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

Restructuring in the shadow of the law

Informal reorganisation in the Netherlands

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van de Rector Magnificus dr. D.D. Breimer,
hoogleraar in de faculteit der Wiskunde en
Natuurwetenschappen en die der Geneeskunde,
volgens besluit van het College voor Promoties
te verdedigen op donderdag 15 december 2005
te klokke 15.15 uur

door

Johannes Antonius Adrianus Adriaanse

geboren te Oosterhout
in 1972

Promotiecommissie:

promotores:	Prof. dr. J.G. Kuijl RA
	Prof. mr. A.F.M. Brenninkmeijer
referent:	Prof. mr. B. Wessels (Vrije Universiteit Amsterdam)
leden:	Prof. dr. J.M.J. Blommaert (Universiteit van Tilburg en Universiteit Leiden)
	Prof. dr. O. Couwenberg (Rijksuniversiteit Groningen)
	Prof. dr. J. Dijksma (Radboud Universiteit Nijmegen)
	Prof. mr. N.J.H. Huls (Erasmus Universiteit Rotterdam en Universiteit Leiden)
	Prof. dr. W.B. Simons (Universiteit Leiden en Università degli Studi di Trento, Italië)

Van dit proefschrift is ook een handelseditie verschenen bij Kluwer Deventer onder ISBN 90-1303-156-0

Lay-out: Anne-Marie Krens – Tekstbeeld – Oegstgeest

© 2005 J.A.A. Adriaanse

Alle rechten voorbehouden. Niets uit deze uitgave mag worden verveelvoudigd, opgeslagen in een geautomatiseerd gegevensbestand, of openbaar gemaakt, in enige vorm of op enige wijze, hetzij elektronisch, mechanisch, door fotokopieën, opnamen of enige andere manier, zonder voorafgaande schriftelijke toestemming van de auteur.

Voorzover het maken van kopieën uit deze uitgave is toegestaan op grond van art. 16b Auteurswet 1912 jo. het Besluit van 20 juni 1974, *Stb.* 351, zoals gewijzigd bij Besluit van 23 augustus 1985, *Stb.* 471, en art. 17 Auteurswet 1912, dient men de daarvoor wettelijk verschuldigde vergoedingen te voldoen aan de Stichting Reprorecht (Postbus 3051, 2130 KB Hoofddorp). Voor het overnemen van gedeelte(n) uit deze uitgave in bloemlezingen, readers en andere compilatiewerken (art. 16 Auteurswet 1912) dient men zich tot de auteur te wenden.

No part of this book may be reproduced in any form, by print, photo print, microfilm or any other means without written permission from the author.

…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 – complied 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

List of abbreviations

ABI	American Bankruptcy Institute
ADR	Alternative Dispute Resolution
Art.	Article(s)
BBA	British Bankers' Association
BV	Private limited company under Dutch law
CBS	Central Bureau for Statistics (NL)
CL	Centre for Labour Affairs
CPR	Center for Public Resources
DBA	Dutch Bankruptcy Act
DIP	Debtor-in-Possession
Diss.	Dissertation
DNB	Dutch National Bank [De Nederlandsche Bank]
DRA	Debt Restructuring Agreement
EBITDA	Earnings Before Interest, Tax, Depreciation and Amortisation
Et al.	And others
Etc.	Et cetera
FAE	Financial Aid programme Entrepreneur-debtors
FD	Het Financieele Dagblad [Dutch financial newspaper]
FEE	European Federation of Accountants
Ff.	And following
FSAP	Financial Sector Assessment Program
HR	Netherlands Supreme Court
I.e.	That is to say
IIB	Industrial Insurance Board
IMF	International Monetary Fund
IMK	Dutch institute for SMEs
Insolad	Federation of Dutch Insolvency Lawyers
INSOL International	International Association of Restructuring, Insolvency and Bankruptcy Professionals
JIT	Just-in-time
/m	Thousand
MBO	Management Buy Out
MDS	Managing Director and major Shareholder
MDW	Competition, Deregulation and Quality of Legislation
MIS	Management Information System
MKB-Nederland	Dutch trade organisation for employers in SMEs

NIVRA	Royal Dutch Institute of Chartered Accountants
N(o.)	Number
NL	Netherlands
NMI	Dutch Foundation for the promotion of Mediation
NOvAA	Dutch Federation of Accountants
NPL	Nonperforming Loan(s)
Nr.	Number
NRC	NRC Handelsblad [Dutch newspaper]
NV	Public limited company under Dutch law
NVB	Dutch Federation (consultative body) of Banks
NVI	Dutch Federation of Debt collection companies
OKB	Dutch Foundation for the provision of advice and support to SMEs
OO&R	Business & Law Research Centre (NL)
P.	Page(s)
Par.	Paragraph(s)
PFP	Private person Fresh start Proceedings
R3	Association of Business Recovery Professionals (UK)
ROSCs	Reports on the Observance of Standards and Codes
SMEs	Small and Medium Sized Businesses
SRA	Dutch Federation of Independent Accounting Firms
St.dev.	Standard deviation
SWOT	Strengths, Weaknesses, Opportunities, Threats
UEAPME	European SME employers' organisation
UK	United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
US	United States
VAT	Value added tax
VNO-NCW	Dutch Federation of Employers
VVCM	Dutch trade organisation for credit management
WODC	Research institute of the Dutch Ministry of Justice

1 Reason for the study, the problem definition and the methods applied

1.1 Introduction

Chapter 1 discusses the set-up which has been the basis for this study into informal reorganisations. First of all, the reason for this study will be described (§ 1.2). Then the problem definition will be presented (§ 1.3). Subsequently, the research methods will be described (§ 1.4) and an overview of the further chapter arrangement is given (§ 1.5). The results of this study largely arise from a study which was commissioned by the Dutch Ministry of Justice.[1] Still, chapter 5 provides an elaboration and deals with the possible application of codes of conduct between companies and their interested parties, as well as the institutionalisation of mediation in informal reorganisations. As a result, the initial set-up regarding certain sections has changed whilst the conclusions have been extended with further recommendations, among other things.

1.2 Reason

This paragraph discusses the social reason behind this study on the basis of the so-called 'Project Competition, Deregulation and Quality of Legislation' (in Dutch: MDW-project; § 1.2.1), with regard to which the relation between formal and informal reorganisation methods is outlined (§ 1.2.2).

---

1 This study was called 'Study into the extrajudicial process re insolvency law' (translation). See Memorandum of Research WODC. The results thereof were published at the end of 2004 in the so-called WODC-report 'Informal reorganisation in the prospect of moratorium, Private person Fresh start Proceedings (PFP) and liquidation' (translation). See Adriaanse *et al.*, p. 1 ff. The compilation of the so-called supervisory committee of this study and that of the research team is described in appendix 1. As a result of this study, the Minister of Justice sent a letter to the parliament in the spring of 2005 summarising a number of important conclusions. Herein he also stated not to be reluctant with regard to a code of conduct for informal reorganisations – in accordance with the so-called London Approach – provided the relevant (market) parties would formulate it themselves. However, the government could – according to the minister – fulfil a stimulating role, if so desired, and it could be further examined whether entrepreneurs must receive (additional) information about the importance of timely (informal) reorganisations. See Letter Minister of Justice, April 2005 and also chapters 5 and 6.

1.2.1 Project Competition, Deregulation and Quality of Legislation (MDW)

Since 1994, the Dutch government has been working to modernise laws and regulations by means of the so-called MDW-project. The objectives of this operation were to reduce the legislative burden for civilians and companies, provide the market with increased room to operate and to improve the quality of the legislation.[2] In this respect, the project 'Modernisation of the Bankruptcy Act' was started in the spring of 1999. The task to be undertaken was formulated by the cabinet as follows:

> 'The taskforce [responsible for the execution of the modernisation of the Dutch Bankruptcy Act] must conduct investigations and develop legislative changes when its findings give reason to do so.
>
> The project must discuss at least the following questions:
>
> 1. How can we ensure that moratorium [a reorganisation procedure described within the Dutch Bankruptcy Act (DBA)] is applied for in time?
> 2. How can the administrator and the entrepreneur be put in a better position to start a restructuring process during moratorium and to continue the viable (elements of the) company?
> 3. How can we ensure that the liquidation-procedure is not misused at the cost of (potential) creditors and employees?'[3]

The taskforce described the subject of the study as follows:

> 'Within the project it is investigated whether it is possible to organise the moratorium procedure in such a way that it will again achieve the initial objective. Moratorium must be applied for with a view to, and if possible, resulting in, the continuation of the company following reorganisation and should not lead to a near automatic liquidation.'[4]

Subsequently, on 22 July 2000, a legislative proposal was submitted to parliament called 'Modification of the Bankruptcy Act in connection with the promotion of the effectiveness of moratorium and liquidation'.[5] The underlying thought with the proposed amendment is – in line with the above – that the moratorium procedure no longer meets the objectives of the legislator.[6] A

2 The MDW-project was initiated by the cabinet, but coordinated by the Ministries of Economic Affairs and Justice. The current project 'Better Civil Service for Citizens and Companies (B4)' (translation) is the successor of the MDW-project. See www.minez.nl.

3 Memorandum of discussion MDW-taskforce, p. 1 ff. (translation). See also Polak-Wessels VIII, par. 8016.

4 Parliamentary documents II 1999/2000, 27 244, no. 3, p. 3 (translation).

5 Parliamentary documents II 1999/2000, 27 244, no. 2, p. 1-20 (translation).

6 For that matter, this had already been detected years before by, among others, the (subsequent) Maas Committee (1983) and the Mijnssen Committee (1989). However, nothing much was done with the proposals made by either committee at the time. With regard

moratorium would seem to end in liquidation too often; 73% of temporary and final moratoriums result in liquidation, according to the explanation accompanying the legislative proposal. In addition, it is alleged that in too many cases the actual reorganisation of weak companies takes place via (a restart following) liquidation. This is inconsistent with the actual purpose of the statutory provisions.[7]

1.2.2 Informal reorganisation as an alternative for moratorium?

From the task statement and the explanatory memorandum it appears that the Dutch legislature wants to see the original objective of the moratorium in the Dutch Bankruptcy Act restored.[8] Wessels has formulated this objective as follows:

> 'Moratorium serves to prevent the situation where a debtor, who – regardless of the circumstances – has run into financial difficulties, lacks cash resources and can hardly obtain credit, is declared bankrupt with the result that his company ceases to exist, compulsory settlement takes place and, as a rule, capital value is lost. The objective of the moratorium is to retain the estate and possibly the continuation of the company, all this based on the (implied) premise that this does not only benefit the debtor, but also creates the prospective that creditors can be better served than they are in the case of liquidation.'[9]

This statutory reorganisation procedure is therefore meant to grant the company in liquidity difficulties deferment of payment, in which period it might be possible to endeavour to arrange a rescheduling of debt, following which the company could be continued within the existing legal entity.[10] The question is, however, how can we achieve the situation whereby companies are reorganised via the moratorium instrument instead of via liquidation and, which is a more general question, whether moratorium is actually the most effective method to reorganise companies. Are there perhaps other, more efficient possibilities to reorganise companies in financial difficulties, other than moratorium and liquidation?

A possibility is the *informal reorganisation* as an alternative for a formal insolvency procedure (*formal reorganisation*). An informal reorganisation can be defined as follows:

---

to debates on the (remaining) initiatives to amend the moratorium procedure, see Polak-Wessels VIII, par. 8014-8016.

7 See Parliamentary documents II 1999/2000, 27 244, no. 3, p. 1-2.

8 Bankruptcy Act of 1893.

9 Polak-Wessels VIII, par. 8003 (translation).

10 See also Leuftink, p. 39, Polak-Wessels VI, par. 6008 and Oosthout, p. 25.

A reorganisation route which takes place outside the statutory framework with the objective of restoring the health of a company in financial difficulties within the same legal entity.

Within an informal reorganisation it will often be necessary to reach agreement with the company's creditors about changing agreements made earlier. When such an agreement is effected on a voluntary basis, we have a workout agreement while the process to come to this point is often called workout. With a view to the following study, the definition workout agreement has been described as follows:

An agreement concluded between the interested parties of a company in financial difficulties within an informal reorganisation with regard to the review of conditions pertaining to funding (credit) made available, without resorting to legal procedures to effectuate this.[11]

In general, the interested parties are management, lenders (for instance banks), tax authorities/Industrial Insurance Board, as well as trade creditors.

Although the government's instruction for the MDW-taskforce did not explicitly ask for a study aimed at reorganisation outside the formal routes, it concluded in its final report:

> 'In the case of nearly all disputes, a compromise between the parties involved is a quicker and more satisfactory solution than legal proceedings. Legal proceedings cost money, both the government's and the taxpayer's, as well as the litigant's.'[12]

Not much is known in the Netherlands about informal reorganisation in the event of (imminent) insolvency, and hardly anything has been recorded until recently.[13] It is a fact however, that Dutch banks often observe problems at an early stage and that they will try to reach an informal reorganisation together with the company's management.[14] A memorandum of discussion

11 The descriptions of informal reorganisation and workout agreement are based on: Boot, p. 49, Boot and Ligterink, p. 8, Chatterji and Hedges, p. 21, Couwenberg 1997, p. 21, Final report MDW-taskforce, p. 47, Gilson 2001, p. 15, Miller, p. 23-25, Oosthout, p. 7, Polak-Wessels VI, par. 6201 ff., Wessels 2000, p. 22 and Wruck, p. 251.

12 Final report MDW-taskforce, p. 62 (translation).

13 The dissertations by Van Amsterdam (2004), Van den Heuvel (2004) and Vos (2003) seem to have brought some (welcome) changes. Van Amsterdam studied the economic aspects of insolvency and liquidation and the role of the relevant interested parties therein. Van den Heuvel studied the field of tension between banks granting loans and other creditors with regard to security rights, especially in situations of (imminent) liquidation. Vos charted the process of credit facilities from banks and on the basis of that he made some concrete proposals to change the Dutch Bankruptcy Act. Although none of them wrote about informal reorganisation in particular, these studies have yielded some interesting information; relevant observations and conclusions have therefore been included in this study.

14 See for instance Boot and Ligterink, p. 20.

titled 'Detailed review of Dutch insolvency law' (translation) even states that banks restructure 80% of companies that have run into difficulties and that the other 20% apparently are cases with regard to which an informal reorganisation is not feasible.[15] In addition, a study by the research institute 'OO&R' into the efficiency of the Dutch Bankruptcy Act shows that in 75% of the cases examined, the activities of companies under moratorium or liquidation were (partly) continued one way or the other.[16] Another study concluded that in 63% of the dossiers examined, business operations were (partly) continued following liquidation.[17]

No unequivocal conclusions can be drawn from the above details. On the one hand the details about informal reorganisations implied that the informal route functions efficiently in the Netherlands. On the other hand, the figures cited above in the last instance give the impression that reorganisations often occur in a formal route and apparently do not fit into informal routes. We can ask ourselves why companies, which – in principle – are (partly) viable, are not reorganised within an informal route (whether or not in cooperation with banks). The question then is whether informal reorganisations may be a good alternative for formal procedures. To put it briefly, what is the existing practice of informal reorganisations in the Netherlands and can lessons be drawn from this (also in an international context)?

1.3 Problem definition

In order to be able to answer the above questions, the following problem definition is formulated:

Which measures are discovered in Dutch companies in financial difficulties which can prevent legal proceedings such as moratorium, Private person Fresh start Proceedings (PFP) and liquidation? Are there any practical bottlenecks which can be removed (whether or not with new legislation)?

