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

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Intra-group financing and enterprise group insolvency:
Problems, principles and solutions

Intra-group financing and enterprise group insolvency

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

Table of Contents

Acknowledgements V

List of Abbreviations XIII

Part I Introduction 1

1 What this Book is About 3
1.1 Setting the Scene 3
1.1.1 Lehman Brothers 3
1.1.2 Nortel Networks 8
1.1.3 Oi Brazil 12
1.1.4 Common features of group insolvencies 16
1.2 Main Question 17
1.3 Scope and Aims of This Book 21
1.4 Organisation of This Book 27

Part II Enterprise Groups: Their Life and Death 31

2 Phenomenon and Rise of Multinational Enterprise Groups 33
2.1 Introduction 33
2.2 History and Legal Foundations of Enterprise Groups 34
2.3 Defining an Enterprise Group 41
2.4 Characteristics and Types of Enterprise Groups 45
2.5 Enterprise Groups and the Curious Case of Limited Liability 48
2.6 Conclusion 54

3 Enterprise Groups and Insolvency Law 57
3.1 Introduction 57
3.2 Three Generations of Insolvency Law 59
3.3 Three Restructuring Procedures 64
3.3.1 The UK: schemes of arrangement 64
3.3.2 The USA: Chapter 11 of the US Bankruptcy Code 66
3.3.3 The Netherlands: WHOA schemes 70
3.4 From a Single Entity to a Single Enterprise? 72
3.4.1 Why recognition of enterprise groups in insolvency law took so long 72

3.4.2 The Global Financial Crisis as an accelerator of change 75
3.4.3 The rise of the rescue culture 77
3.5 Limits of a Single Enterprise Approach 80
3.5.1 Limits of group resolvability 80
3.5.2 Limits of a group-centric vision in corporate insolvency law 82
3.6 Conclusion 84

Part III Principles of Insolvency Law and How to Balance Them 87

4 Principles of Insolvency Law and Principle-based Approach 89
4.1 Introduction 89
4.2 Defining a Legal Principle 91
4.3 Core Legal Principles at Play in Insolvency 94
4.3.1 Classification of legal principles 94
4.3.2 Principles of insolvency law v. principles of restructuring law 95
4.3.3 Value preservation and maximisation 97
4.3.4 Protection of legitimate expectations, freedom of contract and party autonomy 102
4.3.5 Equal treatment of creditors 107
4.4 Application of Legal Principles in Group Insolvencies 111
4.4.1 Value preservation and maximisation within enterprise groups 111
4.4.2 Legitimate expectations and group reality 113
4.4.3 Explicit and hidden priorities in group insolvencies 114
4.5 Conclusion 116

5 Collision of Legal Principles and How to Resolve it 117
5.1 Introduction 117
5.2 The Notion of Fairness in Insolvency Law 118
5.3 Weight of Legal Principles 122
5.4 Meta-Principles 124
5.4.1 Optimisation: Pareto and Kaldor-Hicks efficiency 124
5.4.2 Consistency: alike and unalike cases 125
5.4.3 Proportionality: key tool in a balancing exercise 126
5.5 Conclusion 128

Part IV Intra-Group Financing and Insolvency: Transactions and Problems 131

6 Cross-guarantees, Recourse Claims and "Orphan Restructurings" 133
6.1 Introduction 133

6.2 Cross-guarantees and Co-debtorship Arrangements 134
6.3 How Do Cross-guarantees Work? 135
6.4 Functions of Cross-guarantees 138
6.4.1 "Protective" function of cross-guarantees 138
6.4.2 "Opportunistic" function of cross-guarantees 141
6.5 Insolvency and Triangle of Rights and Liabilities: Principal Debtor, Creditor and Guarantor 143
6.5.1 Cross-guarantees and insolvency: important questions 143
6.5.2 Insolvency of the principal debtor and claim against a guarantor 145
6.5.3 Performance by a guarantor and its rights against the principal debtor 160
6.6 Insolvency and Ex-post Effects of Cross-guarantees 172
6.7 Conclusion 175

7 Intra-group Loans and Statutory Subordination 177
7.1 Introduction 177
7.2 Intra-group Loans and Centralised Cash Management 179
7.3 Internal v. External Creditor Divide 181
7.3.1 Information asymmetry 181
7.3.2 Power and control 182
7.3.3 Risk appetite and misalignment of incentives 183
7.3.4 Minimum capital requirements and capital maintenance 184
7.4 Subordination of Shareholder Loans: National Perspectives 185
7.4.1 Contractual v. statutory subordination 185
7.4.2 The UK: subordination for claims of shareholders *qua* shareholders 187
7.4.3 The USA: Equitable subordination and debt recharacterization 190
7.4.4 The Netherlands: conflicting authorities 198
7.5 Shareholder Loans: to Subordinate or not to Subordinate? 201
7.5.1 Facilitation of early insolvency filings 201
7.5.2 Responsibility for consequences of financial decisions 203
7.5.3 Risk re-allocation and risk shifting 204
7.5.4 Value-enhancing and value-destroying rescue attempts 207
7.6 Conclusion 211

8 Facing Uncertainty: Intra-group Financing and Transaction Avoidance 213
8.1 Introduction 213
8.2 "Group Considerations" in Insolvency Transaction Avoidance 215
8.2.1 Transaction avoidance and group specificity 215

