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

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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.

Table of contents

LIST OF ABBREVIATIONS

XIII

1	REASON FOR THE STUDY, THE PROBLEM DEFINITION AND THE METHODS APPLIED	1
1.1	Introduction	1
1.2	Reason	1
1.2.1	Project Competition, Deregulation and Quality of Legislation (MDW)	2
1.2.2	Informal reorganisation as an alternative for moratorium?	3
1.3	Problem definition	5
1.4	Research methodology	6
1.5	Arrangement of chapters	9
2	FORMAL AND INFORMAL REORGANISATIONS	11
2.1	Introduction	11
2.2	Healthy companies and causes of financial difficulties	12
2.3	Formal reorganisation methods	14
2.3.1	Moratorium	15
2.3.2	Liquidation	16
2.3.3	Fresh Start Proceeding	17
2.4	Informal reorganisation methods	18
2.4.1	Restructuring business operations	19
2.4.2	Financial restructuring	24
2.4.3	The role of banks providing credit	26
2.5	The advantages and disadvantages of informal reorganisation compared to formal reorganisation	29
2.5.1	Advantages	30
2.5.2	Disadvantages	31
2.5.3	Evaluation of advantages and disadvantages	33
2.5.4	Hybrid procedures	34
2.6	International developments in respect of informal reorganisations	35
2.7	Conclusion	41

3	INFORMAL REORGANISATIONS IN PRACTICE: 35 CASE STUDIES	43
3.1	Introduction	43
3.2	Categories of causes, measures and bottlenecks	45
3.3	Case studies of successful informal reorganisations	48
3.3.1	Causes of financial difficulties	48
3.3.2	Measures within the framework of restructuring business operations	50
3.3.3	Measures within the framework of financial restructuring	51
3.3.4	Bottlenecks	53
3.3.5	Success factors	54
3.3.6	Successful informal reorganisations – conclusion	57
3.4	Case studies of failed informal reorganisations	58
3.4.1	Causes of financial difficulties	58
3.4.2	Measures within the framework of restructuring business operations	59
3.4.3	Measures within the framework of financial restructuring	60
3.4.4	Bottlenecks	61
3.4.5	Failure factors	62
3.4.6	Failed informal reorganisations – conclusion	64
3.5	Confrontation – successful and failed informal reorganisations	65
3.6	Conclusion	65
4	PRACTICAL EXPERIENCES AND OPINIONS: SURVEYS AND INTERVIEWS	69
4.1	Introduction	69
4.2	Dutch trade organisation for Credit Management – Survey	69
4.2.1	Introduction	70
4.2.2	General details of the respondents	70
4.2.3	Survey results	70
4.2.4	VVCM – conclusion	72
4.3	Dutch Foundation for the provision of advice and support to SMEs – Survey	73
4.3.1	Introduction	73
4.3.2	General details of the respondents	73
4.3.3	Survey results	73
4.3.4	OKB – conclusion	75
4.4	Federation of Dutch Insolvency Lawyers – Survey	75
4.4.1	Introduction	75
4.4.2	General details of the respondents	76
4.4.3	Survey results	76
4.4.4	Insolad – conclusion	77
4.5	Dutch Federation of Independent Accounting Firms – Survey	78
4.5.1	Introduction	78
4.5.2	General details of the respondents	78
4.5.3	Survey results	78

4.5.4	SRA – conclusion	80
4.6	Interviews	80
4.6.1	Introduction	80
4.6.2	Results of the interviews	81
4.6.3	Interviews – conclusion	86
4.7	Conclusion	87
5	INFORMAL REORGANISATION IN THE FUTURE: TOWARDS AN INSTITUTIONALISED INFORMAL APPROACH	89
5.1	Introduction	89
5.2	Individual or joint action: the prisoner’s dilemma of interested parties	90
5.3	INSOL Statement of Principles	92
5.3.1	The eight principles	92
5.3.2	A number of concluding comments with the eight principles	98
5.4	Banks and Businesses Code	100
5.5	Alternative resolution of disputes and mediation	103
5.5.1	Definitions	104
5.5.2	Mediation during informal reorganisations	106
5.5.2.1	Alternative dispute resolution and informal reorganisation	107
5.5.2.2	Competency of the Reorganisation Mediator	108
5.5.2.3	Moment to call in a mediator	109
5.5.2.4	Conflict relationships	110
5.5.2.5	The mediation process	112
5.5.2.6	Voluntary cooperation	115
5.5.2.7	Costs of mediation	116
5.6	Conclusion	116
6	THE MAIN FINDINGS	119
6.1	Conclusions	119
6.2	In conclusion	137
6.3	Suggestions for further study	139
	SUMMARY	141
	SAMENVATTING (SUMMARY IN DUTCH)	149
	BIBLIOGRAPHY	159
	DEFINITIONS AND TRANSLATIONS OF TERMS	171
	APPENDICES	181
	INDEX	353
	CURRICULUM VITAE	363