Based on the above problem definition, the following seven sub-definitions have been formulated:

a In theory and practice, what is meant by informal reorganisations and workout agreements?
b In what way do workout agreements and/or informal reorganisations distinguish themselves (in a legal and practical sense) from normal opera-

15 Memorandum of discussion MDW-taskforce under 5.4.
16 OO&R, p. 51.
17 Knegt, p. 19.

tional management on the one hand and moratorium, Private person Fresh start Proceedings or liquidation on the other?

c Which measures within the framework of informal reorganisation are discovered in practice and is it possible to make an estimate of the number of (attempted) workout agreements/informal reorganisations occurring in the Netherlands each year?

d Which external interested parties of companies in financial difficulties can be indicated?

e What is the attitude of external interested parties with respect to companies in financial difficulties in general, and with respect to informal reorganisations and workout agreements in particular?

f What are the practical bottlenecks with regard to informal reorganisations and workout agreements?

g Is additional legislation or regulation necessary in order to have informal reorganisation routes and workout agreements function (better) as restructuring tools?

Based on the problem definitions, 21 research questions have been drawn up. These questions have been included in appendix 2 and will be answered in chapter 6, together with the problem definitions.

1.4 Research methodology

In order to come to an answer to the above (sub) problem definitions and research questions, the following four research methods (sub-studies) were applied: literary search, interviews, surveys and case studies.

Literary search
The literary search included a search for relevant national and international scientific and professional literature relating to informal reorganisations and workout agreements. In addition, relevant developments in the discussion about a review of the Dutch Bankruptcy Act were examined.

Interviews
Twenty-three interviews were held among a broad group of experienced parties involved in companies in financial difficulties. This was subsequently subdivided into *banks*, *advisors* and *other interested parties*.

Surveys
In the latter part of 2003, a survey was held among the members of four parties. This concerns the Dutch trade organisation for credit management (VVCM); the Dutch Foundation for the provision of advice and support to SMEs (OKB); the Federation of Dutch Insolvency Lawyers (Insolad) and the Dutch

Federation of Independent Accounting Firms (SRA). For each party a list of questions and statements relating to the specific role and attitude of its members in respect of companies in financial difficulties and informal reorganisations was drawn up. In order to obtain the cooperation of the parties, it was agreed with them that the potential respondents would be addressed once. The surveys at VVCM, OKB, Insolad and SRA yielded responses of 30%, 82%, 21% and 16% respectively.[18] An explanation for the high response at OKB may be the fact that one so-called 'member-consultant' was temporarily made available to actively approach potential respondents.

Case study research
Cases studies were made of companies in financial difficulties which were faced with (attempted) informal reorganisation. To this end, four banks[19] as well as five advisors were approached first. Each party was invited to submit four dossiers (two successful and two failed attempted informal reorganisations).[20] Two advisors who where approached refused to cooperate; this was solved by analysing an additional two dossiers from an advisor and an additional five dossiers from three banks. In total, 35 different[21] companies were examined. It appeared to be impossible to obtain an equal number of successful and failed attempts. Ultimately, twenty successful and fifteen failed informal reorganisations have been examined. For reasons of privacy, the case studies were made anonymous.[22] All names, locations, dates (including years), financial data and, in some cases, products and services were changed. The detailed case studies were submitted to the cooperating parties for verification and checked and approved with regard to anonymity.

Overview 1 shows the parties who cooperated, as well as the research methods used. The left column shows the category of parties who cooperated. The centre column shows the specifically approached parties, as well as the

18 Non-response is a known problem in the case of written surveys; since all surveys are processed anonymously, no details are known about those not responding. However, according to the usual statistical criteria the results are representative.
19 The individual banks were approached with the cooperation of the Dutch Federation (consultative body) of Banks (NVB). The (current) four largest market parties in the field of business loans in the Netherlands were selected. See for instance Van den Heuvel, p. 112 and Vos 2005, p. 19.
20 An attempt is regarded as having failed when legal proceedings must be started when this is not the intention of parties. This definition is detached from the question if a transaction of assets (restart) following liquidation can still be regarded a success in an economic or social sense for instance.
21 Since banks and advisors are often jointly involved in companies in financial difficulties, there was a risk of receiving similar dossiers. There were no problems in this respect however.
22 The research team signed declarations of confidentiality with regard to the treatment of factual company data.

persons involved who where interviewed or surveyed. The right column shows the research method which applies to the specific person or group of persons.

Overview 1: Participating parties and research methods

Category	*Specific parties*	*Methods*
Banks		
· Banks	*ABN-AMRO Bank/Rabobank/Fortis Bank/ ING Bank*	· Dossier study
	· Employees of the departments for legal matters and intensive care	· Interview
Advisors		
· Advisors/Interim managers	*KPMG Restructuring Services, Zuidweg & Partners, Resources Global Professionals, Kerstholt & Scheidema*[25]	· Dossier study
	· Managing director/employees	· Interview
· Insolvency lawyers[23]	*Insolad*	
	· Members	· Survey
	· Two members (mediator/lawyer)	· Interview
· Accountants[24]	*SRA*	
	· Members	· Survey
	· Member (accountant)	· Interview
· Non-commercial services	OKB	
	· Member-consultants	· Survey
	· Managing directory/member-consultants	· Interview
Other interested parties		
· Trade creditors	*VVCM*	
	· Members	· Survey
	· Member (credit manager)	· Interview
· Government	MDW-Working Group	
	· Secretary	· Interview
· Trade unions	Trade union 'FNV Bondgenoten'	
	· Employee specialised in bankruptcy matters	· Interview

As mentioned before, not much is known about informal reorganisations in the Netherlands. The current study therefore is of a strongly exploratory nature. The phenomenon has been explored and subjects which are interrelated

23 In the role of advisor and / or administrator.
24 In the role of advisor of the company (particularly accountants employed with SMEs often have an advisory role in addition to their auditing duties).
25 Interview, no dossier study.

have been put into the context of the overall pattern of relationships between the subjects.

In the literary search no unequivocal categorical classifications were found to verify the practice of (Dutch) informal reorganisations. This particularly concerns classifications for the causes of financial difficulties, measures to prevent formal procedures and bottlenecks. In order to be able to answer the defined problem, different *categories* of causes, measures and bottlenecks have been formulated. In the case study research, in addition, *specific* causes, measures and bottlenecks were subsequently found and placed in these categories. Furthermore, the specific causes, measures and bottlenecks are briefly described (appendix 4). Using the interviews and surveys it was checked to what extent the formulated categories required adjustment. No elements which would give rise to that effect were found.

The formulated categories can be a starting point for a definitive framework to be set in the literature with regard to informal reorganisations.

1.5 ARRANGEMENT OF CHAPTERS

Overview 2 shows the further arrangement of the chapters, as well as the aforementioned research methods.

Overview 2: Arrangement of chapters and research methods

	Subject	*Methods*
Chapter 2	Formal and informal reorganisations	Literary search
Chapter 3	Informal reorganisation in practice	Case study research
Chapter 4	Practical experiences and opinions	Surveys and interviews
Chapter 5	Towards an institutionalised informal approach	Literary search, case studies, surveys and interviews[26]
Chapter 6	The main findings	Evaluation and conclusions

Based on the literary search, chapter 2 will discuss relevant aspects of formal and informal reorganisations. In chapter 3 the practice of informal reorganisations in the Netherlands will be examined by means of the 35 case studies of companies in financial difficulties which, whether or not successfully, tried to prevent a formal insolvency procedure. Causes of financial difficulties, measures within informal reorganisations and practical bottlenecks are presented and in addition success and failure factors of informal reorganisa-

26 Chapter 5 is based on insights obtained from the literary search (chapter 2), the case study research (chapter 3), as well as the surveys and interviews (chapter 4). Furthermore, an additional literary search was conducted into (existing insights into) codes of conduct and alternative settlement of disputes.

tions are described. In chapter 4 the surveys and interviews are worked out in greater detail and analysed. The emphasis here is on the questions regarding the attitudes the various interested parties have with regard to companies in financial difficulties and with regard to informal reorganisations in particular. Chapter 5 draws a possible picture of the practice of informal reorganisations in the future. The objective is to improve the efficiency of restructuring operations of companies in (imminent) financial difficulties. Chapter 6 contains an evaluation of the study and the conclusions.

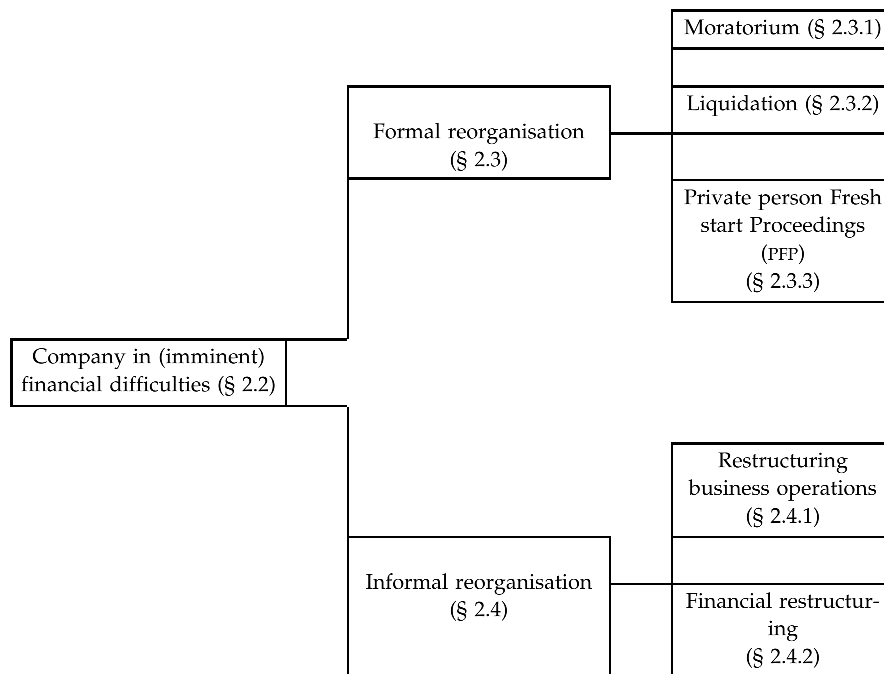
2 Formal and informal reorganisations

2.1 Introduction

Based on the literary search, this chapter will discuss relevant aspects of formal and informal reorganisations.

A company in (imminent) financial difficulties can be reorganised in various ways.[1] An important difference can be made between formal and informal reorganisation methods. Figure 1 shows the possibilities for the Dutch situation.

Figure 1: Reorganisation options in the Netherlands



§ 2.2 will first discuss the following questions: when we can speak of a healthy company, and when is a company in financial difficulties or in danger of being so, and in addition, what are the causes of financial difficulties. Subsequently,

1 See for instance Boot and Ligterink, p. 8 and Couwenberg 1997, p. 21.

the different formal and informal methods of reorganisation are described in § 2.3 and § 2.4 respectively; § 2.5 analyses the pros and cons of formal and informal reorganisation, and § 2.6 will discuss important international developments in the field of informal reorganisations. The conclusion is included in § 2.7.

2.2 Healthy companies and causes of financial difficulties

The current study focuses on companies in financial difficulties which, by means of informal reorganisation, try to prevent having to resort to legal proceedings (formal reorganisation). The question therefore is: when can we speak of a healthy company and when can we speak of financial difficulties? A healthy company can be defined as follows:[2]

A company that is able to generate a positive cash flow from the business operations, with the expectation that the company is able to fulfil its current and future (financial) obligations.

The definition of a company in financial difficulties then runs as follows:[3]

A company in financial difficulties is a company where the current and/or future cash flow is insufficient to fulfil the current and/or future obligations.

Thus, a company is in financial difficulties when on the one hand we have immediate financial difficulties or on the other hand a situation where, in the estimation of those involved, we have a development where financial difficulties will occur in the short or long term if no intervention takes place. In the current study, the negative development is defined as *insolvency process*. The definition thereof is as follows:

The process where the company slips from healthy management into a situation where, without restructuring (rationalisation/reorganisation)[4] *a situation of insolvency will arise.*

In a legal sense, a company in the Netherlands is insolvent when no composition is proposed during the so-called verification meeting, the composition proposed is rejected or the approval of the court is refused. In that case, the estate is legally insolvent/bankrupt (art. 173 DBA). From an economic point

2 This description is based on a general definition of the definition of company. It reads: ‘A company is an organisation which, in order to survive, is dependent on the question whether the revenue from selling its outputs is sufficient to pay the suppliers of the inputs.’ See for instance Douma, p. 9. See also Fitzsimmons, p. 1-3 (www.bofabusinesscapital.com).

3 See also Couwenberg 1997, p. 2 and Wruck, p. 247.

4 Restructuring can be described as all (strategic, organisational and financial) measures which intend to recover (turnaround) a company’s return.

of view, the definition is used within a broader meaning. Van Amsterdam for instance describes insolvency as follows:

> '(…) insolvency means that a company is no longer able to continue independently without outside help.'[5]

This study links up with the broader commercial definition.

The causes that underlie financial difficulties in the Netherlands can be of various natures. Table 1 shows the causes of liquidation, as concluded in studies of the (Dutch) Central Bureau for Statistics (CBS),[6] service provider Graydon[7] and research institute OO&R.[8]

Table 1: Causes of liquidation

CBS	%	*Graydon*	%	*OO&R*	%
Mismanagement	23.9	Unprofessional entrepreneurship	56.1	Poor management	19.6
Economic cause	14.2	Economic conditions	23.8	Market-related	24.6
Liquidation of holding	9.9	Financing difficulties	31.4	Over-financing	0.9
Problems within management	2.3	Archaic management	22.7	Under-investment	3.7
Shell companies, dubious practices	2.2	Fraud	21.4	Excessive investments	8.4
		Competition	19.3	Cost level too high	22.9
		Health/personal problems	7.4	Strangulation contracts	0.3
Other causes	47.5	Other causes	12.3	Other	19.6
Total	100		Pm		100

Although it is difficult to compare the figures due to the definitions used and not further explained by the different researchers, it can be concluded that in the Netherlands *poor management* and *economic conditions* (including *market-related*) in particular are seen as major causes of liquidation. Based on the above definitions, general categories of causes have been defined for the current study into informal reorganisations. This concerns categories of problems in the field of marketing, management, information, efficiency and economic conditions. Table 2 briefly describes the categories.

5 See Van Amsterdam 2001b (translation) and also Oosthout, p.1. 'Outside' means that external financiers (for example banks, trade creditors, investors) must come and help the company.
6 See www.cbs.nl. The results are based on the year 2002.
7 Graydon, p. 87-89. Results are based on a survey among 181 trustees. Since several causes were given, the total exceeds 100%. It is not known how the percentages were achieved.
8 OO&R, p. 50. Results are based on the reports by trustees in 139 liquidation dossiers. In total, 322 causes were given.