8.2.2 The UK: measuring the value for the creditor and guarantor 218
8.2.3 The USA: in search for future and indirect benefits 223
8.2.4 The Netherlands: *Faillissementspauliana* 229
8.3 Difficulties of Ex Post Substantive Review 235
8.4 Conclusion 239

9 When Insolvency meets Freedom of Contract: Ipso Facto and Cross-default Clauses 241
9.1 Introduction 241
9.2 Ipso Facto and Cross-Default Clauses: Definition and Rationale 242
9.2.1 Ipso facto clauses 242
9.2.2 Cross-default clauses 245
9.3 Enforceability of Ipso Facto Clauses 247
9.3.1 The UK: contracts for supply of goods or services 247
9.3.2 The USA: executory contracts and safe harbours 250
9.3.3 The Netherlands: WHOA schemes and obligations towards debtors 256
9.3.4 International developments 260
9.4 Enforceability of Cross-Default Clauses in Insolvency 262
9.4.1 The UK: suspension of termination rights during "insolvency period" 262
9.4.2 The USA: contract assumption and de-acceleration 265
9.4.3 The Netherlands: suspension of termination rights during "cooling-off period" 270
9.5 Insolvency and Ex-post Effects of Ipso Facto and Cross-Default Clauses in a Group Context 273
9.6 Conclusion 274

Part V Group-sensitive Insolvency Law: Tools and Solutions 277

10 Group Debt Deleveraging and Debt Adjustment: Third-party Releases 279
10.1 Introduction 279
10.2 Third-Party Releases 280
10.2.1 Rationale of third-party releases 280
10.2.2 The UK: third-party releases in schemes of arrangement 283
10.2.3 The USA: third-party releases in Chapter 11 289
10.2.4 The Netherlands: third-party releases in WHOA schemes 293
10.3 Conclusions and Suggestions 306
10.3.1 Overview of main findings 306
10.3.2 Suggestions on third-party releases in a group context 308

11 Insolvency Stay on Creditor Action and its Extension to Group Entities 313
11.1 Introduction 313
11.2 Enforcement Stays in National Law 315
11.2.1 The UK: patchwork of different rules and procedures 315
11.2.2 The USA: broad automatic and worldwide stay 319
11.2.3 The Netherlands: moratoriums and cooling-off periods 323
11.2.4 Summary of national law approaches 327
11.3 Extension of an Enforcement Stay to Group Entities 329
11.3.1 A stay and group insolvency 329
11.3.2 The USA: limited possibility of a stay extension 331
11.3.3 The Netherlands: extension of a stay to group entities 334
11.4 Conclusions and Suggestions 335
11.4.1 Overview of main findings 335
11.4.2 Suggestions on the extension of a stay to group entities 337

12 Intra-group Rescue Financing: Safe Harbours and Pre-emptive Strategies 341
12.1 Introduction 341
12.2 Ex Ante Approval Mechanisms and Safe Harbours 343
12.2.1 Three types of safe harbours 343
12.2.2 The Netherlands: safe harbour under the WHOA 345
12.2.3 The USA: DIP financing as a group effort 348
12.3 Pre-emptive Financial Arrangements in Banking Groups 353
12.3.1 Bank resolution: from reaction to pre-emption 353
12.3.2 Group financial support agreements under the BRRD 355
12.3.3 Prepositioning of loss absorbing capacity within banking groups 359
12.3.4 Structural and contractual arrangements related to intra-group support 361
12.4 Conclusions and Suggestions 364
12.4.1 Overview of main findings 364
12.4.2 Suggestions on dealing with intra-group rescue financing 366

13 Limits of Freedom of Contract: Ipso Facto and Cross-default Clauses in a Group Context 371
13.1 Introduction 371
13.2 Ipso Facto Clauses in a Group Insolvency Context 372
13.2.1 Determining the scope of inquiry: three scenarios 372
13.2.2 The UK and the Netherlands: application to direct counterparties 374
13.2.3 The USA: expansive interpretation of law 376
13.2.4 The BRRD and unenforceability of cross-entity ipso facto clauses 381

13.3 Cross-defaults in a Group Insolvency Context 384
13.3.1 Suspension of default-related rights 384
13.3.2 Neutralisation of intercompany cross-defaults in a restructuring plan 386
13.3.3 Assumption, deacceleration and substantially unrelated contracts 388
13.4 Conclusions and Suggestions 391
13.4.1 Overview of main findings 391
13.4.2 Suggestions on intercompany ipso facto clauses 393
13.4.3 Suggestions on intercompany cross-default clauses 395

Part VI Conclusion 397

14 Key Findings and Observations 399
14.1 Forces of Change and Group Insolvencies 399
14.2 Revealing the Trunk and Branches behind the Leaves 400
14.3 Intra-group Financing and Group Insolvency: Challenges and Solutions 402
14.3.1 Group economic and legal realities 402
14.3.2 "Extension effect" in insolvency law 404
14.4 Key Observations: Guiding Factors 408
14.4.1 In search for guiding factors 408
14.4.2 Group integration and interdependence 408
14.4.3 Financial situation of non-debtor group entities 409
14.4.4 Purpose and nature of the procedure 410
14.4.5 Prevalence of public interest 412

Annex Summary of Problems and Solutions 415

Bibliography 417

Summary 445

Samenvatting (Summary in Dutch) 453

Curriculum Vitae 461

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)