International Corporate Rescue

Published by

Chase Cambria Company (Publishing) Ltd

www.chasecambria.com

Centre for
Commercial
Law

Published by:
Chase Cambria Company (Publishing) Ltd
4 Winifred Close
Barnet, Arkley
Hertfordshire EN5 3LR
United Kingdom

www.chasecambria.com

Annual Subscriptions:
Subscription prices 2017 (6 issues)
Print or electronic access:
EUR 730.00 / USD 890.00 / GBP 520.00
VAT will be charged on online subscriptions.
For 'electronic and print' prices or prices for single issues, please contact our sales department at:
+ 44 (0) 207 014 3061 / +44 (0) 7977 003627 or sales@chasecambria.com

International Corporate Rescue is published bimonthly.

ISSN: 1572-4638

© 2021 Chase Cambria Company (Publishing) Ltd

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, mechanical, photocopying, recording or otherwise, without prior permission of the publishers.

Permission to photocopy must be obtained from the copyright owner.
Please apply to: permissions@chasecambria.com

The information and opinions provided on the contents of the journal was prepared by the author/s and not necessarily represent those of the members of the Editorial Board or of Chase Cambria Company (Publishing) Ltd. Any error or omission is exclusively attributable to the author/s. The content provided is for general purposes only and should neither be considered legal, financial and/or economic advice or opinion nor an offer to sell, or a solicitation of an offer to buy the securities or instruments mentioned or described herein. Neither the Editorial Board nor Chase Cambria Company (Publishing) Ltd are responsible for investment decisions made on the basis of any such published information. The Editorial Board and Chase Cambria Company (Publishing) Ltd specifically disclaims any liability as to information contained in the journal.

ARTICLE

Contagion Liability Risk in the United States and Australia for Parent Entities Arising from the Insolvency of a Subsidiary

Scott Atkins, Partner, Deputy Chair and Head of Risk Advisory, Norton Rose Fulbright, Sydney, Australia, **Francisco Vazquez**, Senior Counsel, Norton Rose Fulbright, New York, USA, **Eric Daucher**, Partner, Norton Rose Fulbright, New York, USA, and **Dr Kai Luck**, Executive Counsel and Director of Strategic Insights, Norton Rose Fulbright, Sydney, Australia

Synopsis

With the influx of insolvency cases expected on a global basis in coming months as government support measures are wound back, now is an opportune time for businesses to consider the extent of their potential exposure if a subsidiary liquidates. In particular, can losses be isolated within a liquidating subsidiary, or will there be a contagion effect, so that a parent entity may be held liable for the outstanding debts of the subsidiary?

Given the global, cross-border nature of many modern businesses and the attendant complex corporate group structures, it is important for entities to understand the legal liability framework that applies in the different jurisdictions where they operate or are formally organised. The particular focus of this article is the potential liability of parent entities for the debts of their insolvent subsidiaries in Australia and the United States.

In these jurisdictions, the risk that parent entities will be liable for the debts of their insolvent subsidiaries is greatest where the corporate structure has been used in an improper attempt to avoid legal liabilities, or where assets have been intermingled across different entities within the corporate group, a parent has improperly benefited from the operations of the subsidiary, and/or the parent entirely controls and directs the operations of the subsidiary.

The liability risk in the United States is greater than in Australia, with parent entities potentially liable, on the basis of substantive consolidation, for a broad range of unsecured debts of a debtor subsidiary. Moreover, in certain circumstances a parent of a debtor subsidiary in the United States may have its intra-group loans subordinated to other creditors under equitable principles. However, those outcomes are far from the norm and, as a general rule, courts will respect corporate separateness and will enforce properly documented and incurred intercompany debts.

Significantly, in both the United States and Australia, the current legal principles adopted by the courts in assessing parent entity liability lack precision and are largely untested in the pandemic context, and this itself may serve as a deterrent to responsible risk-taking and value-creating activity within a corporate group. This is an area that could benefit from further legislative guidance as law reform becomes a more dominant focus in the economic recovery period across the world in response to COVID-19.