Table 2: Categories of causes of financial difficulties

Marketing	This category includes all causes which can be reduced to the exchange relationship[9] of company – client. They therefore concern causes which can be directly or indirectly related to the attitude of the company (strategy) in relation to the market where it operates and its (potential) clients
Management	This category includes all causes which are related to the internal organisation of the company. This mainly concerns the attitude, quality and the functioning of management
Information	This category includes the causes of financial difficulties which can be directly or indirectly related to the poor functioning of the management information system (MIS)[10] of the company. This concerns the inadequate reporting of relevant information, as well as poor management of relevant information
Efficiency	The category efficiency includes all causes which relate to excessive fixed and variable costs, as well as excessive expenditures by a company. These could be non-recurring costs and expenditures, or recurring costs and expenditures
Economy	The category economy includes all causes related to certain developments in the industry in which the company is active. This also includes macroeconomic developments

2.3 Formal reorganisation methods

A formal reorganisation includes all possibilities for reorganisation laid down by the law, or which take place by using legal methods and possibilities. When conducting a study into informal reorganisations, it is important to consider formal procedures since informal procedures take place in the light of these procedures (informal reorganisations occur in the 'shadow of the law'[11]). After all, those involved in a rescue operation of a company in financial difficulties will consider the pros and cons of all reorganisation methods and then decide whether or not to start an informal reorganisation, or to cooperate in it.[12] The legal options for the Dutch situation will be described below. These are moratorium, liquidation and Private person Fresh start Proceedings (PFP) respectively. Here the emphasis is mainly on aspects of reorganisation within the relevant procedures. Although they differ in effect and effectiveness, many countries throughout the world have similar legal procedures for (temporary)

9 Marketing can be regarded as all activities aimed at expediting the exchange. See Douma, p. 165.
10 A Management Information System (MIS) is taken to mean: the whole of systematically collected, recorded and processed data, with the objective of providing information for the benefit of taking decisions, managing business operations and giving account. See Fuchs and Van Vlimmeren, p. 3.
11 See for instance Johnson, p. 4.
12 See Gilson *et al.*, p. 315-353 and Taylor, p. 1.

deferment of payment, liquidation and – to a lesser extent – debt restructuring for natural persons respectively.[13]

2.3.1 Moratorium

In the Netherlands, a debtor who (manages a company and) anticipates that he will not be able to fulfil his repayment obligations, can request a moratorium (deferment of payment; art. 213 DBA) for a period of, in principle, no more than a year and a half (art. 223(1) DBA). An extension of no more than a year and a half can be requested (art. 223(2) DBA). The moratorium is a public procedure (art. 222a DBA). At the same time as granting the temporary moratorium, the court appoints one or more administrators who, together with the debtor, must manage the estate (art. 215 DBA). A supervising judge may also be appointed at the same time in order to advise the administrator(s) (art. 223a DBA).

Within the moratorium it is possible to propose a composition (a so-called moratorium-composition) to the ordinary creditors (art. 252 DBA). This often concerns a composition[14] where part of the debts will be waived by the creditors. In this manner, the liabilities side of the balance sheet[15] of the company is rescheduled and the amount of the repayment obligations is reduced, creating financial room and enabling a basis to be laid for recovery of the company within the same legal entity; for the creditor this at least creates the security that part of the debt will be paid. When at least two thirds of the creditors representing three quarters of the total of ordinary debts agree to the composition, the moratorium-composition is binding (art. 268 DBA).[16] After the court has approved the composition, it will apply to all ordinary creditors (art. 273 DBA).

By virtue of article 241a DBA, a so-called (formal) Cooling-off period can be called. Within this period, which in principle lasts for no more than one month, no authority of third parties (read: secured and preferential creditors as moratorium applies only to the claims of ordinary creditors) to claim the

13 For background information on and a comparison with other jurisdictions, see among others Rescue Required, p. 5 ff., Wood, p. 1 ff., Review UK, p. 42 ff. and The European Restructuring and Insolvency Guide 2002, p. 11 ff. For a detailed discussion of recent issues regarding international insolvency law, see Polak-Wessels X and Wessels 2004.

14 The solution does not necessarily have to consist of a composition proposal with remission; it can also consist of a proposition for a certain (non-quantitative) prospect. See Polak-Wessels VI, par. 6008 ff., Polak-Wessels VIII, par. 8278 ff., Druten *et al.*, p. 3, Oosthout, p. 27 and Boot and Ligterink, p. 18.

15 See for instance OO&R, p. 3.

16 This qualified majority changed into an ordinary majority of votes as from 1 January 2005 (see www.minjus.nl). Since the empirical part of this study took place before 2005, this matter is not discussed any further.

estate can be exercised. This way it is possible to work on a composition in relative peace. As soon as the moratorium is effective, rental agreements can be cancelled provided the cancellations are effected at a time when such agreements terminate in accordance with local custom (art. 238 DBA). Employment contracts can be cancelled with due observance of the agreed or statutory terms (art. 239 DBA).

2.3.2 Liquidation

In the Netherlands, a debtor who has ceased paying is declared to be bankrupt at his own request or that of one or more of his creditors (art. 1 DBA). As a result of the liquidation declaration, the company's management legally loses the control and the power to dispose of the assets (art. 23 DBA). A trustee is appointed who takes over this task. He is charged with the management and liquidation of the estate for the benefit of the creditors (art. 68 DBA). As with moratorium, a formal Cooling-off period can be called (art. 63a DBA). Furthermore, by virtue of articles 39 and 24 DBA, the rent and employment contracts can be cancelled.

The (business operations of the) insolvent company can be continued in two ways. First – within the same legal entity – a composition (a so-called liquidation-composition)[17] can be proposed to the ordinary creditors (art. 138 DBA). The composition must be adopted by two thirds of the creditors attending the meeting, who together represent three quarters of the debts (articles 145 and 146 DBA).[18] The composition will then be approved by a court and with that it has become binding for all ordinary creditors. Following this, the liquidation ends (art. 161 DBA). This manner of restructuring is quite rare in the Netherlands, since its effect is restricted to ordinary creditors.[19]

A more common phenomenon concerns the so-called assets (liabilities) transaction following liquidation, also called *restart*. By virtue of his duties, the trustee must try to achieve the highest possible result (read: proceeds) for the creditors. It is generally accepted that the result is highest if the company can be sold as a *going concern*.[20]/[21] After all, any *goodwill*[22] can then be con-

---

17 As with the moratorium, this often concerns a composition with regard to the cancellation of part of the debt.

18 This qualified majority too changed into an ordinary majority of votes as from 1 January 2005, see moratorium (§ 2.3.1). For the same reasons, this matter is not discussed any further.

19 See Couwenberg 2005, p. 24, OO&R, p. 4 and Polak-Wessels VI, par. 6003.

20 The required authority to continue the company (*going concern*) of the bankrupt (legal) person is based on art. 98 DBA.

21 See Oosthout, p. 43.

22 Goodwill can be defined as the profit-earning capacity, which is demonstrated by a certain surplus value which is owned by the composed parts of a company – the assets – together on top of the value of the composed parts separately. See Netherlands Supreme Court (HR)

verted into cash. With this in mind it is therefore important to sell the joint assets of a company to an interested party who places these assets and corresponding activities with another (new) legal entity. This party often takes over part of the employees.[23]

Most restarts concern assets transactions, but it is also possible to take over (part of the) liabilities. In principle however, liabilities will only be taken over insofar as the purchasing party thinks this is relevant, in order not to jeopardise the relationship with an important supplier of the insolvent and by now restarted company for instance.

For the buyer it seems favourable to take over an insolvent company via an assets transaction. Only the assets and the employees required are taken over; debts as well as unknown debts/claims ('skeletons in the cupboard') remain in the insolvent legal entity while the assets can often be taken over at low prices ('forced-sale value').[24]

2.3.3 Fresh Start Proceeding

On 1 December 1998, the so-called Private person Fresh start Proceedings (PFP) became effective in the Netherlands.[25]

This act is included in Title III of the Dutch Bankruptcy Act. During the parliamentary debate about the PFP there were exhaustive discussions about whether or not natural ('private') persons-entrepreneurs can qualify for the PFP. Following on from the report by the so-called Mijnssen Committee, it was decided for principal reasons not to refuse this category of natural persons the applicability of the PFP solely because the debts are caused by the performance of a profession or operation of a business.[26] The literature shares[27] this opinion, although it also criticises this method of approach.[28] During the parliamentary debate, the opinion was that the PFP would be particularly helpful for sole traders such as small retailers.[29]

When the PFP was set up, the principle was to offer some perspective to a natural person who found himself in a dead-end debt situation. The effect of the system means that a debtor who has requested a PFP scheme is subjected

20 May 1953, BNB 1953/190. For similar descriptions see LJN: AE 9479, HR, 1359 (www.rechtspraak.nl), Epe and Koetzier, p. 109, as well as Blommaert and Blommaert, p. 11.

23 Although the preservation of employment following liquidation is not the express objective of the Dutch Bankruptcy Act, in practice it is often regarded as important. See for instance Joosen, p. 22.

24 See for instance Vos 2003, p. 353.

25 PFP 1998. For a detailed discussion of the PFP ('WSNP') procedure, see Polak-Wessels IX.

26 See Lankhorst, p. 86-88.

27 See Stutterheim, p. 133-134.

28 See Huizink, p. 829.

29 For this see among other things Proceedings I 1997/1998, no. 31, p. 1751-1757.

to a strict savings regime for a period of no more than five years, under the supervision of an administrator and a supervising judge. When the debtor fulfils his obligations,[30] the PFP scheme will be ended after a while (within 3-5 years), while the remaining debts will continue as being unenforceable (art. 358 DBA); a so-called natural obligation remains (art. 6:3 Dutch Civil Code). In other words, the objective is that a debtor will not be hounded by his creditors for 'the rest of his life' (30 years) and can therefore start 'with a clean slate'.[31]

Although the PFP is actually aimed at liquidation/business discontinuation, there seem to be no obstructions for an entrepreneur to propose a composition within this scheme so that the company can subsequently be continued with a rescheduled balance sheet (see art. 329 DBA). This is enhanced by the fact that the PFP is intended as a deterrent scheme[32] in order to come to a workout (amicable) agreement.[33] Therefore, the PFP (theoretically) offers a formal reorganisation option.

2.4 Informal reorganisation methods

This paragraph further discusses the (universal) phenomenon of informal reorganisation. As stated in chapter 1, an informal reorganisation is taken to mean: a reorganisation route which takes place outside the statutory framework with the objective of restoring the health of a company in financial difficulties within the same legal entity. Within the informal reorganisation a plan to reorganise will be drawn up to reach the objective which has been set. This reorganisation (restructuring) plan will mostly consist of two processes:

- restructuring the business operations;
- financial restructuring.[34]

The idea is that it is impossible and undesirable to carry through financial restructuring without restructuring the business operations (which led to the deteriorated financial situation in the company). Solving problems also involves taking away the causes. The nature of the problems and the moment action

30 That is to say 'to save the amount of income remaining after providing for normal living expenses in order to repay debts as much as possible'. With regard to Chapter 13 of the US Bankruptcy code, this is sometimes called a 'Best efforts plan'.
31 See for instance Kuijl *et al.*, p. 3.
32 For example, the costs for an appointed administrator in the PFP scheme directly affect the return for creditors in a negative way.
33 See Kuijl *et al.*, p. 8.
34 Here, Couwenberg speaks of asset restructuring and financial restructuring in order to distinguish between the restructuring of the business operations (asset restructuring) and the financing of the company (financial restructuring). See Couwenberg 1997, p. 21.

is taken in the organisation will be a decisive factor for the planned measures.[35]

First of all, restructuring of the business operations will be discussed (§ 2.4.1). Then financial restructuring will be examined (§ 2.4.2). Subsequently, the specific role of banks providing credit will be discussed – especially in the Dutch context – since they are often involved in informal restructuring processes from an early stage (§ 2.4.3).

2.4.1 Restructuring business operations

Particularly important questions when restructuring business operations include those regarding any concrete plans that have been made to come to healthy management, as well as the actual implementation thereof. The process is also aimed towards restoring confidence of the interested parties in the company and its management.[36] Restructuring the business operations, often called *turnaround* for which the process can be described as *turnaround management*,[37] can therefore be defined as follows:

A comprehensive plan which pursues to reconstruct/revitalise (the business operations of) a company in financial difficulties.

The main features of a restructuring process will consist of the following phases: (I) Stabilising, (II) Analysing, (III) Repositioning, (IV) Reinforcing.[38]

The four phases are described below. In practice, the different phases and actions to be taken will frequently overlap. Therefore, that which follows must be read in that context.

Phase I Stabilising

In phase I the focal point must be identifying the critical problems which require immediate action in order to stabilise the situation. The emphasis in this phase is on increasing the *cash flow*.[39] This involves actions aimed at

---

35 See also Oosthout, p. 2.

36 Sociology mostly considers confidence as the 'lubricant' for interactions; it ensures that interactions run more smoothly. See for instance Buskens and Raub, p. 3 and Macaulay, p. 55-67.

37 For definitions of 'turnaround (management)' see, among others, DiNapoli and Fuhr, p. 2-3 and Sloma, p. 11 ff.

38 See for instance Davis and Sihler, p. 45 ff., DiNapoli and Fuhr, p. 13, Faulhaber and Landwehr, p. 23, Van Frederikslust *et al.* 2004, p. 112-128 and p. 193-214, as well as Slatter and Lovett, p. 5-6 and p. 75 ff.

39 Cash flow can be described as: the incoming and outgoing cash flows during a period t0-tl. See Douma, p. 272.

increasing the incoming cash flow and to reduce the outgoing cash flow. This way the required 'breathing space' can be created to meet critical financial obligations. Table 3 shows various possibilities.[40]

Table 3: Actions for the benefit of increasing the cash flow in the short term

Action	*Description*
Cost cutting	Reducing the current expenses both in the field of costs and with regard to investments
Optimising stock situation	Selling off excessive stock, as well as reducing the stock (which creates both physical and financial space)
Optimising turnover times of the accounts receivable	Quicker collection of receivables and/or reducing the payment periods
Asset stripping	Selling excessive assets
Optimising spontaneous financing	Increasing (insofar still possible) the (re)-payment periods among existing financiers of the company

Phase I therefore concerns actions which in the short term can contribute to improving the company's cash situation.

Phase II Analysing

In phase II it is necessary for the company to look at the company's prospects in the long term. As such, drawing up a well-founded reorganisation (business) plan is vital, particularly also to enhance or restore confidence of the relevant interested parties. In this phase, the relevant interested parties are the financiers of the company in particular, such as the providers of loan capital (for example: banks) and providers of equity (for example: shareholders). The 'ingredients' of a reorganisation plan will be different per situation; however, it can be said that the more extensive (qualitatively), the better. Table 4 shows topics which should in any case be incorporated in a reorganisation plan.[41]

40 See also Sloma, p. 136 ff., Vos 2003, p. 254-256 and DiNapoli and Fuhr, p. 12-13.
41 See Slatter and Lovett, p. 192 ff. and Vos 2003, p. 253.

Table 4: Topics within a reorganisation plan

1	A financial analysis ex post to trace the causes of the negative state of affairs
2	An inquiry into the actual financial position and an assessment as to whether the company still offers sufficient basis for recovery
3	Proposed measures (strategic, organisational and financial) and the calculated effects thereof on long-term exploitation overviews and balance projections
4	Cash flow projections in the short and long term from which it appears that the obligations entered into and to be entered into can be fulfilled
5	Cash flow projections which show a future improvement in the liquid assets

When doing so, it is important that the reorganisation plan states what the core activities of the company are, including their (potential) additional value.[42] In addition, it must be considered which specific products/services and customers must be retained or axed.

The measures to be taken to restore profitability in the long term can be diverse and depend on the specific situation. Table 5 shows various possibilities.[43]

Table 5: Measures to restore profitability in the long term

Dismissing excessive personnel[44]
Cutting overhead costs
Adjusting strategy and marketing
Rationalising the product assortment
Improving purchasing processes
Improving management of information systems
Improving working capital and cash flow management
Closing loss-making business units
Capitalise (excessive) fixed assets
Selling (profitable) operations which are not part of the core activities

In the literature, no useful categorical classifications were found for this study.[45] For the benefit of the current study therefore, a number of general categories of measures within the framework of restructuring business operations were formulated on the basis of the above measures (table 6).

42 See also Copeland *et al.*, p. 48 ff.

43 See also Chatterji and Hedges, p. 115-118, Roland Berger, p. 2-27, Slatter and Lovett, p. 75 ff. and Vos 2003, p. 254-256.

44 The influence of a reorganisation on social capital (informal social network) within the company is not part of the scope of this study. It is expected to be large however. See for instance Bulder *et al.*, p. 261-276, Flap *et al.*, p. 132 and Krackhardt and Hanson, p. 104-111.

