoU, and FFA were ratified by a very small majority (29 votes in favour, 27 votes against) and enacted as Ratifying Law No. 1 of 2013.

On 1 May 2013, the President of Big Bear, in a speech to Big Bear's Parliament, stated on record that in a telephone conversation with the Prime Minister of Mythland held the previous week, he had been provided verbal assurances by the Prime Minister that Mythland would unfailingly abide by the terms of the bilateral loan agreement and provide special protections to Big Bear citizens and companies in all banking sector restructuring schemes.

On 3 May 2013, the Supreme Court of Mythland (by majority decision) held in Case No. 702 that:

1. The administrative actions against the Republic of Mythland and State bodies cannot succeed as there is no contractual link between the depositors and the Republic and the MCB and thus no direct *locus standi* of the applicants under administrative law principles;

2. The affected depositors are, in any event, not entitled to pursue their claims in administrative proceedings because the deposit levies imposed on bank deposits did not constitute a public act but was, rather, a private act involving the contracting obligations of the banks to their depositors;

3. As such, the proper forum for analysing the validity of measures taken under Laws Number 100/2013 and 101/2013 was the ordinary civil courts under contractual or tortuous claims; and

4. Such civil law suits could be issued against not only the banks but also: (i) the Republic of Mythland (given that it was an act of the state that affected the banks' ability to meet its contractual obligations to its depositors); and (ii) the European institutions involved in the agreement that led to the Decrees.

On 5 May 2013, HAR convened a meeting to discuss the position of the Bhangi and Lucky Banks. Although a transcript of the meeting was released, it was not open to the public and no representatives from the banks were present. The only attendees were the three HAR members. At this meeting, HAR decided on a "Framework for Resolution of Bhangi Bank" (***FOBB***), the salient features of which were:

(i) Bhangi Bank will be placed in administration.

(ii) Resolution of the Bank will occur immediately and with full contribution of equity shareholders, bondholders, and uninsured depositors. The value of their shares, bonds, and deposits would be used to clear the Bank's ELA debts and bring the balance on that credit line down to zero. The Bank's ELA credit line facility will be reset at a level of €2 billion. The resolution process will take place within 120 days.

(iii) The Bank will be split into a good bank and a bad bank.

(iv) The Bank's non-performing assets will be housed in the bad bank. The bad bank will be run down over time.

(v) The good bank will be folded into Lucky Bank. It will take €9 billion of assets with it including €6.4 billion in insured deposits and the €2 billion ELA credit facility along with technology and intellectual property worth €600 million.

(vi) The transfer of deposits from Bhangi Bank to Lucky Bank should take place after banks close on a Friday and be completed overnight before Saturday morning 09:00 A.M.

(vii) All insured deposit account holders will be informed to withdraw their funds or receive new bank accounts in Lucky Bank.

(viii) ESM funds will not be used to run down Bhangi Bank.

At the same meeting, HAR decided on a "Framework for Lucky Bank Operationalisation Plan" (***FLOP***), the salient features of which were:

(i) Lucky Bank will absorb the good Bhangi bank.

(ii) All uninsured deposits in Lucky Bank will remain frozen until recapitalisation has been effected, and following that, these deposits may be subject to appropriate restrictions.

(iii) Recapitalisation of Lucky Bank will occur through converting the Bank's uninsured deposits into equity shareholding with full contribution of equity shareholders and bondholders. The conversion will be such that a bank capital ratio of 9% is secured by the end of the program.

(iv) The good Bhangi Bank's zero balance ELA facility will be added to Lucky Bank's existing ELA threshold amount.

(v) All insured depositors in Lucky Bank – including those transferred from Bhangi Bank – will continue to be insured by the BDPS.

(vi) ESM funds will not be used for any Lucky Bank purposes.

Following HAR's adoption of FOBB and FLOP, the ESM Board of Governors decided on 8 May 2013 to disburse the ESM funds. The first disbursement of €2 billion was transferred on 13 May 2013, the second disbursement of €1 billion was transferred on 26 June 2013, and the third disbursement of €3.5 billion was transferred on 12 July 2013, all in cash. With this, all disbursements for calendar year 2013 under the FFA had been completed. The remainder of the ESM funds would now only be provided in calendar year 2014, as per the terms of the FFA. Mythland's government was given the freedom to decide whether to use these amounts for bank recapitalisation purposes or general financing needs of the public sector.

On 1 July 2013, HAR issued the following Decrees:

1. Decree No. 23/2013 on the sale of operations of Lucky Bank Public Co. Ltd;

2. Decree No. 24/2013 on the sale of operations of Bhangi Bank Public Co. Ltd;

3. Decree No. 25/2013 on the sale of operations in Olive Garden of Lucky Bank Public Co. Ltd;

4. Decree No. 26/2013 on the sale of operations in Olive Garden of Bhangi Bank Public Co Ltd;

5. Decree No. 27/2013 on the rescue by own means of Lucky Bank Public Co Ltd; and

6. Decree No. 28/2013 on the sale of some operations of Bhangi Bank Public Co Ltd.

By these Decrees, the principles set out in FOBB and FLOP were put into effect. A new banking company called the Lucky-Bhangi Bank Public Co Ltd (***Lucky-Bhangi***) was formed which took over the combined operations of Lucky Bank and Bhangi Bank under the brand name "Lucky Bank". On this date, Bhangi Bank ceased to exist and its assets and deposits were distributed as per FOBB and FLOP.

Legal actions were brought before the Supreme Court of Mythland (Revision Branch) in Case No. 702 seeking to introduce the above Decrees as "new facts". The Supreme Court did not grant leave to hear the case and dismissed the matter.

