

The socio-legal obstacles to the rescue culture

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The authors will present a newly-launched international, comparative project, looking at the socio-legal factors preventing the establishment of a true rescue culture in Europe. The project is composed of 27 international contributors from 18 jurisdictions.

The so-called “rescue culture” has materialised, over the years, through the creation of several rescue procedures, enshrined in domestic pieces of legislation, as well as European instruments (such as the New Approach to Business Failure and Insolvency Recommendation (2014) and the Directive on Preventive Restructuring (2019)).

Despite its much-lauded status, recourse to rescue has remained remarkably low compared to liquidation, indicating an inconsistency between legal and policy priorities and the corporate reality. Assessing the reasons for the low uptake of rescue procedures is not straightforward and is likely dependent upon a number of variables. One of the explanations proffered to explain such low uptake is the perceived ubiquity of stigma. It is argued that the sense of stigma around insolvency and business failure acts as an obstacle to the successful implementation of the mechanisms of the rescue culture because corporate debtors may be hesitant to initiate corporate rescue processes and disclose their financial troubles. This reluctance by corporate officers may exhaust potential *ex ante* rescue avenues, forcing firms down the only remaining route, that of formal insolvency mechanisms or liquidation.

That, if stigma were to be omnipresent its influence could be problematic, is all very well but stigma is notoriously difficult to qualify or quantify. As a result, the literature so far has mostly relied on the *assumption* that “bankruptcy stigma is ubiquitous” and therefore, “should not be questioned”. So, how truly stigmatised is insolvency law?

We combine two qualitative studies based on different methodologies. The first study is an extensive systematic review of the literature in selected jurisdictions which either have an established rescue regime or are in the process of modernising theirs. The second study is an empirical collection of data through interviews with corporate directors in the UK.

Our findings can be briefly summarised as follows; We identify a prominent narrative around the stigma of insolvency in most jurisdictions surveyed. We find that debates around stigma prevail in policy and legislative discussion alongside academic literature. So saying, we find that in the corporate reality, amongst corporate directors, the sense of stigma around insolvency is not as strong as the literary narrative might suggest. Rather, our empirical study reveals that the levels of stigma are moderate to low. Most importantly, we identify an acute lack of knowledge of insolvency law and procedures amongst corporate managers.