45 See Couwenberg 1997, p. 201 however for a clear overview of formal and informal restructuring methods he found during his case study research, as well as Datta and Iskandar-Datta, p. 19 for a classification into Asset restructuring, Governance restructuring and Labour re-contracting.

Table 6: Categories of measures within the framework of restructuring business operations

Marketing	Measures aimed at improving the strategy of the company in general and the marketing policy in particular, in order to restore and/or improve the relationship with the market and (potential) clients
Management	Activities within the informal reorganisation which are aimed at improving the company's management
Information	Activities with the objective of improving the management information system
Efficiency	Actions with the objective of improving the company's efficiency, as well as all other actions with the objective of reducing costs. Actions aimed at generating additional liquidity by selling assets are also part of this
Economy	Not relevant in this case[46]

Summarising, it can be stated that the company must indicate in a reorganisation plan which objectives it pursues in the short and the long term in order to stop the insolvency process and to rationalise the company, as well as the manner in which the company is going to pursue these objectives. It is important that the plans are realistic, particularly so because relevant interested parties will take decisions on the basis of this; financiers decide whether or not they are prepared to maintain the credit facilities granted or to make new credit[47] available in order to finance the (period of) reorganisation (financial restructuring; see below). Suppliers of products/services decide on the basis of the reorganisation plan whether or not to continue to supply (on credit). In addition, shareholders/investors will consider making or not making available (any) required risk-bearing capital; for instance by paying up (informal) capital or by making available (any) subordinated loans.

In order to restore the afore-mentioned confidence it is often also necessary to recruit or consult persons (interim managers, advisors, accountants) who are specialised in carrying out turnaround processes. After all, the management/interested parties relationship is often under pressure as a result of the deteriorated state of affairs, and the question is whether the interested parties (still) have sufficient confidence in the capacities of the current management to rationalise the company on their own.[48]

46 In such cases, causes of financial difficulties can probably be traced back to economic circumstances. These circumstances in their turn however cannot be influenced by an individual company. That is why the category *Economy*, as defined within the framework of causes of financial difficulties, is not a part of measures within the framework of restructuring business operations. See also Vos 2003, p. 241 on this matter. In the course of this study therefore, this category will not be used any further, apart from the lists of causes.

47 In this context often called Bridging (or Emergency) loan.

48 See DiNapoli and Fuhr, p. 13-14 and Van Frederikslust *et al.*, 2004, p. 134. Here it is of interest to mention the so-called 'bail out phenomenon', as described by D'Aveni. His research shows that hiring interim managers and more generally, implementing a reorganisation, can lead to (further) *deterioration* of the trust that interested parties have in the company, as well as the departure of sound employees. Clear communication towards

Phase III Repositioning

In phase III the management, together with (any) recruitments, will need to initialise the reorganisation as outlined in the reorganisation plan.[49] This process is also called the *(value) recovery process*.[50] The company has hit heavy weather because value was lost or diminished, endangering the continuity; using this process, the loss of value is now stopped. It is important that the objectives which have been set are feasible and that the management reports to the interested parties in an open and timely manner. After all, the process of the intended recovery of the company is also the process of the intended restoration of confidence among the interested parties of the company. Supplying information during the process is therefore vital.[51]

Phase IV Reinforcing

In addition to initiating the reorganisation, during which the organisation tries to regenerate positive cash flows from the business operations, the company will also need to be *reinforced*. This is understood to mean reinforcing in the field of management, as well as strengthening the balance sheet of the company. In addition, strengthening can be achieved by transferring the company to another (healthy) company (as a result of which future payments can be guaranteed).

As stated before, it is often necessary to involve third parties in the turnaround process, as it still remains to be seen whether the current management is able to independently complete this operation successfully. During the reinforcement phase the question emerges whether the current management is able to successfully run the company in the future and with that, whether the existing organisation and management structure fits within the 'new' company. Changing the organisation and management structure, including position changes (or dismissal) of certain key figures in management, may be required. Situations can of course arise in which decisions on this subject were already taken in a previous stage; however, a key point is that, in addition to the reorganisation of the business activities, the 'strength' of the organisation and management structure and the current management is also looked at.[52]

---

the relevant interested parties about the reorganisation therefore appears to be essential. See Bulder *et al.*, p. 264 and D'Aveni, p. 121-142.

49 See also Vos 2003, p. 254.

50 See for instance DiNapoli and Fuhr, p. 14.

51 See also Pate and Platt, p. 100 ff., DiNapoli and Fuhr, p. 1 and Van Frederikslust *et al.* 2004, p. 92 ff.

52 See for instance Pate and Platt, p. 15. See also Denis and Denis, p. 1029-1057; by means of empirical research, they show that management changes in the form of forced resignations are often related to financial distress.

Reinforcing the balance sheet as described in this phase is interconnected with financial restructuring. Financial restructuring will be described in the following paragraph.

2.4.2 Financial restructuring

Although the reorganisation plan and its initiation form a basis for a successful restructuring of the company, financial restructuring will also often be necessary. The losses from the past have in most cases disturbed the balance sheet ratios to such an extent that the obligations towards the assets are too large; as a result (future) interest and repayment obligations cannot (or can no longer) be met. In addition, high reorganisation costs are usually involved (for example costs for redundancies).[53] The company will not always be able to clear away the 'burden' from the past with its own future cash flows. *Efforts* from outside the company (shareholders/creditors) will (must) often be requested. Within the framework of an informal reorganisation, financial restructuring can therefore be described as follows:[54]

A part of the informal reorganisation where on the one hand relevant creditors of the company voluntarily commit to reviewed conditions regarding the funding (credit) made available by them (workout agreement),[55] and on the other, if so required, new funding is made available by providers of risk-avoiding capital (debts) and/or risk-bearing capital (equity).[56]

Table 7 shows various (non-exhaustive) possibilities of financial restructuring.[57]

53 Although not required by law, ex-employees are often awarded redundancy payments in a redundancy package between the company and employer's associations or in a court ruling with regard to the redundancies. These payments are in many cases based on the so-called 'sub-district court-formula' in which the number of years of service and the employee's age play a role. See also Pellicaan, p. 107-108.

54 The possibilities within financial restructuring are also suitable for formal procedures.

55 See also § 1.2.2.

56 See also Couwenberg 1997, p. 28.

57 These are derived from Asquith *et al.*, p. 635 ff., Chatterji and Hedges, p. 21, Datta and Iskandar-Datta, p. 21 (table 3 / panel B), DiNapoli and Fuhr, p. 12-14, Gilson *et al.*, p. 315-353, James, p. 1209 ff., Oosthout, p. 7, Pate and Platt, p. 90-91 and Weston *et al.*, p. 404. For an interesting comparison of the findings of Asquith *et al.*, Datta and Iskandar-Datta and Gilson *et al.*, see Couwenberg 1997, p. 42 ff.

Table 7: Measures for the benefit of financial restructuring

Measures
Reducing the repayment obligations and/or reducing current debts
Reducing interest obligations
Deferring repayments
Deferring interest obligations
Converting risk-avoiding capital into risk-bearing capital (Debt equity swap)[58]
Generating new risk-avoiding funding
Generating new risk-bearing financing (either or not in the form of a part or complete takeover)

The core of the measures within financial restructuring consists therefore of deferment or remission of current financial obligations, as well as generating additional liquidity. The part or complete takeover of a company fits within financial restructuring, since the buying company will usually (partly or wholly) act as guarantor for the fulfilment of current obligations and/or provide additional financial means.

In the literature, no useful categorical classifications were found for this study.[59] For the benefit of the current study therefore, the following general categories of measures within the framework of financial restructuring were formulated on the basis of the above measures (table 8).

Table 8: Categories of measures within the framework of financial restructuring

Category	Description
Repayments	Measures aimed at adjusting/changing the obligations of the company in relation to its creditors
Interest	Adjustments of conditions in (financing) agreements in order to (temporarily) lower interest obligations
Increasing cash funds	Measures aimed at introducing 'fresh money' into the company. This means making liquid assets available to the company. This can be done directly or indirectly. Directly means making available cash resources (by providers of risk-bearing and/or risk-avoiding capital). Indirectly means for instance increasing available credit (overdraft), so that the company can dispose of 'fresh money' if so required, or (partly) selling the company while simultaneously liquid assets are made available or fulfilment of the current obligations is guaranteed (by the purchaser)
Other	(Any) measures that are not part of the above categories

58 See for instance James, p. 1209-1234, Hart, p. 12 and OO&R, p. 67. The conclusions, drawn by the OO&R researchers, that the Debt equity swap does not occur in the Netherlands is not entirely shared (see chapter 3). James found that banks in the United States are often prepared – in 31% of the Debt restructuring cases examined by him – to take up a so-called Equity position.

59 See Datta and Iskandar-Datta, p. 21 (table 3), however, for a classification into No attempt, Exchange offer and Private debt restructuring.

2.4.3 The role of banks providing credit

In the Netherlands, banks play an important role in the (risk-avoiding) financing of companies. Particular in the case of small and medium-sized enterprises (SMEs) they take up the position of 'housebank' (in international literature often referred to as 'Hausbank'). This usually means that the credit facilities are not just restricted to obtaining mortgage loans, but also overdraft facilities and other services (factoring, leasing and insurance). This position creates a relation of long-term cooperation and mutual dependency. This is demonstrated by among other things the regular provision of (financial) information by the company to the bank.[60] The moment a company is in financial difficulties or is in danger of being so, the company is often placed under a so-called Intensive Care Department (also called a Debt Recovery unit, Workout department or Rescue unit).[61] Such a department, set up at most Dutch banks at the end of the seventies, is responsible for handling so-called problem loans (also called: Nonperforming Loans; in short NPL).[62] Here the bank focuses on securing provided credit facilities, but it actually also concerns the support/ monitoring[63] of the company during restructuring and revitalising. After all, once the company is healthy again, the credit facilities are 'safe'.

The support aims to implement a reorganisation in the company as soon as possible, while the seriousness of the situation will determine the measures to be taken (restructuring business operations and/or financial restructuring). The formal role of the bank is that of advisor, materially however, this role is more far-reaching. After all, as the ultimate sanction, the housebank can cancel the credit and then it is quite uncertain where replacement financing can be found in the short term. A bank 'thinking along' with the company is therefore not always regarded as a positive thing by a company's management.[64] Dutch banks claim that 60% to 80%[65]/ 75% to 80%[66] of companies supported by them in an informal reorganisation do not end up in liquidation

60 See Elsas and Krahnen, p.1-45, Van Amsterdam 2003, p. 81, Van Amsterdam 2004, p. 196 and Van den Heuvel, p. 111 ff. Elsas and Krahnen showed that '(…) if a bank i) has a high share in debt financing, ii) has a high share in payment transactions, iii), iv) has a high share in either long-term or short-term financing, v), vi), vii) undertakes special, exclusive or intense business with the firm, viii) the duration of the bank-borrower relationship is long, or ix) has influence on the firm's management, then a housebank relationship is more likely to be observed' (p. 17-21).

61 Banks use various names (across the world) for their departments where 'special' loans are placed. Also in respect of confidentiality, this study only mentions Intensive Care Department, regardless of the name given to such a department by specific banks. See also Van Amsterdam 2003, p. 82, Franks and Sussman, p. 1 ff., Armour 2004, p. 5, Van Frederikslust *et al.* 2004, p. 129 ff., as well as Review UK, p. 16 ff.

62 See Barton *et al.*, p. 196 ff. and Vos 2003, p. 60.

63 See Armour *et al.*, p. 8 and Brunner and Krahnen, p. 13.

64 See Van Amsterdam 2003, p. 82-83.

65 See Franken 2002, p. 338.

66 See Visser, p. 112-115.

and are therefore successfully reorganised. In his thesis, Van Amsterdam adjusts this percentage to 48% – 61%.[67] Although there is no arguing about the exact level of the success rates, it seems fair to say (based on the literature) that Dutch banks contribute positively to informal reorganisations. It is the imminent threat of cancellation of credit which paradoxically seems to be a positive coercive measure to spur a company's management on to truly take measures for the sake of saving the company. Elsas and Krahnen confirm this conclusion for Germany saying:

> '(…) housebanks in particular are prepared to take action in distress times i.e. to provide fresh money, request the advice of outside consultants, increase pressure by frequent monitoring etc., in order to support firm workout activities'.[68]

A study by Franks and Sussman from the United Kingdom also confirms these conclusions. This has shown that about 75% of the companies examined which were in (imminent) financial difficulties – and which had been placed under the supervision of banks – managed to avoid formal insolvency procedures.[69]

The role of the banks in the Netherlands however is not undisputed. This is demonstrated by a selection of newspaper headings:[70]

Companies often spoon-fed by bank – Banks have a hold over companies – At Hagemeyer, thirty banks fight over one bone – Banks retain their positions during moratoriums.

It seems that the criticism voiced by interested parties on the role of banks can be traced back to three subjects:

1. the possibility to cancel the credit and with that bringing a halt to business. The process of consideration to do this does not seem to be transparent at all times;
2. the refusal in such cases to provide additional (risk-avoiding) financing;
3. a (suspected) information advantage in relation to other creditors, as a result of which banks can take measures that are convenient to them in a timely manner. For instance stipulating (additional) securities, forcing

67 Here he uses the definition of 'success for the community' which means that 'the company remains largely in tact and makes a useful contribution to economic developments'. See Van Amsterdam 2003, p. 85.
68 See Elsas and Krahnen, p. 34.
69 See Franks and Sussman, p. 2 and Review UK, p. 17.
70 FD 10 October 2003, NRC 3 June 2003, FD 12 November 2003 respectively FD 19 November 2003 (translations).

certain reorganisation measures, as well as applying a so-called lease construction.[71]

About the possibility to cancel the credit, Vos says:

> 'The arbitrariness with which the provision of credit is created offers borrowers little to hold on to and not a lot of security, especially in times of financial difficulties (...). The important thing is that banks should not be given carte blanche when cancelling credit facilities and it should not be at the sole discretion of the bank to decide whether or not funding must continue.'[72]

He hints at the insecurity among companies regarding the circumstances under which funding should or should not continue. To management this does not always seem to be clear.[73]

The refusal by banks in such cases to provide additional financing can be traced back to the difference between risk-bearing and risk-avoiding[74] financing. Barring exceptions, banks provide risk-avoiding financing (loan capital). This means that at a certain fixed payment (interest) amounts will be made available (nominal value) which are expected to be fully repaid within a certain term. This as opposed to risk-bearing financing in which case its providers provide capital which in principle will be placed with the company permanently (equity). The payment for this provision (dividend/withdrawals[75]) depends on the profit made by the company; in addition there is a danger of the money provided 'disappearing'. In the case of ending a business for instance, the providers of equity capital will be repaid only after all providers of loan capital are satisfied; therefore, in cases of compulsory liquidation (bankruptcy) often

71 In a lease construction, undisclosed pledged goods (mostly company equipment and stock) are brought under possessory pledge. This is established by leasing the ground on which the goods are located to the pledgee. This way, the pledgee can prevent missing out on the (proceeds of) the goods via the so-called right to claim compound bounded assets by the tax authorities. This can be described as the exclusive legal right of the Dutch tax authorities to recover outstanding tax arrears from certain goods which are located at the site of a company (in the Netherlands); whether or not in the possession of third parties.

72 Vos 2003, p. 74 and p. 362 (translation).

73 Vos therefore pleads for an 'increased social responsibility' for banks (in the Netherlands) which should be demonstrated, for example, by an obligation to continue financing when there is 'a good chance of survival' (Vos 2003, p. 461). He seems to have found a supporter in Van den Heuvel with regard to this increased responsibility (see Van den Heuvel, p. 154 and p. 201; however, also see Blomkwist, p. 344 ff. for a critical reaction to this).