Background

From a policy perspective, making parent entities liable for the debts of their insolvent subsidiaries may be justified by 'fairness' concerns, counterbalancing the economic efficiency that underpins limited liability and the separate legal entity ('SLE') doctrine. Achieving an appropriate balance between these two competing interests – fairness and efficiency – is an ongoing quest in all forms of corporate regulation in the common law world. As one commentator has noted, there has never been 'a satisfactory conclusion about the proper balance between these two interests', with legislative efforts reflecting an ongoing push-and-pull, rebalancing exercise such that regulation has at times seemed 'schizophrenic' – a 'history of corporate law see-saws between a paternalistic and free market approach.'[1]

In general, common law jurisdictions have adopted the principle that a company has a distinct personality, separate from its directors and shareholders, so that 'it must be treated like any other independent person with its rights and liabilities appropriate to itself.' Indeed,

Notes

1 David Cohen, 'Theories of the Corporation and the Limited Liability Company: How Should Courts and Legislatures Articulate Rules for Piercing the Veil, Fiduciary Responsibility and Securities Regulation for the Limited Liability Company?' (1998) 51 *Oklahoma Law Review* 427, 430, 446.

this is perhaps the most fundamental principle and building block of the entire corporate law system in common law jurisdictions.[2]

Consequently, courts in common law jurisdictions have routinely held that each member of a corporate group should be treated as a distinct entity, separate from related parent and subsidiary entities within the group. According to this legal fiction, the debts incurred by one corporate group entity are isolated within that entity. Absent any exception to the SLE doctrine, group entities cannot be held liable for, or made to contribute to, the debts of one another. The so-called corporate 'veil' of protection is therefore extensive in its scope and implications.

In terms of economic efficiency, therefore, limited liability and the SLE doctrine offer standard-form 'default rules' that, from a contractarian perspective, lower transaction costs by saving companies from negotiating specific liability terms in the contracts they enter into with individual creditors.[3] These default rules are viewed as better than the alternative of unlimited liability across corporate group structures because they promote investment and economic activity. Indeed, if shareholders of a parent entity faced lost dividends and the risk of personal liability, shareholders would be reluctant to provide the capital required for companies to invest in global, large scale projects and operations across multiple entities in different jurisdictions. Even if they did provide equity funding, shareholders would be incentivised to excessively monitor and intervene in corporate decision-making, deterring risk-taking essential to the creation of wealth, as well as investment in the innovative activities that may drive new technology and projects essential to support capacity-building and populations in a globalised, interconnected world (the current COVID-19 pandemic notwithstanding). Likewise, in terms of debt finance, the enhanced liability risk for parent entities would deter banks and other financiers from offering funding for new projects, and would at the very least substantially increase the cost of credit. The deterrent to equity and debt finance would ultimately jeopardise sustainable growth on a micro, macro and cumulative global scale.[4]

Any notion that limited liability and the SLE doctrine in a corporate group context do not lead to fairness concerns is necessarily predicated on an assumption that distinct companies in the group perform distinct functions, with no intermingling of assets, liabilities and expertise. However, as Finch and Milman note, the essential problem in modern times is that, as the corporate group has evolved to become a standard business model, crossing national and regulatory boundaries, 'there is a disjuncture between the law's vision … and the reality of commercial life.'[5]

Specifically, there is a concern that the corporate group may be used as an asset protection vehicle, so that a parent entity can place all of the business risk, and allow debts to accrue, in a subsidiary, benefiting from the commercial output of the subsidiary and its employees and creditors while the parent faces no personal liability in its own right. The subsidiary's employees and small trade creditors would likely be unable to self-protect by identifying the risk of loss if the subsidiary became insolvent and pricing for that risk in their terms of trade (as secured creditors do) and diversifying the risk across multiple investments and sources of income. These are the very claimants that are also less well placed to absorb the impact of insolvency loss as part of their ongoing trade or, in the case of employees, their everyday lives.[6]

The challenge for the law is to therefore address these competing policy concerns – protecting vulnerable unsecured creditors from the abuse of the corporate form while still preserving the economic efficiency of the corporate group structure underpinned by limited liability and the SLE doctrine.