On 5 July 2013, the National Financial Fraud Bureau of the Mythland Ministry of Interior filed criminal charges against Mr. Olively and nine co-conspirators accusing them of insider dealing, mismanagement, tax evasion and siphoning off monies. The High Court of Mythland registered these cases as Case No. 420 of 2013

On 13 July 2013, the Prime Minister issued "Decree No. 29/2013 on the sale to Big Bear of some operations of the Lucky-Bhangi Bank Public Ltd." By this Decree, investors that could prove Big Bear nationality or a Big Bear corporate registration (***Big Bear Investors***) were given special consideration. Pursuant to this Decree:

(i) 20% of the shares of Lucky-Bhangi were to be offered to the sovereign wealth fund of Big Bear for a price of €1 billion.

(ii) This sale amount would be placed for 24 months in a special fund along with the interest accruing on the Big Bear-Mythland loan of December 2011 (***Big Bear Fund***). The Big Bear Fund would invest wholly in securities listed on the Big Bear stock exchanges. The fund proceeds would be used to compensate Big Bear Investors that chose not to participate in the rest of the scheme set out in the Decree.

(iii) Big Bear Investors in the erstwhile Bhangi Bank or Lucky Bank were given a choice: either to convert their investments into shares of Lucky-Bhangi (on par with the individuals falling under point (iii) of FLOP, or take compensation at a level determined by the Big Bear Fund without any waiver of legal rights of recourse.

(iv) Big Bear Investors who elected to convert themselves to FLOP (iii) investor status, and who held their shares for a period of 2 years, would be at that time granted

> bonus shares increasing their shareholding to a level putting them in the same financial position as they were on 1 May 2011, before the crisis started. In the event the financial position of Lucky-Bhangi was such that bonus shares would not adequately compensate these investors, the government of Mythland would provide cash compensation at a level that restored them to their financial position on 1 December 2011, the month the Big Bear-Mythland loan agreement was signed.

On 1 August 2013, the Big Bear Fund was established.

On 1December 2013, a Parliamentary inquiry into the demise of Bhangi Bank was opened and Parliamentary warrants and subpoenas on penalty of imprisonment were issued to Mr. Panicos and members of his group requiring them to appear and provide testimony. At this time, warrants of arrest against Mr. Panicos were outstanding in Case No. 420. On 17 January 2014, the Parliamentary Inquiry issued a hearings timetable and required Mr. Panicos to appear and provide testimony on 9 March 2014. Mr. Panicos did not appear and Parliamentary arrest warrants were also issued against him. On 9 March 2014, an order requiring Mr. Panicos to appear on 17 May 2014 was entered.

C. The Investor-State Arbitration Proceedings

On 9 December 2013, Olively issued the following press announcement:

> On 6 July 2013, Olively and another nine Olive Garden shareholders and depositors in Bhangi Bank initiated a process of international protection against the Republic of Mythland in accordance with the procedure provisioned by the bilateral treaty regarding the protection of investments between Olive Garden and Mythland (Law 2100/92, Gov. Gazette A666 in force on 19 April 2005), claiming damages for the loss of their investments amounting to approximately €900 million, of which €750 million relates to the value of their shares, €50 million relates to the value of their deposits with interest, and €100 million relates to moral and reputational damage.
>
> The Mythland Republic did not acknowledge the communications for an amicable settlement of the dispute, which the claimants have addressed in accordance with the provisions of the bilateral treaty. Therefore, the case has been brought to international arbitration before the arbitral body of the World Bank (ICSID) in accordance with the multilateral convention governing the ICSID Convention (Washington Convention of 1965), which has long been ratified by Olive Garden and Mythland. The jurisdiction of the international tribunal is exclusive.
>
> The claimants claim compensation for the expropriation and ill treatment of themselves and their investments as shareholders and depositors of Bhangi Bank, and other related violations of the bilateral treaty by the Mythland Republic that led to the evisceration of their investments. The Mythland Republic's wrongful actions started in 2010 and accelerated in 2011, especially in the last quarter, when the Republic of Mythland wrongfully deprived Bhangi Bank of the EFSF facility. The Republic of Mythland's wrongful actions are continuing to this day.

> All the claimants are no longer residing in Mythland and announce that they denounce all Mythland honours and recognitions awarded to them in the past. They have no intention of ever visiting Mythland in the future.

On 14 March 2014, Olively issued the following press announcement:

> Following our announcement of 9 December 2013, the arbitral tribunal was constituted in full in March 2014. On 13 March 2014, the Tribunal issued Procedural Order No. 1, determining the procedural timetable, the place of proceedings (Bangalore), the sequence of the proceedings, the language (English), and other procedural matters. The Republic of Mythland does not accept the jurisdiction of the tribunal, yet it participates in the arbitration proceedings as a party.
>
> Following the timetable approved by the tribunal, the present phase of the proceeding will only cover issues related to: interim relief (if any), threshold objections to admissibility and jurisdiction of the tribunal (if any); the merits of the claim and counterclaim (if any); and the legal grounds for an award of damages (if any). The calculation of the amount of damages, if this were to become necessary, will be taken up in a second phase following the tribunal's decision in the present phase.
>
> The hearing of the case has been set in Bangalore at a time following the written submissions.

E. Instructions

All future events following 14 March 2014 may be disregarded.

The Olive Garden-Mythland bilateral investment treaty is a verbatim copy of the Treaty between the Federal Republic of Germany and the Islamic Republic of Afghanistan concerning the Encouragement and Reciprocal Protection of Investments (available on the website of the UNCTAD IAA Navigator). Both countries have been full signatories of the Washington Convention of 1965 since 1982 and both countries have been full members of the EU since 2004. Both countries follow the common law system.