74 The definition *risk-avoiding financing* could suggest that no (hardly any) risk is involved. Nothing could be further from the truth; the risk of non-payment is still present. However, as a result of the set-up – a certain term, fixed interest payments, as well as priority of repayment (with regard to equity) during any liquidation of the company – the risks are in principle lower than with risk-bearing financing and can be 'avoided' in that sense. See Boot and Schmeits, p. 95 ff. For extraordinarily exciting descriptions of the 'history' of risks in the business sector see Bernstein, p. 183-184 and Favier, p. 278 ff.

75 In case of a one-man business (proprietorship).

nothing remains for the providers of the equity capital. Against the chance of the provided capital 'losing its value' however, there is the possibility for the yield to turn out higher, as a result of for instance (forecast) profits/ appreciation of the company.[76] The above difference also seems to harbour an explanation for the opposition from Dutch banks in respect of the (by some proposed) obligation to continue financing in the event of moratorium/liquidation.[77] The increased risk in such situations is not 'compensated' adequately while it also removes the possibility (the coercive measure) of forcing companies to take (drastic) restructuring (turnaround) measures in time.

Since banks are directly involved in reorganisation processes, other interested parties (for instance trade creditors) often state that the banks have an information advantage which is used to safeguard their positions at the expense of other creditors and the company. On the one hand banks defend themselves by saying that everyone can familiarise themselves with the financial situation of a company (for instance by actively researching/inquiring about this), on the other hand they say that in the case of proven misuse each creditor can defend himself by virtue of (the legal tenet of) *Actio Pauliana* (this should prevent and combat any misuse).[78]

Who is right, and under which circumstances, is difficult, and perhaps impossible, to say. It is clear however that relevant stakeholders often have different perceptions of the bank's role in companies in financial difficulties. This results in a field of tension between banks and other interested parties.

2.5 The advantages and disadvantages of informal reorganisation compared to formal reorganisation

This paragraph will describe some important advantages and disadvantages of informal reorganisations compared to formal reorganisations, as found in the literature. Informal reorganisations take place in the 'shadow of formal procedures'. That is to say, if parties are unable to restructure in an informal manner, these legal proceedings remain.[79] In order to make informal reorganisations a success, the advantages therefore must outweigh the disadvantages.

76 See Cools, p. 372.
77 See Franken 2002, p. 340.
78 For a detailed explanation of this specific subject see Van Amsterdam 2003, p. 83 and also Kraakman *et al.*, p. 71-99 (Creditor protection).
79 The objective of the PFP is for instance explicitly aimed at preventing legal procedures ('deterrent scheme'). See § 2.3.3.

2.5.1 Advantages

Important advantages of informal reorganisations compared to formal reorganisations can be summed up with the terms *flexibility*, *silence* and *control*. The terms will be worked out further below.

Flexibility
Informal reorganisations can be recognised by their unrestricted character. The reorganisation process is less rigid compared to formal procedures.[80] Companies and entrepreneurs can reach mutual agreement on the actions to be taken by the company (both with regard to the restructuring of business operations and financial restructuring) and the terms under which these take place. Because of the flexible character, 'tailor-made' solutions can be worked out and, if so required, the relative positions of creditors can be deviated from by mutual agreement. In addition, it can be agreed that new funding made available takes priority, separate from current positions and guarantees. Although current law in the Netherlands, strictly theoretically, also offers this possibility, the focus is usually on offering an arrangement under strict statutory regulations while a certain percentage must be waived by the ordinary creditors.[81]/[82] The possibilities within informal reorganisations are better; this makes the process more flexible.

Silence
Informal reorganisations take place in relative silence; that is to say, the procedure is (generally) not made public. This as opposed to formal reorganisations, which in the Netherlands take place in the public domain.[83] The result of these public procedures often is that suppliers, financiers and (potential) clients will approach the company with (increased) reserve, which may lead to unwillingness to enter into new contracts or only under more stringent terms.[84] This is also called the *self-fulfilling prophecy-effect* of a public procedure.[85] The negative effects on management and the missed opportunities

80 See World Bank Principles, p. 54. For more information about these principles, please refer to § 2.6.
81 See art. 138 DBA ff. and art. 252 DBA ff.
82 See also Oosthout, p. 32.
83 See articles 14 and 216 DBA.
84 See Polak-Wessels VI, par. 6203, Wessels 1999, p. 384-390 and Oosthout, p. 28.
85 See Van Amsterdam 2001a, p. 174. A striking example with regard to negative effects of financial difficulties in the public domain, involved the problems of a company called Mosa Porselein NV, situated in Maastricht, the Netherlands. Koninklijke Mosa BV, operative in the same sector and of the same name, also situated in Maastricht, but fully independent from Mosa Porselein NV experienced negative effects because of the bad publicity surrounding Mosa Porselein NV (as result of the mix-up in names). These effects involved (threatening) to withdraw orders by existing customers, as well as hesitance among potential clients. See FD 27 July 2004.

as a result of the publicity of procedures are also called *opportunity costs*.[86] Due to the relative silence, these costs in informal reorganisation are considerably lower than in the case of formal reorganisations.[87]

Control
An important advantage for management is that during an informal reorganisation it can continue to fully run the company independently. Neither judges nor trustees or administrators need to be appointed in order to come to a reorganisation. Apart from the fact that this saves costs (eventually increasing the return for creditors and thereby increasing the *recovery rate*)[88] those directly involved are given the chance to determine the pace and outcome of the reorganisation themselves. Costs can be saved socially as the judicial system does not need to be called in.[89]

2.5.2 Disadvantages

Important disadvantages of informal reorganisations compared to formal reorganisations can be summed up with the terms *personnel, obligations and creditors*. The terms will be worked out further below.

Personnel
In the Netherlands, staff redundancies within informal reorganisations are to be carried out in accordance with the prevailing regulations of the employment law. Depending on the number of staff to be made redundant, a procedure must be started at either the sub-district court or the so-called Centre for Labour Affairs (CL). Both procedures are characterised by lengthy decision terms and, when a sub-district court-udge is involved, often involve (high) redundancy payments (see also § 2.4.2). Within the moratorium less stringent requirements apply, but the prevailing periods must be adhered to, the company meanwhile is obliged to continue salary payments.[90] Liquidation is characterised by the possibility of making personnel collectively redundant in a simple manner during which the Industrial Insurance Board (IIB) takes over the salary obligations; the costs therefore are shifted.[91] Particularly with

86 See Couwenberg 1997, p. 35, Haugen and Senbet, p. 384-385 and Verdoes, p. 46.
87 See Gilson 1996, p. 313 and Wruck, p. 263-265.
88 Recovery rate can be described as that part of the debt which is repaid, divided by the nominal debt.
89 See also Gilson 1996, p. 311-313.
90 See Pellicaan, p. 96-115 and Van Frederikslust *et al.* 2004, p. 287 – 315.
91 See Knegt, p. 1-2. During a liquidation-procedure, legal dismissal terms are taken into account and the IIB will submit a recourse action with regard to this. However, in practice this often does not lead to (full) payment due to a lack of positive revenue from the assets of the bankrupt company.

regard to liquidation as a means of reorganisation (transaction of assets following liquidation), the informal reorganisation in this respect is disadvantageous.

Obligations
Within informal reorganisations contractual obligations cannot be terminated without the consent of the other party. In certain instances, formal procedures within the Dutch Bankruptcy Act do provide these possibilities, for example with regard to rental and lease agreements (articles 39 and 238 DBA).[92] Not having the possibility to terminate contracts within an informal reorganisation can become an important obstacle, as a result of which starting a formal procedure may be necessary.

Creditors
Another disadvantage of informal reorganisations is that to come to a workout agreement, the consent of all (relevant) creditors is required. This as opposed to formal procedures where in the case of moratorium (art. 268 DBA) and liquidation (art. 145 DBA), with regard to ordinary debts, a qualified majority is sufficient,[93] while in the case of Private person Fresh start Proceedings, with regard to ordinary and preferential debts, an ordinary majority will suffice (art. 332 DBA). Uncooperative creditors with workout agreements can, in principle, not be forced[94] and bound; they therefore can block an informal reorganisation. However, in the Netherlands, (unsecured) creditors can in certain cases still be forced by means of a legal procedure. Wessels calls this *forced participation in a workout agreement* (translation) and describes the relevant most important and common criteria in Dutch jurisprudence as follows:

> '(…) according to the court, the proposal for debt rescheduling:
> (1) must be well-substantiated and offer a full insight into the debt and equity position of the debtor;
> (2) must offer an insight into the maximum feasible result;
> (3) must be drawn up and supported by an independent expert;
> (4) must prove that not reaching a workout agreement will lead to liquidation as a result of which the creditors will receive (much) less;
> (5) must be the result of the fact that the debtor has suffered considerable sacrifices or will do so in order to satisfy his creditors as much as possible;
> (6) must during its execution incorporate the fact that the creditors are continuously kept informed of all developments relevant to their claims for the duration of the breach;

92 For that matter, in such situations, one must also take into account potential (contractual) damage to be charged by the other party.
93 As stated earlier (§ 2.3), this qualified majority changed into an ordinary majority of votes as from 1 January 2005. In time it will be interesting to see if this change has any consequences for the behaviour of (ordinary) creditors with regard to the (desired) debt structure of a company. Research by Bolton and Scharfstein (p. 20) does suggest this relation.
94 See Van der Heijden, p. 144.

(7) must result in the fact that jobs are maintained;
(8) must treat similar creditors equally, or at least it will be explained in the agreement why certain creditors are favoured over others, and
(9) must be adopted by a qualified majority of the creditors.
I [Wessels] would like to add (10) that the judge in his considerations explicitly demonstrates to have considered the interests of the creditors as well.'[95]

Although this way still provides possibilities to bind certain uncooperative creditors to a workout agreement, the procedure has a delaying effect with regard to the informal reorganisation, it takes place within the public domain and the outcome depends on a court judgement.

2.5.3 Evaluation of advantages and disadvantages

The above describes some important advantages and disadvantages of informal reorganisations compared to formal reorganisations, as found in the literature. Although there are (theoretically) important bottlenecks in respect of staff redundancies and creditors in particular – at least in the Netherlands – the informal reorganisation seems a less expensive procedure in principle. Especially the flexibility of the process and the relative silence in which it takes place – thereby retaining the going concern value – are decisive in this matter.

Gilson, John & Lang (1990) showed – for the United States – that in any case the stakeholders of companies in financial difficulties will generally prefer informal alternatives, since these procedures generate considerably lower costs. They also showed – this is in line with the afore-mentioned disadvantages – that major bottlenecks can arise in an informal procedure with regard to the preparedness of creditors to cooperate ('coordination-roblem') and with regard to the availability of information ('information dissymmetry'). These problems are further discussed in § 5.2.

In the literature no categorical classifications were found for bottlenecks within informal reorganisations; it rather gives fragmented descriptions. Therefore, for the benefit of the (continuation of the) current study, general categories of bottlenecks within informal reorganisations were formulated on the basis of the above observations (table 9).

95 See Polak-Wessels VI, par. 6201 ff. and Wessels 1999, p. 384-390 (translation).

Table 9: Categories of bottlenecks within informal reorganisations

Effectiveness	Bottlenecks relating to the execution of the reorganisation, regarding the restructuring of business operations in particular
Creditors	Bottlenecks which can be traced back to the role of the creditors in the process of informal reorganisation
Investors	Bottlenecks arising with regard to the role of (potential) future investors
Management	Bottlenecks relating to the conduct of management in the process of informal reorganisation
Shareholders	Bottlenecks relating to the role of shareholders[96]
Other	Bottlenecks which do not fall within the other categories

Appendix 4 shows various possibilities of bottlenecks within the formulated categories. See also chapter 3.

2.5.4 Hybrid procedures

The previous paragraphs described some important advantages and disadvantages of informal procedures, as found in the literature. The process of removing disadvantages of informal procedures has created the phenomenon of so-called pre-pack procedures, or hybrid procedures.[97] Hybrid, because these procedures distinguish themselves by both an informal and formal character.

Hybrid procedures concern informal reorganisations during which legal procedures are also used. In the Netherlands, the latter procedure in principle concerns moratorium, liquidation and Private person Fresh start Proceedings. However, the *starting point* must be for the company to be reorganised within the same legal entity, as a result of which only the moratorium remains as a real pre-pack option.

The point in these procedures is the fact that an informal reorganisation which has been started will end in a formal procedure in order to confirm/ force a proposed/detailed workout agreement. Although the parties do not intend to reorganise in this manner, they are forced to do so because a proposed plan for reorganisation is turned down by certain interested parties. The options offered by the formal procedure – as stated, in the case of the Netherlands: moratorium – are used to confirm an informal reorganisation. This particularly involves the possibility to cancel lease and employment contracts, as well as the 'majority criterion' with regard to agreements with creditors (as for workout agreements, in principle 100% agreement is required).

96 In the case of a Managing Director and major Shareholder (MDS), his conduct in the capacity of shareholder will be included in this category. Entrepreneurs who have a one-man business are also included in respect of their conduct with regard to the business assets (in relation to their private capital).

97 See for instance Tashjian *et al.*, p. 135-136 and McConnell and Servaes, p. 322 ff.

The advantage of a well thought-out pre-pack plan is that the formal procedure (moratorium) can take place in a relatively quick and controlled manner. A pre-pack is not a form of informal reorganisation, but a(n) (unwanted) result of an attempt at informal reorganisation; however, when the formal procedure succeeds as a result, the objective – continuing the company within the same legal entity – is reached.

2.6 International developments in respect of informal reorganisations

As a result of the enormous growth of international trade and the impact of increasingly faster technological developments, legal systems come into contact more and more. Trying to reach a (more) international design of commercial law, including international insolvency law which also includes subjects pertaining to 'avoidance',[98] is the order of the day. However, it appears to be difficult to create an international system of insolvency law. This is due to the often (too) large differences in national systems with regard to subjects such as directors' and officers' liability, secured claims as well as the so-called 'sanctioning' effect of an insolvency system (including the issue whether insolvency law should be more creditor or debtor-friendly). In order to achieve international harmonisation, regulation, improvement and cooperation, opting for guidelines, codes and protocols is becoming increasingly popular, so that (potential) issues in international practice can be resolved, despite the large differences. In this case, the so-called standard-setting agencies – both governmental and non-governmental trade/professional organisations – are the ones who facilitate practice by means of this soft-law approach. This concerns organisations such as (not exhaustively) the World Bank, INSOL International, the International Monetary Fund (IMF), the Asian Development Bank and the United Nations Commission on International Trade Law (UNCITRAL).[99] The latter organisation formulated a Model Law in the field of Cross-Border Insolvency, which – although not binding – focuses on harmonisation of national law in this field. It has the status of 'recommendation' to a State to incorporate the verbatim text of the draft in national legislation.[100] Furthermore, the World Bank has formulated the so-called Principles and Guidelines for Effective Insolvency and Creditor Right Systems, in order to improve the stability of the 'international financial system', while the Asian Development

98 See Polak-Wessels, X, par. 10003. Here, Wessels also expressly considers cross-border (informal) workouts.
99 For a more detailed description of developments in the field of international insolvency law, see Polak-Wessels X, par. 10060 ff., as well as 'Current topics of international insolvency law' by Wessels (2004).
100 See UNCITRAL Model Law, as well as Wessels 2004, par. 10150 ff.

