# Intra-group financing and enterprise group insolvency: problems, principles and solutions

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*Problems, principles and solutions*

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I began my legal career in a small law firm in the Siberian city of Tomsk, three thousand kilometres east of Moscow, at the end of 2008. This was right at the time when the global financial crisis reached Russia, causing many firms to go out of business. It marked my initial encounter with the rapidly evolving field of insolvency law. In 2012, after obtaining an LLM degree from Central European University (Hungary), I relocated to Saint Petersburg. There, I joined the dispute resolution and insolvency groups of international law firms. Being a member of a team solving complex legal and practical problems was truly fulfilling. I am thankful to all practicing lawyers who shared their knowledge with me. The hands-on experience in the field ignited a deeper, more theoretical interest in insolvency law. This interest was further fuelled during my studies at Leiden University (2014-2015), where I met some of the greatest teachers and researchers. It was also at this prestigious, the Netherlands' oldest, university that I set foot on my academic path in 2017.

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Ilya Kokorin
Leiden, September 2023

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# List of Abbreviations

| | |
|---|---|
| ABI | American Bankruptcy Institute |
| AktG | *Aktiengesetz* (German), German Stock Corporation Act |
| ALI | American Law Institute |
| APR | Absolute priority rule |
| Art. | Article |
| AT&T | American Telephone and Telegraph Company |
| BCBS | Basel Committee on Banking Supervision |
| BGH | *Bundesgerichtshof* (German), German Federal Court of Justice |
| B.R. | Bankruptcy Reporter |
| BRRD | Bank Recovery and Resolution Directive, Directive 2014/59/EU of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms |
| BW | *Burgerlijk Wetboek* (Dutch), Dutch Civil Code |
| CCAA | Companies' Creditors Arrangement Act (Canada) |
| CEO | Chief executive officer |
| CERIL | Conference on European Restructuring and Insolvency Law |
| CIGA | Corporate Insolvency and Governance Act 2020 (UK) |
| Cir. | Circuit |
| CIWUD | Directive 2001/24/EC of 4 April 2001 on the reorganisation and winding up of credit institutions |
| CJEU | Court of Justice of the European Union |
| CNA | Citicorp North America |
| COMI | Centre of main interests |
| Coop | Oi Brasil Holdings Coöperatief U.A. |
| CPR | Civil Procedure Rules (UK) |
| CUP | Cambridge University Press |
| CVA | Company voluntary arrangement |
| DAO | Decentralised autonomous organisation |
| DCC | Dutch Civil Code |
| DCFR | Draft Common Frame of Reference |
| DIP | Debtor in possession |
| EBA | European Banking Authority |
| EBOR | European Business Organization Law Review |
| EBRD | European Bank for Reconstruction and Development |
| EC | European Commission |
| ECB | European Central Bank |
| ECFR | European Company and Financial Law Review |
| ECGI | European Corporate Governance Institute |
| ECHR | European Convention on Human Rights |

| | |
|---|---|
| ECtHR | European Court of Human Rights |
| EFTA | European Free Trade Association |
| e.g. | *exempli gratia* (for example) |
| EIC | English East India Company |
| EIR 2000 | Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings |
| EIR Recast | Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) |
| EKEG | *Bundesgesetz, mit dem ein Bundesgesetz über Eigenkapital ersetzende Gesellschafterleistungen (Eigenkapitalersatz-Gesetz – EKEG)* (German), Austrian Equity Substitution Act (Austria) |
| EU | European Union |
| EUR | Euro |
| EWCA | England and Wales Court of Appeal (UK) |
| FDIA | Federal Deposit Insurance Act (USA) |
| FDIC | Federal Deposit Insurance Corporation |
| FSB | Financial Stability Board |
| Fw | *Faillissementswet* (Dutch), Dutch Bankruptcy Act |
| GFC | Global Financial Crisis |
| GFSA | Group financial support agreement |
| GMRA | Global Master Repurchase Agreement |
| G-SIB | Global systemically important bank |
| HR | *Hoge Raad* (Dutch), Dutch Supreme Court |
| HUP | Harvard University Press |
| IAIS | International Association of Insurance Supervisors |
| ibid. | *ibidem* (in the same place) |
| i.e. | *id est* (in other words) |
| IHC | Intermediate holding company |
| III | International Insolvency Institute |
| InsO | *Insolvenzordnung* (German), German Insolvency Code |
| IOSCO | International Organization of Securities Commissions |
| IP | Insolvency practitioner |
| IRDA | Insolvency, Restructuring and Dissolution Act (Singapore) |
| ISDA | International Swaps and Derivatives Association |
| IT | Information technology |
| IVA | Individual voluntary arrangement |
| JOR | *Jurisprudentie Onderneming & Recht* (Dutch), Jurisprudence Business & Law |
| KA | Key Attribute |
| LBHI | Lehman Brothers Holdings, Inc. |
| LBT | Lehman Brothers Treasury Co B.V. |
| LMA | Loan Market Association |
| MEG | Multinational enterprise group |
| MLCBI | UNCITRAL Model Law on Cross-Border Insolvency |
| MLEGI | UNCITRAL Model Law on Enterprise Group Insolvency |
| MPOE | Multiple point of entry |

| | |
|---|---|
| MREL | Minimum requirement for own funds and eligible liabilities |
| MSME | Micro, small and medium-sized enterprise |
| NACIIL | *Nederlandse Vereniging voor Rechtsvergelijkend en Internationaal Insolventierecht* (Dutch), Netherlands Association for Comparative and International Insolvency Law |
| NCWO | No-creditor-worse-off |
| NJ | *Nederlandse Jurisprudentie* (Dutch), reports of court decisions (Netherlands) |
| NPV | Net present value |
| OUP | Oxford University Press |
| PECL | Principles of European Contract Law |
| PTIF | Portugal Telecom International Finance B.V. |
| R&D | Research and development |
| ReO | *Restrukturierungsordnung* (German), Restructuring Regulation (Austria) |
| Rb. | *Rechtbank* (Dutch), first instance court (Netherlands) |
| RPT | Related party transaction |
| SME | Small and medium-sized enterprise |
| SNFE | Significant non-financial enterprise |
| SPOE | Single point of entry |
| SPE | Special purpose entity |
| SPV | Special purpose vehicle |
| SRB | Single Resolution Board |
| SRMR | Single Resolution Mechanism Regulation, Regulation (EU) No 806/2014 of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund |
| SSA | Secured support agreement |
| StaRUG | *Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen (Unternehmensstabilisierungs- und -restrukturierungsgesetz – StaRUG)* (German), Enterprise Stabilization and Restructuring Act (Germany) |
| TLAC | Total loss-absorbing capacity |
| UCC | Uniform Commercial Code |
| UK | United Kingdom of Great Britain and Northern Ireland |
| UKSC | United Kingdom Supreme Court |
| UNCITRAL | United Nations Commission on International Trade Law |
| USA/US | United States of America |
| USD | US dollar |
| VOC | *Vereenigde Oostindische Compagnie* (Dutch), Dutch East India Company |
| Vol. | Volume |
| WHOA | *Wet Homologatie Onderhands Akkoord* (Dutch), Act on Court Confirmation of Extrajudicial Restructuring Plans (Netherlands) |