LEGAL NATURE AND OWNERSHIP

MODULE 1

Legal Establishment, Nature, and Ownership of Central Banks

THE ROLE OF CONSTITUTIONS

The role played by constitution in the legal establishment of central banks is a relatively recent development. In quite a few countries, constitutions have come to provide the legal basis for establishing central banks, though still mainly in civil law traditions. Even where the constitution provides such a legal basis, an organic law is still required to be enacted by the legislature.

Often, the constitution makes pronouncements regarding the key features of central bank governance, such as autonomy, the decision-making structure, and accountability. The advantage of this approach is that it provides a certain amount of protection against changes made by the legislature. One disadvantage, however, is the lack of flexibility.

LEGAL PASSAGES

In the following passages, consider how the constitution provides the legal basis for the establishment of the central bank, and how it seeks to regulate some key features of the central bank's governance.

HUNGARY

CONSTITUTION OF THE REPUBLIC OF HUNGARY

Article 41

1. The National Bank of Hungary shall be the central bank of Hungary. The National Bank of Hungary shall be responsibility for monetary policy as set out by a cardinal Act.
2. The Governor and Deputy Governors of the National Bank of Hungary shall be appointed for six years by the President of the Republic.
3. The Governor of the National Bank of Hungary shall present to Parliament an annual report on the activities of the National Bank of Hungary.
4. Acting within his or her competence defined by a cardinal Act, the Governor of the National Bank of Hungary shall issue orders by statutory authorization, which may not conflict with any law. The Governor of the National Bank of Hungary may be substituted for by a Deputy Governor designated in an order for the purpose of issuing orders.
5. The detailed rules for the organization and operation of the National Bank of Hungary shall be defined by a cardinal Act.

PERU

CONSTITUTION OF PERU

Article 83

The law determines the monetary system of the Republic. Issuance of bills and coins is under the exclusive power of the State. Such power is exercised through the Central Reserve Bank of Peru.

Article 84

The Central Bank is a corporate entity under public law. It is autonomous in conformity with its organic act.

Its aim is to preserve monetary stability. Its functions are: to regulate the currency and credit of the financial system, to manage the international reserve under its responsibility, and to perform other functions as provided in its organic act.

The Bank accurately and periodically informs the country about the state of the national finances under the responsibility of its Board of Directors.

The Bank may not grant financing to public funds, except for the purchase on the secondary market of securities issued by the Treasury within the limits set forth by its organic act.