Common law liability – piercing the corporate veil

Australia

In Australia, the courts have been very reluctant to pierce the 'veil of incorporation' of their own accord, in the absence of specific legislative provisions inviting them to do so, to render parent entities liable for the debts of their insolvent subsidiaries.

There is a greater prospect of veil piercing where the corporate structure has been used to perpetuate a

Notes

2 See the remarks of Lord Halsbury in the seminal case of *Salomon v Salomon & Co Ltd* [1897] AC 22.

3 Michael Whincop, 'Painting the Corporate Cathedral: The Protection of Entitlements in Corporate Law' (1999) 19 *Oxford Journal of Legal Studies* 19, 28.

4 Among the leading exponents of these arguments are Frank Easterbrook and Daniel Fischel, *The Economic Structure of Corporate Law* (1991); Paul Halpern, Michael Trebilcock and Stuart Turnbull, 'An Economic Analysis of Limited Liability in Corporation Law' (1980) 30 *University of Toronto Law Journal* 117; and Phillip Blumberg, 'Limited Liability and Corporate Groups' (1986) 11 *Journal of Corporation Law* 573.

5 Vanessa Finch and David Milman, *Corporate Insolvency Law: Perspectives and Principles* (Cambridge University Press, Third Edition, 2017), 496.

6 See, for example, the discussion in Vanessa Finch, 'Security, Insolvency and Risk: Who Pays the Price?' (1999) 62 *Modern Law Review* 633. See also Susan Cantlie, 'Preferred Priority in Bankruptcy' in Jacob Ziegel (ed) *Current Developments in International and Comparative Corporate Insolvency Law* (Clarendon Press, 1994) 413.

© 2021 Chase Cambria Publishing

'sham' or 'façade',[7] or where a parent entity exercises such a degree of effective control over a subsidiary that the subsidiary is properly considered to be the parent's agent, so that the subsidiary's actions are attributable to the parent as a matter of law. [8]

However, the precise limits of those exceptions are unclear, and it has been emphasised that the courts are not prepared to set down any 'great new principle' which has general application.[9] As Justice Rogers held in *Briggs v James Hardie & Co Pty Ltd*:

> '[T]here is no common, unifying principle which underlies the occasional decision of courts to pierce the corporate veil. Although an ad hoc explanation may be offered by a court which so decides, there is no principled approach to be derived from the authorities.'[10]

In practice, the absence of a certain liability framework enhances the liability risk for parent entities, serving as a distinct 'transaction cost' that may deter value-creating activity.

United States

In the United States, courts often use the terms 'alter ego,' 'veil piercing' and 'instrumentality' interchangeably when analysing a claim to disregard corporate separateness. Courts have noted that the terminology 'has not been a model of clarity.'[11] Different states have adopted different tests for piercing the corporate veil. For the purpose of this article, we have limited our discussion to Delaware law, which governs the internal affairs of companies created there.

Under Delaware law, a court may disregard the corporate separateness of a company and pierce its corporate veil where the parent and subsidiary 'operated as a single economic entity,' and an 'overall element of injustice or unfairness is present.'[12] Specifically, Delaware courts consider the following factors in determining whether to pierce the corporate veil:

– whether the company was adequately capitalised for the undertaking;
– whether the company was solvent;
– whether corporate formalities were observed;
– whether the dominant shareholder siphoned company funds; and
– whether the company simply functioned as a facade for the dominant shareholder.[13]

A court may pierce the corporate veil when there is evidence of fraud, breach of contract or law, or a public wrong. A veil piercing claim is typically asserted where 'the shell corporate entity is insolvent and the plaintiff wishes to reach the personal assets of the corporation's stockholders or alter egos.'[14]

Shadow directorship

Australia

In contrast to the uncertainty of veil piercing as a means to render a parent company liable for the obligations of an insolvent subsidiary, a stronger basis for achieving that result in Australia is to argue that the parent company is a 'shadow director' of the subsidiary. This argument may also be applied to officers of the parent company, although that is not the focus of this article.

