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Restructuring in the Shadow of the Law. Informal Reorganisation in the Netherlands

Adriaanse, Jan

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Restructuring in the shadow of the law
Informal reorganisation in the Netherlands

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Informal reorganisation in the
Netherlands

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...But for what he did, Harry Zale looked perfect. He was a workout artiste, and the workout artistes were the Marines, the commandos, the G.I. Joes of commercial banking...

...“Sell it,” he said...

...And then Peepgass saw them...The saddlebags! The saddlebags! The saddlebags had formed! They were complete! The great stains of sweat on the tycoon’s shirt had now spread from both sides, from under the arms and across the rib cage and beneath the curves of his mighty chest until they had met, come together, hooked up – two dark expanses joined at the sternum. They looked just like a pair of saddlebags on a horse...

...Oh, Peepgass loved it! Harry had done it again! – gotten his saddlebags – even with a tough old bird like Charlie Croker!

Tom Wolfe, *A Man in Full*

Preface

In times of economic decline the attention focused on companies in financial difficulties generally increases. For many this is a unwelcome but absolute necessity: clients run into difficulties as a result of which invoices are paid late or not at all, an important supplier goes into liquidation and therefore a new supplier must be found quickly, or the employer is under threat of becoming insolvent, creating all kinds of uncertainties for relevant employees and their families. Strangely enough, to others the news of a company's financial difficulties is very good news indeed and as such appears to be welcome. Specialised lawyers and so-called corporate recovery consultants are, par excellence, the very parties who can profit from the event of a so-called (imminent) 'corporate death'. Ironically enough, the employees in any given 'Intensive Care Department' also benefit from a deteriorated state of affairs within the group of clients of their bank. The latter certainly also applies to a researcher into reorganisation and insolvency: the more financial misery the better. During the last four years therefore, the undersigned – like some kind of curious sightseer at the scene of a disaster – has studied the Dutch practices in regard to companies in financial difficulties. In particular the phenomenon of informal reorganisation has been studied: this involves a restructuring process outside the statutory framework such as – in the Netherlands – the Moratorium ('Surseance van Betaling'), the Private person Fresh start Proceedings ('Wet Schuldsanering Natuurlijke Personen') or Liquidation ('Faillissement').

The relevance of informal reorganisation is considerable; it is not only applicable to companies on the brink of bankruptcy. The principles of informal reorganisation can also be applied to companies which are not in an immediate crisis situation as such, but which will be in that situation sooner or later if no action is taken. Even more relevant is the possibility that the principles and underlying ideas of informal reorganisation may be exceptionally suitable for healthy companies. The periodic screening of a company for (possible) negative developments and the implementation of strategic, financial and operational changes where required, is indeed not the easiest of methods; however, it is the most effective method to prevent liquidation. Retaining value

by taking small steps from time to time leads to results which cannot be matched by even the most extensive rescue operations.¹

Because of the broad approach with regard to the subject matter of informal reorganisation, this study could be of interest to a large group of interested parties: not only to those involved with the daily prevention and solving of financial problems, but particularly also to those who – intentionally or unintentionally – have been or are at times confronted with a deteriorated state of affairs in companies and businesses. They may include accountants, auditors, management consultants, lawyers, bankers, politicians, civil servants, managers and entrepreneurs. Place or country of business hardly plays a role in this respect: after all, in principle the laws of business economics are universal.

With regard to undertaking and completing this study, I owe a debt of gratitude to the research institute of the Dutch Ministry of Justice (WODC), as well as all other persons and institutions who rendered their voluntary assistance to the realisation of this work.

Finally, the essence of being a curious sightseer at the scene of a disaster is that he does not contribute to the relief efforts connected with the results of such a disaster, any more that he was able to prevent it in the first place. Stronger still, onlookers are often in the way. Not unimportantly, they often create additional traffic-jams – many times on the other side of the road as well – not to mention new accidents. I sincerely hope this study will not contribute to such line of thought regarding companies in financial difficulties. In all modesty, I hope that the result of my sightseeing activities – compiled in the current ‘travel report’ – will in some way make a positive contribution to future policy decisions in general and restructuring processes in particular, both in the Netherlands and hopefully much further abroad. Should this not be the case, then stop reading immediately...and I shall then turn the hourglass over and start again.

This manuscript was completed on 1 May 2005.

The Hague, May 2005

Jan Adriaanse

1 See also Copeland *et al.*, p. 18.

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