Bank is working on a best practices model, which objective is to deal more effectively with problems of insolvency and debt recovery in the relevant region. In addition and last but not least, the International Monetary Fund has published an overview – under the name 'Orderly and Effective Insolvency Procedures: Key Issues' – of policy-related issues regarding the design (and review) of insolvency law systems.[101]

Although international initiatives to improve existing insolvency systems and to promote harmonisation often have different reasons, objectives and effects, a general theme can be observed. 'Value maximisation for creditors' and 'rehabilitation of the debtor' are at the forefront of all initiatives. This means that sound insolvency systems must offer viable companies in financial difficulties the opportunity to reorganise – in relative peace – without this being at the expense of the creditors' rights to the highest return possible, depending on the situation. This is mainly about the question to what extent creditors can be enforced to not exercise their rights (temporarily) or to keep them at bay for the benefit of a potential revitalisation of the debtor, with the danger that the final returns for the creditors will reduce (even) further as a result. Other key objectives are the equal treatment of domestic and foreign similarly-situated creditors, improved cooperation between various countries in the field of cross-border insolvency and improving fast, reasonable, transparent, predictable and efficient insolvency procedures.[102]

It does not seem unjustified to conclude that against this background of key objectives various initiatives have been developed to promote informal reorganisations in general and workouts in particular. After all, informal reorganisations can be pre-eminently fit to contribute to the solution of financial problems in relative peace and in a fast and efficient manner, so that vital going concern value is retained, partly also because parties can determine the outcome themselves. This fits in with the advantages of informal reorganisations discussed earlier in this chapter. Here it was also observed however, that informal reorganisations can involve certain important disadvantages. Disadvantages which can stand in the way of a solution. This also appears to harbour a reason for proposals made and concrete elaborations of some of the afore-mentioned standard-setting agencies in respect of so-called voluntary rescue frameworks. Such frameworks can be described as follows:

> '[sets] of principles or guidelines that facilitate the rescue of commercially viable enterprises by providing a framework under which the stakeholders (principally financial creditors) can agree a mutually acceptable course of action, in a stable

101 See among other things World Bank Principles, p. 1 ff., UNCITRAL Insolvency Law Report 2001, p. 2, as well as UNCITRAL Insolvency Law, p. 6-8, Polak-Wessels X, par. 10074 and Wessels 2004, p. 131-154.
102 See for instance UNCITRAL Insolvency Law, p. 9-10.

environment on the basis of full and reliable information, without recourse to the courts.'[103]

The significance of these frameworks seems great. In its 'Principles and Guidelines', the World Bank even explicitly says:

'*[Principle 26: Informal workout procedures]* (…) A country's financial sector (possibly with the informal endorsement and assistance of the central bank or finance ministry) should promote the development of a code of conduct [framework] on an informal out-of-court process for dealing with cases of corporate financial difficulty in which banks and other financial institutions have a significant exposure- especially in markets where enterprise insolvency has reached systematic levels. An informal process is far more likely to be sustained where there are adequate creditor remedy and insolvency laws. The informal process may produce a formal rescue, which should be able to quickly process a packaged plan produced by the informal process. The formal process may work better if it enables creditors and debtors to use informal techniques.'[104]

Other organisations which underline the importance of informal procedures are, among others, UNCITRAL (see for instance the 'UNCITRAL Alternative approaches to out-of-court insolvency processes'), the European Commission (see 'Helping businesses overcome financial difficulties: a guide on good practices and principles on restructuring, bankruptcy and a fresh start'), the Asian Development Bank (see 'ADB's Good Standard Practice'),[105] the IMF (see the project 'Reports on the Observance of Standards and Codes'; or ROSCs)[106] as well as INSOL International.[107] In 2000, the latter introduced

103 See Chatterji and Hedges, p. 20.

104 World Bank Principles, p. 53-54.

105 Concrete elaborations concern among others the 'Korea Financial Institution Agreement for Promotion of Company Restructuring', the 'Framework for Corporate Debt Restructuring in Thailand' ('Bangkok Rules'), as well as the so-called 'Jakarta Initiative'. See www.adb.bdw.com.

106 The background of this ROSCs-project is the importance, acknowledged by the international community, of introducing standards in order to strengthen the international financial system. On an international level, the standards can improve transparency as well as multilateral supervision. On a national level, the standards could form a benchmark which can contribute to the identification of weaknesses in the national financial and legal systems. In order to achieve the objectives above, selected standards for each participating country are tested by means of assessments. In total, twelve subjects have been selected, including Insolvency and Creditor Rights. The input for the ROSCs also originates from the project Financial Sector Assessment Program (FSAP), which has the objective of helping countries to increase financial stability and stimulate economic growth by strengthening and diversifying the financial system. With regard to the subject Insolvency and Creditor Rights, the afore-mentioned World Bank Principles form the basis, and therefore the incentive within the framework of the ROSCs-programme is to introduce a code of conduct for informal reorganisations. See www.imf.org. IMF's first mission for the Netherlands within the framework of this programme took place in the autumn of 2003. By now, more than 95 countries have cooperated or have promised to do so. With regard to insolvency however,

the so-called 'Statement of Principles for a Global Approach to multi-creditor workouts' [hereinafter: Statement of Principles] which, according to the documents at the time of publication, was at least endorsed by the World Bank, the Bank of England, many international commercial banks and consultancy agencies, as well as the British Bankers' Association (with 320 banks as members; established in more than 60 countries).

The core of the Statement of Principles – consisting of eight principles which can be regarded as a best practice for informal reorganisations – is recognised in various 'local' versions. The principles will therefore be discussed below, while the entire text of the eight principles is included in appendix 3. Chapter 5 will further discuss the principles within the framework of a proposal to institutionalise a code of conduct for informal reorganisations in the Netherlands.

The Statement of Principles was published in order to bring the different globally used informal procedures (voluntary rescue frameworks) more in line with each other and to formalise them in a consistent system. It was drawn up by more than 150 experts from as many (mainly banking) organisations and consists, as mentioned earlier, of eight principles which should be used during an informal reorganisation/workout in order to increase the chances of success.[108] Table 10 summarises the main characteristics of the eight principles.

Table 10: Principles of the INSOL International code

Principle	*Characteristic*
1	The relevant creditors voluntarily 'stand still'[109]
2	None of the creditors takes any individual action on the condition that their relative positions remain in tact[110]
3	The debtor (company in financial difficulties) does not take any actions which may jeopardise the relative positions of the creditors
4	In order to speed up the decision-making process, creditor groups are formed if possible and necessary (groups of secured, senior and junior creditors for instance)

until this date an assessment has been carried out in only four countries. See also www.minfin.nl and www.worldbank.org.

107 INSOL International is a globally active organisation, uniting more than 7,700 accountants and lawyers who specialise in turnaround and insolvency.

108 See www.insol.org, Paulus, p. 1 ff. and UNCITRAL Alternative approaches to out-of-court insolvency processes, p. 7 ff.

109 Voluntarily 'stand still' in this case means that creditors voluntarily and temporarily do not exercise their legal rights – 'mark time' – such as petitioning for liquidation or selling up securities.

110 The intended purpose of this is that creditors do not end up in a worse position due to their cooperation as a result of which their individual recovery rate drops.

Principle	*Characteristic*
5	In order to be able to evaluate proposals for solutions, the debtor must grant the relevant creditors timely and full access to all relevant information
6	Proposals for workout agreements must be formulated on the basis of prevailing legislation and relative positions of the creditors
7	All information must be available and should be treated in confidence
8	When new financing is provided during the informal reorganisation, it must be given a priority status

The fundamental objectives therefore are: reaching a *stable situation* where none of the parties take any individual action, as well as a *free flow of information* based on which all parties within the process can take decisions[111] without worsening their relative positions.[112]

The Statement of Principles can be regarded as a spin-off of a successful English phenomenon which dates back to the mid seventies of the previous century and is known throughout the world as the 'London Approach'.[113] Bird described the London Approach rescue framework as follows:

> 'a cooperative basis by which lender creditors recognise individual and collective risk at a point in time and keep that balance throughout an agreed debt recovery strategy that seeks to preserve business.'[114]

This very clearly shows the joint interest, as referred to in the Statement of Principles. The main advantages of the London Approach and the Statement of Principles and therefore of voluntary rescue frameworks in general can be summarised by five subjects on the basis of the above (see table 11). This confirms the advantages of informal reorganisations which were identified earlier in this chapter.

111 See also Guide good practices, p. 27.

112 See also Chatterji and Hedges, p. 20.

113 This period was marked by a serious economic situation in the United Kingdom; in order to prevent banks and (other) high-profile companies from going into liquidation, the Bank of England started encouraging voluntary support operations by creditors. Around 1990, this approach became generally known as the London Approach. See for its history and evolution Flood, p. 262-267, Armour and Deakin, p. 17 ff. and Bird, p. 87-89. See also Adams *et al.*, p. 15 ff., Chatterji and Hedges, p. 20, World Bank Principles, p. 54 and Kent, p. 1 ff.

114 See Bird, p. 87 and Flood, p. 262. The London Approach does not have a legal or authorised basis: '(…) It is merely an informal codification of a set of practices that had come to be widely accepted (…)'; see Clementi, p. 1 ff. Although it was at the basis, the Bank of England is in principle not a party in the process of reorganisations by virtue of the London Approach; however, it does act as a *mediator* during conflicts (if so desired). See also Brierley and Vlieghe, p. 174.

Table 11: Advantages of voluntary rescue frameworks

1.	Flexibility	They are not sections of a law, they are principles. Their application is therefore more flexible compared to formal procedures[115]
2.	Pro-active	They provide a possibility for creditors to get involved in a reorganisation process at an earlier stage than is the case with formal procedures[116]
3.	Lower costs due to speed and monitoring	Since the informal reorganisation is in the hands of the negotiating parties, they are able to determine the pace as well as the result in a relatively structured manner. Uncertainties and unpredictable costs can be mitigated[117]
4.	Publicity	It is not a public process. As a result, unwanted effects (see § 2.5.2 for the disadvantages of formal procedures) are avoided. It also seems that less of a stigma is attached to it[118]
5.	Reduction of mistrust	As a result of a joint approach of the problems by the company and its relevant creditors using pre-set agreements (principles), the mistrust between parties is reduced, increasing the chances of success[119]

Earlier we also observed that informal reorganisations involve some important disadvantages. This particularly applies to not being able to enforce the co-operation and obtain the required consent from all (relevant) creditors involved. This problem remains (the word says it all), when voluntary rescue frameworks are used. The question is how parties can be moved to cooperate in a voluntary rescue operation; this appears to be extraordinarily difficult. Joint understandings and values (also known as *habits*)[120] must be present among the interested parties involved; they cannot be enforced however.

In order for informal workouts to succeed, some basic elements must therefore be present according to the literature. The most important one – and this seems slightly paradoxical – is that there must be clear insolvency legislation in the relevant judiciary/judiciaries. After all, informal reorganisations take place in the 'shadow of the law'. It must be absolutely clear to the parties what the 'penalty' is for not cooperating in a workout, that is to say an unpredictable course of a formal procedure with regard to which it will be clear from the outset that the gains will be lower for all parties involved. In that sense, a clear insolvency law is a necessary condition for the success of informal reorganisations.[121]

A second element is that it must be possible to resolve conflicts between different interested parties fast, so that (further) escalation can be avoided.

115 See World Bank Principles, p. 52 and Flood, p. 263.
116 See UNCITRAL Insolvency law, p. 41.
117 See Statement of Principles, p. 5.
118 See World Bank Principles, p. 54 and Flood, p. 265.
119 See Flood, p. 275 and Guide good practices, p. 27.
120 The system of the London Approach is based on this, see Flood, p. 273-276.
121 See for instance World Bank Principles, p. 53 and Fisher *et al.*, p. 7.

Involving specialists in the workout – accountants, advisors in the field of business restructuring and insolvency lawyers for instance – can reduce the chances of failure. In addition, specialised mediators could be appointed by the parties, whether or not at the start of the negotiations.[122]

A third element is that arrangements made must always be recorded in an agreement, a so-called Restructuring Agreement.[123] This way, they will be binding and verifiable for the parties involved. This may increase the final success, since it removes (potential and future) lack of clarity. It has the added advantage that it can be invoked during any legal procedure with reluctant creditors (see also the phenomenon of *forced participation* in § 2.5.2); it increases the chances of a solution, albeit with some delay and coercion by legal means. Still, one of the basic principles must always be that all parties cooperate voluntarily.[124]

Finally, the London Approach and the Statement of Principles arise from (large) workouts in the banking industry and therefore they seem to be specifically designed for situations where multiple banking creditors are involved in a company in financial difficulties. The commentary for principle 1 of the Statement of Principles however emphasises that in such cases, the principles can also be applied to negotiations with other interested parties such as (large) trade creditors and buyers. The definition of voluntary rescue framework, as given earlier, underlines this broad approach, since it explicitly states that it is a framework for all stakeholders. In SME-situations, where often only one (large) banking creditor is involved ('housebank'), the principles therefore may also apply. In this situation, the emphasis will mainly be on the relation between company and bank and (any) other creditors.[125]

2.7 Conclusion

Based on the literature search it can be argued that informal reorganisations are an efficient alternative for formal reorganisation methods. When a company, whether or not instigated by and in cooperation with the housebank, restructures its business and implements (any) financial restructuring at an

---

122 Mediation can be described as resolving a dispute together with the aid of a neutral dispute mediator. See Chatterji and Hedges, p. 20, Statement of Principles, p. 18 ff. and World Bank Principles, p. 55. See also chapter 5.

123 See World Bank Principles, p. 55-56.

124 In order to save time and avoid disputes, large (financial) creditors regularly decide to leave small trade creditors out of the process of informal reorganisation and to guarantee full payment for these parties. Although this violates the relative position of creditors it can increase the chances of success, as demonstrated by the literature. See World Bank Principles, p. 56 and Mako, p. 13.

125 I do not share the opinion that a protocol such as the London Approach does not have much to offer for SMEs. However, see Flood, p. 263 and Franken 2002, p. 338 and p. 340. In chapter 5 we will see to what extent the principles can be applied to smaller companies (in the Netherlands).

early stage, a formal procedure can be avoided. The key to success lies in restoring the confidence the various interested parties have in the (viability of the) company and its management. Banking lenders (housebanks) are often a vital party in this process. According to the literature, the development/ introduction of a voluntary rescue framework (in a country) can contribute to the required restoration of confidence, since it contains 'rules of play' for the conduct of parties in relation to each other in situations of great uncertainty. The process of informal reorganisation becomes more transparent and objective; parties have a better idea of where they stand. The significance of informal reorganisation in general and relating codes of conduct in particular will grow as a result of the international developments referred to.

3 Informal reorganisations in practice: 35 case studies

3.1 INTRODUCTION

The study includes a total of 35 case studies of banks and advisors of Dutch companies in financial difficulties. Although it is not possible to make generalisations for the population '*companies in financial difficulties trying to avoid liquidation by means of informal reorganisation*' on the basis of these case studies, they do offer a good opportunity to gain insight into common practice in these cases.[1] This also provides the opportunity to chart trends, such as, for instance, the question of whether deviating combinations of success and failure factors occur in certain subpopulations (in this case successful or failed informal reorganisations). The 35 companies examined were studied[2] by means of datasheets and analysed using the following search structure: history of the company, cause of the problems and course of the insolvency process, proposed workout agreement and/or reorganisation plan, implementation of informal reorganisation and bottlenecks arising during the implementation of the reorganisation. The study material consisted largely of discussion reports and correspondence between the interested parties involved, as well as annual reports, study reports, quick-scans and internal memos. It was decided not to interview those involved about the progress of the process, in order to avoid qualitative and/or subjective opinions as much as possible.

A distinction was made between failed and successful informal reorganisations. An informal reorganisation is successful when the company has been able to avoid[3] moratorium or liquidation by successfully executing an informal reorganisation. Entrepreneurs entering into the Private person Fresh start Proceedings (PFP) do so in the light of imminent liquidation. Within this framework, PFP therefore falls under the heading 'liquidation'. An informal reorganisation has failed when the company has unwittingly ended up in a situation of moratorium or liquidation. The question of whether we can still

1 See also Couwenberg 1997, p. 132 ff.
2 During the study it proved to be impossible to find all required information in the dossiers. One of the causes concerns the moment at which the bank/advisor becomes involved in the company as well as the specific instructions it/he has been given in that respect.
3 When, within the framework of an informal reorganisation, moratorium and/or liquidation has been requested for one or multiple group companies, this study speaks of a successful informal reorganisation, when the total group has been informally reorganised with success.

speak of a success in a social and economic sense, in the case of an assets transaction (restart) following liquidation, will be ignored in this context with a view to the problem definition (however, see also § 3.4.6).