In that regard, 'director' is defined in section 9 of the *Corporations Act 2001* (Cth) ('*Corporations Act*') to include not only a person validly appointed as a director but also a person *not* validly appointed as a director in circumstances where 'the directors of the company are accustomed to act in accordance with the instructions or wishes of the person.'

In the cases decided to date, the courts have accepted that a parent entity is capable of being a shadow director of its subsidiary. The critical factor is whether the appointed directors of the subsidiary are 'accustomed to act in accordance with the instructions or wishes' of the parent, so that they accept and implement those instructions or wishes as a 'fait accompli' without exercising their own independent discretion and judgment.[15]

Notes

7 See, for example, *Re Darby* [1911] 1 KB 95 and *Sharrment Pty Ltd v Official Trustee in Bankruptcy* (1988) 82 ALR 530. See also *Spreag v Paeson Pty Ltd* (1999) 94 ALR 679, in which a parent company was held liable for the misleading and deceptive statements made by its subsidiary in circumstances where the subsidiary had intentionally not been provided with its own finance and management.

8 This line of authority derives from the English cases of *Smith Stone & Knight Ltd v Birmingham Corp* [1939] 4 All ER 116 and *DHN Food Distributors v London Borough Council Tower Hamlets* [1976] 3 All ER 462. The authority has been accepted on occasions (see, for example, in *Dennis Willcox Pty Ltd v FCT* (1988) 79 ALR 267), but has also been doubted in several other decisions, including most recently in *ACN 007 528 207 Pty Ltd (in liq) v Bird Cameron* (2005) 91 SASR 570, [96].

9 *Pioneer Concrete Services Ltd v Yelnah Pty Ltd* (1986) 5 NSWLR 254, 265-266.

10 (1989) 16 NSWLR 549, 567.

11 *Mobil Oil Corp v Linear Films, Inc,* 718 F.Supp. 260, 266 (D.Del. 1989).

12 *Official Comm. of Unsecured Creditors v Bay Harbour Master Ltd (In reBH S&B Holdings LLC),* 420 B.R. 112, 133-34 (Bankr. S.D.N.Y. 2009).

13 *E.I. du Pont de Nemours & Co v Agfa-Gavaert NV,* 335 F.Supp.3d 657, 675 (D. Del. 2018).

14 *Crosse v BCBSD, Inc*, 836 A.2d 492, 497 (Del. 2003).

15 *Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd* (2011) 82 ACSR 703, [9]-[10]; *Standard Chartered Bank of Australia Ltd v Antico* (1995) 18 ACSR 1, 70. See also *Re Akron Roads Pty Ltd (in liq) (No 3)* (2016) 117 ACSR 513 and *Ho v Akai Pty Ltd (in liq)* (2006) 24 ACLC 1,526.

© 2021 Chase Cambria Publishing

United States

United States law does not contain any provisions that are directly analogous to Australian concepts of shadow director liability. The United States *Bankruptcy Code*, does, however, impose certain heightened scrutiny on the conduct of 'insiders' of a debtor. A parent company of a debtor (even if not a debtor itself) meets the statutory definition for insider status. Moreover, while the statutory definition of an insider is expansive, courts have repeatedly noted that even the broad list of entities that should be considered insiders is not exclusive. Rather, courts have found that 'non-statutory' insiders may exist where an entity or individual has such a close relationship with a debtor that it may gain an advantage in its business dealings 'that is attributable simply to affinity rather than to the court of business dealings between the parties.'[16] Accordingly, there is a parent entity insolvency contagion risk arising from these principles.

Pooling/consolidation or contribution orders

Australia

Under the *Corporations Act*, where two or more companies in a corporate group are being liquidated at the same time and it is 'just and equitable' to do so, a court may order that the group is a 'pooled group'.[17] Where a pooling order is made, intra-group debts and claims are extinguished and each group company is jointly and severally liable for the debts payable by and the claims against each other group company.[18] In determining whether it is just and equitable to make a pooling order, the court must have regard to the following prescribed factors:

- the extent that the management and operation of the group companies was the same;
- the conduct of each group company and its officers and employees towards the creditors of other group companies;
- the extent that the liquidation of a group company can be attributed directly or indirectly to the acts or omissions of another group company or its officers or employees;
- the extent to which the activities and businesses of the group companies were intermingled;
- the extent that creditors of any group company may be advantaged or disadvantaged by the pooling order; and
- any other relevant matters.[19]

Critically, however, a pooling order can only be made to consolidate the affairs or two or more group companies that have *all* entered liquidation. Asset rich and solvent companies cannot be subjected to a pooling order.

