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Pre-Insolvency Proceedings: A Normative Foundation and Framework

Nicolaes Tollenaar, Oxford University Press, 1st edition, 2019, 320 pages, ISBN 978-01-98799-92-4, £75

This recently published text presents a critically analytical discussion of preventive restructuring frameworks based on a nuanced version of the creditors' bargain theory. The Preventive Restructuring Directive has now been adopted and the transposition period has begun. The publication of this book is therefore timely because it indeed provides a normative foundation and framework for preventive restructuring generally, also commenting on the purpose, practicality and ultimately, the fairness of such frameworks.

By examining both the US Chapter 11 procedure and the UK's Scheme of

Arrangement, the author interrogates the viability of both frameworks as preventive restructuring procedures as well as their relative 'fairness' to creditors within the normative framework of the creditor's bargain theory, though the author is also highly critical of that theoretical paradigm. The result is a framework for preventive restructuring that takes into account the faults and advantages of Chapter 11 and the Scheme of Arrangement, along with the author's solutions to some of these faults.

Overall, this text is useful in both the review of the two procedures and in describing succinctly how both the Scheme of Arrangement and Chapter 11 work, as well as what the author sees as their faults. He also sets out a fascinating review and critique of the

classical insolvency theory, presenting a nuanced normative framework aimed specifically at the creation and application of preventive restructuring frameworks.

The research goes beyond a recommendation of the current progress toward a preventive restructuring framework in the EU to a design supported by highly critical analysis and reasons that could form the basis for future reforms. It could well be that Tollenaar has foreseen the problems that the current frameworks will encounter and has already provided potential solutions.

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