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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

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List of Abbreviations

ABI	American Bankruptcy Institute
AktG	<i>Aktiengesetz</i> (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	<i>Bundesgerichtshof</i> (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	<i>Burgerlijk Wetboek</i> (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.	<i>exempli gratia</i> (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	<i>Bundesgesetz, mit dem ein Bundesgesetz über Eigenkapital ersetzende Gesellschafterleistungen (Eigenkapitalersatz-Gesetz – EKEG)</i> (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	<i>Faillissementswet</i> (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	<i>Hoge Raad</i> (Dutch), Dutch Supreme Court
HUP	Harvard University Press
IAIS	International Association of Insurance Supervisors
ibid.	<i>ibidem</i> (in the same place)
i.e.	<i>id est</i> (in other words)
IHC	Intermediate holding company
III	International Insolvency Institute
InsO	<i>Insolvenzordnung</i> (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	<i>Jurisprudentie Onderneming & Recht</i> (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	<i>Nederlandse Vereniging voor Rechtsvergelijkend en Internationaal Insolventierecht</i> (Dutch), Netherlands Association for Comparative and International Insolvency Law
NCWO	No-creditor-worse-off
NJ	<i>Nederlandse Jurisprudentie</i> (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	<i>Restrukturierungsordnung</i> (German), Restructuring Regulation (Austria)
Rb.	<i>Rechtbank</i> (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	<i>Gesetz über den Stabilisierungs- und Restrukturierungsrahmen für Unternehmen</i> (<i>Unternehmensstabilisierungs- und -restrukturierungsgesetz – StaRUG</i>) (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	<i>Vereenigde Oostindische Compagnie</i> (Dutch), Dutch East India Company
Vol.	Volume
WHOA	<i>Wet Homologatie Onderhands Akkoord</i> (Dutch), Act on Court Confirmation of Extrajudicial Restructuring Plans (Netherlands)