In contrast, under reforms to the *Corporations Act* that came into effect on 6 April 2019,[20] the court can now make an 'employee entitlements contribution order' against a parent company (or another entity) which has benefited from the services of employees of a company being liquidated where it is just and equitable for the order to be made,[21] for example where the assets of group entities have been intermingled and a subsidiary company has been intentionally left with insufficient capital to discharge its liabilities. This is a particularly significant reform, permitting contribution orders to be made against *solvent* parent entities for the first time. However, the scope of the new contribution orders is limited and, unlike comparable legislation in New Zealand[22] and Ireland,[23] there is still no statutory mechanism in Australia to impose liability on parent entities for the debts of non-employee creditors outside circumstances where the parent entity is a shadow director, or in limited cases where the parent has otherwise allowed the subsidiary to trade while insolvent.[24] That is the case even though the parent entity may have benefited from the services provided to the subsidiary by creditors just as much as it might have from the services provided by employees.

The extension of contribution orders to benefit other creditors, beyond the existing limit to employees, should be an important item on the insolvency law reform agenda in Australia in over the next year. However, as noted below, any such extension of contribution orders should be guided by clear liability criteria to ensure that economic efficiency and responsible risk-taking is not deterred.

Notes

16 *Friedman v Sheila Plotsky Brokers, Inc (In re Friedman)*, 126 B.R. 63 (Bankr. 9th Cir. 1991).
17 *Corporations Act*, section 579E(1).
18 *Corporations ct*, section 579E(2).
19 *Corporations Act*, section 579E(12).
20 The reforms are comprised in the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* (Cth).
21 *Corporations Act*, section 588ZA(1).
22 *Companies Act 1993* (NZ), section 271(1)(a).
23 *Companies Act 2014* (Irl), section 599.
24 *Corporations Act*, section 588V.

© 2021 Chase Cambria Publishing

United States

In the United States, courts have developed the concept of 'substantive consolidation' in the exercise of their general equitable power under section 105(a) of the Federal *Bankruptcy Code* to 'issue any order, process or judgment that is necessary or appropriate to carry out provisions of [bankruptcy law]'.

Substantive consolidation enables courts to 'pool; the assets and liabilities of different entities within a corporate group and treat the entities as a single enterprise. Creditors of a single group company that has become insolvent therefore are entitled to claim against the group as a whole. Unlike the current position in Australia, substantive consolidation is not limited to benefiting employees of a bankrupt company.

Courts have recognised that substantive consolidation may often result in a harsh redistribution of value to some creditors at the expense of others and, therefore, the power to do so is an extraordinary remedy that must be exercised sparingly. The early decisions discussing substantive consolidation under the *Bankruptcy Code* rely principally on the presence or absence of certain 'elements' that are similar to factors relevant to 'piercing the corporate veil' and 'alter ego' theories. Those factors include:

- the degree of difficulty in segregating and ascertaining individual assets and liabilities;
- the presence or absence of consolidated financial statements;
- the profitability of consolidation at a single physical location;
- the commingling of assets and business functions;
- the unity of interests and ownership between the various corporate entities;
- the existence of parent and intercorporate guarantees on loans; and
- the transfer of assets without formal observance of corporate formalities.[25]

Other courts have modified the 'elements' or alter-ego liability approaches to incorporate a balancing analysis and address the potential adverse impact on creditors. Such tests shift the focus from the manner in which affiliated debtors conducted business to the effect of substantive consolidation on creditors.[26] The essential analysis is whether 'the economic prejudice of continued debtor separateness' outweighs 'the economic prejudice of consolidation.'[27]

Finally, a third group of courts have adopted the following alternative tests to determine whether substantive consolidation is warranted:

- whether creditors dealt with the entities as a single economic unit and did not rely on their separate identities in extending credit; or
- whether the entities' affairs are so entangled and confused that substantive consolidation will benefit all creditors.[28]

The presence of either factor is sufficient to grant substantive consolidation.