Table 12 shows the classification of the dossiers according to supply by parties.

Table 12: Classification of dossiers

Dossiers	*Successful*	*Failed*	*Total*
Banks	11	10	21
Advisors	9	5	14
Total	20	15	35

The classification according to branch of industry is shown in table 13. This shows that dossiers were submitted by companies in the sectors *industry* and *other commercial* (commercial services sector) in particular.

Table 13: Classification according to brand of industry[4]

Branch of industry	*Number*	*%*
Trade	5	14
Industry	13	37
Agriculture	1	3
Other commercial	15	43
Culture and recreation	1	3

The classification according to size (based on the average turnover) is shown in table 14. So-called *Medium-sized and Large-scale* companies in particular are represented here.

4 Classification according to branch of industry in accordance with the Dutch Central Bureau for Statistics (CBS). See www.cbs.nl and CBS Bankruptcy Statistics, 1997-1999. The classification according to branch of industry is based on the non-anonymous information in the dossiers.

Table 14: Size of companies according to turnover[5]

Turnover (in €)	*Number*	*%*
< 100,000	2	6
≥ 100,000 < 1,000,000	2	6
≥ 1,000,000 < 10,000,000	7	20
≥ 10,000,000 < 100,000,000	14	40
≥ 100,000,000	5	14
Unknown	5	14

The most significant findings from the case studies are given in this chapter. The following aspects will be highlighted:

- causes of financial difficulties;
- measures within the framework of restructuring business operations;
- measures within the framework of financial restructuring;
- bottlenecks in the process of informal reorganisation;
- success and failure factors of informal reorganisations.

In the current study, *measures* are taken to mean: all actions taken by management and/or other interested parties with the objective of positively contributing to the informal reorganisation. *Bottlenecks* are taken to mean: all developments – observed in the dossiers – during an informal organisation which (could) obstruct a positive outcome (bottlenecks therefore do not necessarily have to lead to the failure of an informal reorganisation).

Appendix 4 shows brief descriptions of the causes, measures and bottlenecks found. The case studies are included in appendix 5, as well as an overview of causes, measures and bottlenecks as found in the specific dossiers (appendix 5: tables A-D).

3.2 Categories of causes, measures and bottlenecks

Based on the literary search, in Chapter 2 categories have been formulated concerning the causes of financial difficulties and the measures taken within the framework of restructuring, as well as bottlenecks. On the basis of the case study examination, the tables below show which categories of causes, measures and bottlenecks are most common in practice. Each table shows the incidence

5 Although the turnover details in the case studies (appendix 5) are fictitious in order to guarantee adequate anonymity, a true picture of the turnover classification can be provided by using a broadly graduated scale. The turnover data is based on an average of years given in the dossiers and relates to the non-anonymous financial information.

of each category per category in absolute numbers and percentages.[6] The percentages are based on the number of dossiers which yielded (one or more) causes, measures and bottlenecks part of a specific category, divided by the total number of dossiers per selected group (successful, failed and total).

Causes of financial difficulties

Table 15 shows the causes according to category.

Table 15: Causes according to category

Number of dossiers	*Successful 20*		*Failed 15*		*Total 35*	
	Number	%	Number	%	Number	%
Marketing	13	65	11	73	24	69
Management	13	65	12	80	25	71
Information	11	55	9	60	20	57
Efficiency	12	60	12	80	24	69
Economy	8	40	5	33	13	37

It emerges that nearly all dossiers show a combination of factors leading to financial difficulties. The main causes can be found in the fields of *marketing*, *management* and *efficiency*. Compared to the studies referred to in chapter 2, it appears that causes in the field of *economy* are relatively less dominant.

Measures within the framework of restructuring business operations

Table 16 shows the measures within the framework of restructuring business operations according to category.

Table 16: Measures within the framework of restructuring business operations according to category

Number of dossiers	*Successful 20*		*Failed 15*		*Total 35*	
	Number	%	Number	%	Number	%
Marketing	8	40	5	33	13	37
Management[7]	14	70	10	67	24	69
Information	7	35	6	40	13	37
Efficiency	15	75	8	53	23	66

6 Rounding-off differences in the tables can cause minor differences in calculated figures.
7 The results of this category are based on measures found in dossiers of banks and the measures taken by advisors minus the measure *appointing third parties*. This way, calculations are kept clear, since dossiers of advisors always concern the appointment of third parties.

The examined dossiers show that, with regard to the restructuring of business operations, most actions are taken in the field of *management*, as well as measures to improve *efficiency*. This is in line with the causes identified. Relatively speaking, there is far less reaction to problems relating to *marketing*.

Measures within the framework of financial restructuring

Table 17 shows the measures within the framework of financial restructuring according to category.

Table 17: Measures within the framework of financial restructuring

Number of dossiers	*Successful* 20		*Failed* 15		*Total* 35	
	Number	%	Number	%	Number	%
Repayments	17	85	14	93	31	89
Interest	5	25	0	0	5	14
Increasing cash funds	16	80	14	93	30	86
Other[8]						
· Takeover of finance agreement(s)	9	45	2	13	11	31
· Threatening to cancel credit	8	40	4	27	12	34
· Lowering of credit ceiling	4	20	0	0	4	11
· Additional securities	7	35	4	27	11	31
· Consultation with banks[9]	4	20	1	7	5	14
· Let-go construction	1	5	1	7	2	6
· Waivers	6	30	5	33	11	31
· Credit cancellation without selling off	5	25	2	13	7	20
· Postponement of execution of attachment	5	25	1	7	6	17
· Petition for liquidation of group company	2	10	2	13	4	11
· Application for a moratorium for group company	2	10	0	0	2	6
· Deferment petition for liquidation	1	5	1	7	2	6
· Financing estate	0	0	2	13	2	6

Most financial measures occur in the categories *repayments* and *increasing cash funds*. It is also remarkable that within the residual category, *threatening to cancel credit* occurs relatively often.

8 Since *other* is a residual category, the scores of the separate measures are included.
9 Please bear in mind that many companies (in this research) do business with one bank ('housebank') only. As a result, the figures are somewhat misrepresentative.

Bottlenecks

Table 18 shows the bottlenecks according to category.

Table 18: Bottlenecks according to category

	Successful		*Failed*		*Total*	
Number of dossiers	*20*		*15*		*35*	
	Number	%	Number	%	Number	%
Effectiveness	12	60	14	93	26	74
Creditors	12	60	11	73	23	66
Investors	7	35	11	73	18	51
Management	12	60	10	67	22	63
Shareholders	4	20	9	60	13	37
Other						
· Large claim (for damages)	0	0	2	13	2	6
· Departure of key figures	1	5	0	0	1	3
· Trustee/administrator does not cooperate sufficiently	0	0	1	7	1	3
· Legal disputes	1	5	0	0	1	3
· Market conditions	3	15	3	20	6	17

The most common bottlenecks can be found in the categories *effectiveness* of the initiated reorganisation, *creditors* and *management*. Furthermore, in more than half of the dossiers, the bottlenecks are related to (future) *investors*.

3.3 Case studies of successful informal reorganisations

This paragraph will present the most significant findings with regard to the 20 successful informal reorganisations.

3.3.1 Causes of financial difficulties

Table 19 shows the identified causes of financial difficulties in absolute numbers. The numbers represent the total number of times that a specific cause has been detected in the examined dossiers (n=20). It must be stated that, in each dossier that was examined, multiple causes were often found.

Table 19: Causes of financial difficulties during successful informal reorganisations

	Number
Marketing	
· Disappointing turnover	5
· No clear strategy	4
· Insufficient quality	1
· Margins too low	5
Management	
· Poor management	9
· Gross errors/mismanagement	5
· Excessive withdrawals	3
· Conflicts within management	2
Information	
· MIS inadequate	11
Efficiency	
· Unsatisfactory management of working capital	5
· Excessive costs	9
· Takeover(s) too expensive	2
· Excessive investments	3
· Loss-making activities not halted	2
· Under-investment	1
Economy	
· Economic conditions	6
· Non-forthcoming spending	1
· Fierce competition	2

The three specific causes of financial difficulties identified most often are:

- *inadequate management information system.* The management information system is inadequate, so that the correct financial information does not surface or surfaces too late for the correct management decisions to be made. In certain cases the management information system is adequate but the company is insufficiently managed on the basis of the information arising from that;
- *poor management.* This means that the company is systematically managed in an unsatisfactory manner and that there is an insufficient/poor reaction to negative and positive developments inside and outside the company;[10]
- *excessive costs.* This involves excessive variable and/or fixed costs. Excessive costs are often attributed to a poor organisation of business activities.

It is striking that causes can often be traced back to the company being insufficiently managed on the basis of financial parameters.

10 Although strictly speaking all causes of financial difficulties can be traced back to poor management, a separate mention is made for those dossiers where the systematic aspect predominates in addition to any other causes.

3.3.2 Measures within the framework of restructuring business operations

Table 20 shows the identified measures within the framework of restructuring business operations. The numbers represent the total number of times that a(n) (attempt[11] at a) specific measure has been detected in the examined dossiers (n=20).[12] It must be stated that multiple measures were often found in each dossier that was examined.

Table 20: Measures within the framework of restructuring business operations during successful informal reorganisations

	Number
Marketing	
· Formulation of strategy	5
· Adjustment of marketing tactics	2
· Rationalisation of product assortment	5
· Improvement of margins	3
Management	
· Change in management structure	1
· Appointment of third parties	8
· Changes in positions	5
Information	
· Improvement of MIS	7
Efficiency	
· Reduction in personnel	6
· Cutting overhead costs	8
· Reduction of withdrawals	2
· Improving production and logistic processes	5
· Improving procurement	1
· Improving working capital	8
· Improving liquidity management	2
· Integrating business units	3
· Closing loss-making business units	7
· Selling excessive assets	7
· Selling non-core activities	4

The three most common measures within restructuring business operations are:

- *appointment of third parties.* This concerns the appointment of specialist advisors/interim managers;

11 Not all proposed measures were fully executed or successful.

12 For 'appointing third parties' only the dossiers from banks (n=11) are used, since it would otherwise give a distorted picture.

- *cutting overhead costs.* This involves the implementation of spending cuts with regard to the company's fixed costs;
- *improving the working capital.* This especially involves managing the accounts receivable, accounts payable and stocks in the most efficient manner.

Therefore the measures are aimed at restoring faith by appointing third parties who assist in the implementation of the reorganisation on the one hand, while on the other measures are taken which are aimed at reducing the structural expenditure of the company as well as managing the incoming and outgoing cash flows.

3.3.3 Measures within the framework of financial restructuring

Table 21 shows the identified measures within the framework of financial restructuring. The numbers represent the total number of times that a(n) (attempt at a) specific measure has been detected in the examined dossiers (n=20). It must be stated that multiple measures were often found in each dossier that was examined.

Table 21: Measures within the framework of financial restructuring during successful informal reorganisations

	Number
Repayments	
· Workout agreement with remission	10
· Workout agreement with subordinated loan	3
· Deferment of repayments	15
· Conversion of loan(s)	1
· Repayment scheme coupled to term or products to be sold	6
· Cash sweep	4
· Debt equity swap	2
· Discharging parent company from liability	1
Interest	
· (Temporary) discontinuation of interest	3
· Increase of interest	3
Increasing cash funds	
· New risk-bearing funding	10
· New risk-avoiding funding	8
· Increasing available credit	6
· Takeover	5

	Number
Other	
· Transfer of finance agreement(s)	9
· Threatening to cancel credit	8
· Lowering of credit ceiling	4
· Additional securities	7
· Consultation with banks	4
· Let-go constructions	1
· Waivers[13]	6
· Credit cancellation without selling off	5
· Postponement of execution of attachment	5
· Petition for liquidation of group company	2
· Application for a moratorium for group company[14]	2
· Deferment of liquidation petition	1
· Financing estate	0

The dossiers examined seem to show a preference for attempts to *defer repayments* within the framework of financial restructuring, as well as for proposals for a *workout agreement with remission*. Additionally, companies also look for *new risk-bearing funding* whether or not in the shape of a *takeover* in order to correct the balance sheet and to improve the liquidity position.

It is remarkable that in Dutch practice more options are used in respect of financial restructuring than *generally* mentioned in the literature.[15] Some striking examples are *threatening to cancel credit* (in order to force a (quicker) reorganisation), providing *additional securities* (as a result of which the financier will not terminate the credit agreement or is prepared to allow additional financing), *cash sweeps* (using part of the free cash flow for repayments in addition to regular or lower repayment commitments), as well as *transferring*

13 Many credit agreements incorporate certain preconditions. If the company does not comply with those (any longer) there is a contractual possibility, within the bounds of reasonableness and fairness, to cancel the credit. Examples of preconditions are: having to comply with certain solvency or liquidity ratios. Regularly informing the credit provider about the company's (financial) situation can also be a precondition. When a bank – in economic terms – *formally* decides not to cancel the credit agreement despite the fact that certain preconditions are no longer met, we speak of a so-called *waiver;* this can be defined as the bank not exercising certain rights in advance. To all intents and purposes, that is voluntary continuation of financing.

14 When, within an informal reorganisation, parties regard it necessary to file a petition for moratorium or liquidation of a group company (so not the entire group of companies) and this can be regarded as a deliberate element of the survival strategy of the other companies within the informal reorganisation; this is considered a measure within the financial restructuring (as this can lead to deferment and/or cancellation of commitments as a result). This as opposed to a pre-pack procedure which is entered into involuntarily in order to confirm a pre-designed informal plan.

15 See Asquith *et al.*, p. 636-638 (table V), however, as well as Datta and Iskandar-Datta, p. 19-31 (table 3) who explicitly mention *waive covenants*, *reductions in credit* and *increases in collateral* as possibilities.

finance agreements. Furthermore, banks often seem prepared to grant *waivers* and to increase or extend credit facilities (*risk-avoiding funding*).

3.3.4 Bottlenecks

Table 22 shows the bottlenecks identified within successful informal reorganisations. The numbers represent the total number of bottlenecks detected in the examined dossiers (n=20). It must be stated that multiple bottlenecks were often found in each dossier that was examined. Bottlenecks concern opinions as found in the documents made available, as well as conclusions/interpretations based on analyses of the facts. The bottlenecks found have been verified by the relevant experts of the cooperating parties; no adjustments were made among any of the 35 case studies (both successful and failed informal reorganisations).

Table 22: Bottlenecks during successful informal reorganisations

	Number
Effectiveness	
· Reorganisation too late	4
· Reorganisation too long	2
· Reorganisation measures insufficient	6
· Profit perspectives uncertain	2
· High costs of staff redundancies	1
· Disappointing incidental results	2
Creditors	
· Cancellation of credit	1
· No more flexibility from creditors	0
· Internal conflicts among creditors	1
· Petition for liquidation by creditors	1
· Attachment of property found on the premises	1
· Creditors refuse agreement	4
· No more confidence	6
· Decisions against the will of creditors	1
Investors	
· Investors pull out	7
Management	
· Insufficient information	7
· Incapable management	3
· Prognoses structurally deviate from reality	6
· Failure to comply with agreements	6
· Proposed solution unsatisfactory	1

	Number
Shareholders	
· Shareholders/owners are reticent with regard to contribution of risk-bearing capital[16]	3
· Shareholders are reticent with regard to contribution of risk-bearing capital by third parties	0
· Passive attitude shareholders	1
Other	
· Large claim (for damages)	0
· Departure of key figures	1
· Trustee/administrator does not cooperate sufficiently	0
· Legal disputes	1
· Market conditions	3

The main bottlenecks are in the field of (potential) *investors who pull out*, as well as *insufficient supply of information* from the company to its directly affected parties. Significant bottlenecks have been found in relation to this, which indicate an (imminent) breach of trust between the company and its creditors. Striking examples are *prognoses which structurally deviate*, the *failure to comply with agreements* and, more generally, the *lack of confidence* among the creditors (in management and/or viability of the company).