The reported decisions regarding substantive consolidation show that the cases are to a great degree *sui generis* and, as a result, case law is only a general guide to the potential applicability of the doctrine to any particular combination of facts.

The absence of a definitive outcome as to substantive consolidation arguably acts as a deterrent not only to equity investment from shareholders, but also debt finance from creditors. Indeed, exposing creditors to the risk of the diversion of assets that would otherwise be available to pay their claims to meet the obligations of an insolvent entity with whom the creditors have no connection, may increase the cost of credit. That additional cost may stifle the innovation, productivity, and value-creation necessary to drive the economic recovery and return to long-term, sustainable economic growth as people and businesses across the globe continue to confront the challenges of COVID-19.

Equitable subordination and recharacterisation

In addition to substantive consolidation, United States courts may equitably subordinate or recharacterise a claim. Through equitable subordination, a claim may be relegated behind the claims of other creditors.

United States courts have generally concluded that a claim can be subordinated when:

- the claimant engaged in some type of inequitable conduct;
- the misconduct resulted in injury to other creditors or conferred an unfair advantage on the claimant; and
- equitable subordination is consistent with bankruptcy law.[29]

Similarly, a United States court may recharacterise a claim as equity, resulting in the subordination of the

Notes

25 *In re Vecco Constr Indus., Inc*, 4 B.R. 407, 410 (Bankr. E.D. Va. 1980).
26 *In re AFH Dev, Ltd*, 462 B.R. 186, 198 (Bankr. N.D. Tex. 2011).
27 *Eastgroup Props v Southern Motel Assoc Ltd*, 935 F.2d 245, 249 (11th Cir. 1991).
28 *In re Augie/Restivo Baking Co, Ltd*, 860 F.2d 515, 518 (2d Cir. 1988).
29 *Benjamin v Diamond (In re Mobile Steel Corp)*, 563 F.2d 692, 700 (5th Cir. 1977).

© 2021 Chase Cambria Publishing

claim because equity is returned generally only after creditors are paid in full. However, recharacterisation is different to equitable subordination because it does not require inequitable conduct to be shown. While courts have adopted a variety of recharacterisation tests, they focus on discerning whether the parties intended a loan or an equity contribution.[30]

Equitable subordination and recharacterisation allow a court to defer payment to certain creditors in favour of other claims where it is just and equitable to do so. For example, a debt owed by a subsidiary to its holding company could be deferred if there has been fraud, mismanagement or wrongful conduct with respect to the incursion of the debt. That may include instances where a parent entity has benefited from the services of the subsidiary without accepting any of the risks and costs – instead, only providing loans to the subsidiary to cover its operating expenses so that it remains technically solvent, while reserving the right to call for the repayment of the loan in future. This creates a significant risk for employees and other unsecured creditors of the subsidiary, who may find that, when the subsidiary becomes insolvent, the bulk of available funds realised by a liquidator go towards repaying inter-group secured loans with very little left to be shared among thousands of other claimants. Again, there is no definitive guidance as to when a claim should be equitably subordinated or recharacterised. Clearer guidelines could enhance economic efficiency and the responsible corporate risk-taking to benefit growth.

There is no similar regime in Australia, although equitable subordination may also be a topic for consideration as part of the insolvency law reform push currently underway in the country.

Concluding remarks

The scaling back of government support measures in response to COVID-19 is likely to spark a flood of new insolvency filings across the world over the next six to 12 months. For large enterprises conducted in a corporate group setting, parent companies will have a legitimate concern that they may become liable for the debts of their insolvent subsidiaries. To incentivise continued responsible risk-taking and value-creating activity – crucial to the innovation, productivity and economic growth needed to combat the pandemic-induced downturn – further legislative clarity is required, particularly in relation to veil piercing, contribution and consolidation orders and equitable subordination and recharacterisation. This will provide express guidelines for courts in the exercise of their discretion and will also allow parent entities to quantify their likely insolvency exposure as a guidepost for future investment and operational decisions.

Notes

30 *Bankruptcy Code*, section 510(C).

© 2021 Chase Cambria Publishing

International Corporate Rescue

International Corporate Rescue addresses the most relevant issues in the topical area of insolvency and corporate rescue law and practice. The journal encompasses within its scope banking and financial services, company and insolvency law from an international perspective. It is broad enough to cover industry perspectives, yet specialised enough to provide in-depth analysis to practitioners facing these issues on a day-to-day basis. The coverage and analysis published in the journal is truly international and reaches the key jurisdictions where there is corporate rescue activity within core regions of North and South America, UK, Europe Austral Asia and Asia.

Alongside its regular features – Editorial, US Corner, Economists' Outlook and Case Review Section – each issue of *International Corporate Rescue* brings superbly authoritative articles on the most pertinent international business issues written by the leading experts in the field.

International Corporate Rescue has been relied on by practitioners and lawyers throughout the world and is designed to help:

- Better understanding of the practical implications of insolvency and business failure – and the risk of operating in certain markets.
- Keeping the reader up to date with relevant developments in international business and trade, legislation, regulation and litigation.
- Identify and assess potential problems and avoid costly mistakes.

Editor-in-Chief: Mark Fennessy, McDermott Will & Emery UK LLP, London

Emanuella Agostinelli, Curtis, Mallet-Prevost, Colt & Mosle LLP, Milan; Scott Atkins, Norton Rose Fulbright, Sydney; James Bennett, KPMG, London; Dan Butters, Deloitte, London; Geoff Carton-Kelly, FRP Advisory, London; Gillian Carty, Shepherd and Wedderburn, Edinburgh; Charlotte Cooke, South Square, London; Katharina Crinson, Freshfields Bruckhaus Deringer, London; Hon. Robert D. Drain, United States Bankruptcy Court, Southern District of New York; Simon Edel, EY, London; Matthew Kersey, Russell McVeagh, Auckland; Prof. Ioannis Kokkoris, Queen Mary, University of London; Professor John Lowry, University College London, London; Neil Lupton, Walkers, Cayman Islands; Nigel Meeson QC, Conyers Dill Pearson, Hong Kong; Mathew Newman, Ogier, Guernsey; John O'Driscoll, Walkers, London; Karen O'Flynn, Clayton Utz, Sydney; Professor Rodrigo Olivares-Caminal, Queen Mary, University of London; Christian Pilkington, White & Case LLP, London; Susan Prevezer QC, Brick Court Chambers, London; Professor Arad Reisberg, Brunel University, London; Jeremy Richmond QC, Quadrant Chambers, London; Daniel Schwarzmann, PricewaterhouseCoopers, London; The Hon. Mr Justice Richard Snowden, Royal Courts of Justice, London; Anker Sørensen, De Gaulle Fleurance & Associés, Paris; Kathleen Stephansen, New York; Dr Artur Swierczok, Baker McKenzie, Frankfurt; Meiyen Tan, Oon & Bazul, Singapore; Stephen Taylor, Isonomy Limited, London; Richard Tett, Freshfields Bruckhaus Deringer, London; The Hon. Mr Justice William Trower QC, Royal Courts of Justice, London; Mahesh Uttamchandani, The World Bank, Washington, DC; Robert van Galen, NautaDutilh, Amsterdam; Miguel Virgós, Madrid; L. Viswanathan, Cyril Amarchand Mangaldas, New Delhi; Prof. em. Bob Wessels, University of Leiden, Leiden, the Netherlands; Angus Young, Hong Kong Baptist University, Hong Kong; Maja Zerjal Fink, Arnold & Porter, New York; Dr Haizheng Zhang, Beijing Foreign Studies University, Beijing.

For more information about *International Corporate Rescue*, please visit www.chasecambria.com