3.3.5 Success factors

Upon analysis of the case studies, the following question was posed for each successful informal reorganisation:

- which were the *decisive* factors for the informal reorganisation to *succeed*?

Table 23a shows the names of the case studies in alphabetical order, giving the (decisive) success factors. These factors are based on the verified analyses of the case studies.

16 This reluctance can be associated with Myers' theory (1977) about the Debt overhang or Underinvestment problem. He states in this respect: 'The greater the risk of default, the greater the benefit to existing debt from additional investment'. Or, to put it the other way round: the introduction of equity (in the form of cash for instance) will be advantageous for creditors, since this means there are additional means to pay them. This may be at the expense of future income for shareholders/owners; it enables them to grow (more) reluctant to put capital into a business during (informal) reorganisations. See Myers 1977, p. 147-175, Myers 2001, p. 96-97 and also Gertner and Scharfstein, p. 1189-1222.

Table 23a: Success factors

No.	*Name of case study*	*Success factors*
1	Advertising	· good relationship between bank and company · parties realise that going concern value is highest under informal reorganisation · business operations successfully (adequately) restructured (eventually)
2	Aid	· adequate and fast restructuring of business operations · good relationship between bank and company · injection of risk-bearing capital
3	Cable	· transparent approach of informal reorganisation by the advisor · extension of financing (risk-avoiding) for the benefit of workout agreement
4	Candy	· transparent approach of informal reorganisation by the advisor · FAE-loan[17] obtained to finance workout agreement
5	Car	· adequate restructuring of business operations · good relationship between bank and company
6	Food	· injection of risk-bearing and risk-avoiding capital · voluntary 'stand still' by banks · adequate restructuring of the business operations, combined with (partial) remission of debts
7	Garden	· adequate and fast restructuring of business operations · injection of risk-bearing capital
8	ICT	· good relationship between bank and company · active search for takeover candidates · takeover by healthy company in the same line of business, combined with the injection of risk-bearing capital
9	Lamps	· transparent approach of informal reorganisation by the advisor · FAE-loan obtained to finance workout agreement
10	Lease	· voluntary 'stand still' by banks · parties realise that going concern value is highest under informal reorganisation · injection of risk-bearing capital, combined with partial remission of debts
11	Office	· injection of risk-bearing capital · adequate restructuring of business operations

17 FAE stands for Financial Aid Programme Entrepreneur-debtors. It is a (governmental) scheme which, under strict conditions, provides working capital to established self-employed persons who temporarily do not have sufficient means and are unable to receive financing in another way.

No.	Name of case study	Success factors
12	Products	· injection of risk-bearing capital · adequate restructuring of business operations · parties realise that going concern value is highest under informal reorganisation
13	Raw	· injection of risk-bearing capital · adequate restructuring of business operations · good relationship between bank and company
14	Renting out	· good relationship between bank and company · voluntary 'stand still' by banks · reorganisation during which relative positions of creditors have been observed
15	Sales	· adequate and fast restructuring of business operations · good relationship between bank and company
16	Soil drilling	· transparent approach of informal reorganisation by the advisor · FAE-loan obtained to finance workout agreement
17	Sound	· agreement with suppliers to defer payments · bank showing patience with regard to settlement of repayments
18	Training	· transparent approach of informal reorganisation by the advisor · injection of risk-bearing capital
19	Tree nursery	· bank showing patience with regard to settlement of repayments · (partial) remission of debts
20	Wood	· remission of debts by shareholder · takeover

Table 23b shows these success factors in aggregated form. The identified factors have been quantified.[18]

Table 23b: Success factors – aggregated

	Number
Adequate (and fast) restructuring of business operations	9
Injection of risk-bearing capital	9
Good relationship between bank and company	7
Transparent approach of informal reorganisation by the advisor	5
(Partial) remission of debts	4

18 The division into 23a and 23b was made to be able to present the most common success factors in an orderly manner. The case studies in table 23a sometimes contain multiple elements per enumeration, which is why the number of success factors in table 23b differs from the number of enumerations in table 23a.

	Number
Parties realise that going concern value is highest under informal reorganisation	3
FAE-loan obtained to finance workout agreement	3
Voluntary 'stand still' by banks	3
Takeover[19]	2
Injection of risk-avoiding capital	2
Bank showing patience with regard to settlement of repayments	2
Reorganisation during which relative positions of creditors have been observed	1
Agreement with suppliers to defer payments	1

Analysis of these case studies shows that informal reorganisations are especially successful when the company is able to restructure the business operations quickly and adequately and therefore restore profitability. This process must often go hand in hand with the introduction of additional risk-bearing capital (whether or not in the form of a takeover). This way a foundation is laid for the future, as this positively restores the balance sheet ratios. Creditors are generally prepared to cooperate with an informal reorganisation provided that the focal point (in the first instance) is deferment rather than remission of (re)payments.

A good relationship between the company and its main interested parties (mostly banks and/or important suppliers) appears to be vital. Informal reorganisations only seem to be successful when these interested parties can be convinced of the (future) viability of the company and the abilities of management. A transparent approach to the problems, often with the help of specialised advisors, combined with realistic prognostications is important in this respect. Case studies appear to indicate that banks are virtually always prepared to continue financing (not to withdraw credit or levy execution), provided these afore-mentioned conditions are met. When the parties involved can be convinced that the going concern value is higher than the forced-sale value, the willingness to cooperate will increase.

3.3.6 Successful informal reorganisations – conclusion

Based on the study into causes, measures, bottlenecks and success factors within successful informal reorganisations the conclusion can be drawn that an informal reorganisation has a great chance of success when the following conditions are met:

19 At ICT, two success factors where observed with regard to the measure *takeover*. In table 23b these factors where only counted once, otherwise it would create a distorted picture.

- adequate restructuring of the business operations by management (preferably with the help of third parties);
- involvement of important interested parties (financiers) in the reorganisation process;
- transparency with regard to the financial situation and the intended informal reorganisation;
- injection of risk-bearing capital (whether or not in the form of a takeover).

The key to success is restoring confidence in the management and in the viability of the company through adequate actions with regard to business operations, the provision of information and transparency, as well as rescheduling the balance sheet (injection of risk-bearing capital).

3.4 Case studies of failed informal reorganisations

This paragraph will present the most significant findings with regard to the 15 failed informal reorganisations.

3.4.1 Causes of financial difficulties

Table 24 shows the identified causes of financial difficulties.

Table 24: Causes of financial difficulties during failed informal reorganisations

	Number
Marketing	
· Disappointing turnover	5
· No clear strategy	6
· Insufficient quality	2
· Margins too low	5
Management	
· Poor management	11
· Gross errors/mismanagement	5
· Excessive withdrawals	1
· Conflicts within management	0
Information	
· MIS inadequate	9
Efficiency	
· Unsatisfactory management of working capital	3
· Excessive costs	8
· Takeover(s) too expensive	3
· Excessive investments	7
· Loss-making activities not halted	3
· Under-investment	0

	Number
Economy	
· Economic conditions	3
· Non-forthcoming spending	2
· Fierce competition	1

The three most common causes are *poor management*, an *inadequate management information system*, as well as *excessive costs*. These causes correspond with the most common causes as found in the successful informal reorganisations. In nearly half of the failed informal reorganisations *excessive investments* were made.

3.4.2 Measures within the framework of restructuring business operations

Table 25 shows the identified measures within the framework of restructuring business operations.

Table 25: Measures within the framework of restructuring business operations during failed informal reorganisations

	Number
Marketing	
· Formulation of strategy	1
· Adjustment of marketing tactics	2
· Rationalisation of product assortment	0
· Improvement of margins	3
Management	
· Change in management structure	1
· Appointment of third parties	6
· Changes in positions	3
Information	
· Improvement of MIS	6
Efficiency	
· Reduction in personnel	5
· Cutting overhead costs	4
· Reduction of withdrawals	0
· Improving production and logistic processes	3
· Improving procurement	0
· Improving working capital	4
· Improving liquidity management	2
· Integrating business units	1
· Closing loss-making business units	8
· Selling excessive assets	3
· Selling non-core activities	0

The three most common measures are *closing loss-making business units*, *appointment of third parties* and *improving the management information system*.

3.4.3 Measures within the framework of financial restructuring

Table 26 shows the measures within the framework of financial restructuring.

Table 26: Measures within the framework of financial restructuring during failed informal reorganisations

	Number
Repayments	
· Workout agreement with remission	9
· Workout agreement with subordinated loan	1
· Deferment of repayments	8
· Conversion of loan(s)	2
· Repayment scheme coupled to term or products to be sold	1
· Cash sweep	0
· Debt equity swap	4
· Discharging parent company from liability	0
Interest	
· (Temporary) discontinuation of interest	0
· Increase of interest	0
Increasing cash funds	
· New risk-bearing funding	10
· New risk-avoiding funding	4
· Increasing available credit	7
· Takeover	11
Other	
· Transfer of finance agreement(s)	2
· Threatening to cancel credit	4
· Lowering of credit ceiling	0
· Additional securities	4
· Consultation with banks	1
· Let-go constructions	1
· Waivers	5
· Credit cancellation without selling off	2
· Postponement of execution of attachment	1
· Petition for liquidation of group company	2
· Application for a moratorium for group company	0
· Deferment of liquidation petition	1
· Financing estate	2

It seems that in the case of failed informal reorganisations an attempt is often made to inject risk-bearing funding (*takeover* and *new risk-bearing funding*) into the company. In addition, there is often an attempt to realise a *workout agreement with remission*, as well as *deferring repayments*. These frequent measures correspond with the measures identified in the case of successful informal reorganisations. A remarkable difference however is that failed informal reorganisations see a relatively high number of *takeover* attempts. Banks appear

to be prepared to *increase available credit* and provide *risk-avoiding funding* on these routes as well.

3.4.4 Bottlenecks

Table 27 shows the bottlenecks identified within failed informal reorganisations.

Table 27: Bottlenecks during failed informal reorganisations

	Number
Effectiveness	
· Reorganisation too late	6
· Reorganisation too long	4
· Reorganisation measures insufficient	8
· Profit perspectives uncertain	1
· High costs of staff redundancies	4
· Disappointing incidental results	1
Creditors	
· Cancellation of credit	1
· No more flexibility from creditors	4
· Internal conflicts among creditors	0
· Petition for liquidation by creditors	2
· Attachment of property found on the premises	0
· Creditors refuse agreement	3
· No more confidence	7
· Decisions against the will of creditors	0
Investors	
· Investors pull out	11
Management	
· Insufficient information	5
· Incapable management	8
· Prognoses structurally deviate from reality	4
· Failure to comply with agreements	1
· Proposed solution unsatisfactory	0
Shareholders	
· Shareholders/owners are reticent with regard to contribution of risk-bearing capital	4
· Shareholders are reticent with regard to contribution of risk-bearing capital by third parties	4
· Passive attitude shareholders	2
Other	
· Large claim (for damages)	2
· Departure of key figures	0
· Trustee/administrator does not cooperate sufficiently	1
· Legal disputes	0
· Market conditions	3

It is remarkable that eleven dossiers speak of (potential) *investors pulling out* (this appears to be a major factor for failure; see § 3.4.5). It further appears that *reorganisation measures* often have *insufficient* effect so that a loss-making situation continues to exist. Furthermore, the conclusion that *management* was *incapable* was drawn eight times. Partly as a result of this, creditors in particular lose *confidence* in a positive outcome at a certain moment. Banks *cancelling credit* seems to have been a true bottleneck only once.

3.4.5 Failure factors

Upon analysis of the case studies, the following question was posed for each failed informal reorganisation:

· which were the *decisive* factors in the *failure* of the informal reorganisation?

Table 28a shows the names of the case studies in alphabetical order, giving the (decisive) failure factors. These factors are based on the verified analyses of the case studies.

Table 28a: Failure factors

No.	*Name of case study*	*Failure factors*
1	Agrarian	· passive attitude shareholders · reorganisation measures insufficient
2	Airline tickets	· takeover price too high · takeover candidates prefer assets transaction following liquidation · passive attitude management/entrepreneur
3	Furniture	· insufficient insight into financial situation · takeover candidates/risk-bearing funding not found · takeover candidates seem to prefer assets transaction following liquidation
4	Goods	· no takeover candidate can be found · passive attitude shareholders
5	Knowledge	· no takeover candidates can be found · takeover candidates prefer assets transaction following liquidation · costs cannot be controlled in time (reorganisation measures insufficient)
6	Machines I	· confidential relationship company – financiers under pressure · takeover candidates prefer assets transaction following liquidation · insufficient insight into financial situation · no risk-bearing capital can be found

No.	*Name of case study*	*Failure factors*
7	Machines II	· insufficient insight into financial situation · takeover candidates/risk-bearing funding not found · too many insecurities ('skeletons in the cupboard') combined with high reorganisation costs
8	Marketing	· takeover candidates/risk-bearing funding not found · excessive dependency on a number of clients
9	Packaging machine	· passive attitude shareholders · no takeover candidates can be found · takeover candidates seem to prefer assets transaction following liquidation
10	Reconstruction	· conflict of interests/disputes among shareholders
11	Services	· costs cannot be controlled in time · insufficient insight into financial situation · takeover candidates prefer assets transaction following liquidation
12	Steel	· insufficient insight into financial situation · too many insecurities ('skeletons in the cupboard') combined with high reorganisation costs, causing takeover candidates to pull out · takeover candidates seem to prefer assets transaction following liquidation
13	Systems	· takeover price too high · insufficient insight into financial situation · passive attitude shareholders
14	Techno	· takeover price too high/no takeover candidate found · takeover candidates prefer assets transaction following liquidation · passive attitude shareholders
15	Welding	· creditors refuse agreement

Table 23b shows these failure factors in aggregated form. The identified factors have been quantified.[20]

20 The division into 28a and 28b was made to be able to present the most common failure factors in an orderly manner. The case studies in table 28a sometimes contain multiple elements per enumeration, which is why the number of failure factors in table 28b differs from the number of enumerations in table 28a.

Table 28b: Failure factors – aggregated

	Number
No takeover candidates can be found/no risk-bearing capital available	11
Takeover candidates (seem to) prefer assets transaction following liquidation	8
Insufficient insight into financial situation/(fear for) 'skeletons in the cupboard'	8
Passive attitude shareholders/management/entrepreneur	6
Takeover price too high	3
Reorganisation measures insufficient	2
High reorganisation costs	2
Creditors refuse agreement	1
Confidential relationship company – financiers under pressure	1
Conflict of interests/disputes among shareholders	1
Excessive dependency on a number of clients	1

It seems that informal reorganisations fail mainly because companies are not able to realise a takeover (in time) and/or to effectuate the contribution of additional risk-bearing capital (from outside). Furthermore, potential takeover candidates often seem to prefer an assets transaction following liquidation (restart), since this way an expensive reorganisation can be avoided as well as any (as yet) unknown risks ('skeletons in the cupboard'). A passive attitude of shareholders/management (particularly with regard to the provision of additional risk-bearing capital and/or reorganisation measures) and insufficient insight into the actual financial situation of a company also seem to contribute to the chances of failure of an informal reorganisation.

3.4.6 Failed informal reorganisations – conclusion

Based on the study into the causes, measures, bottlenecks and failure factors it can be concluded that an informal reorganisation has a good chance of failing when:

- the company is unable to find risk-bearing capital (whether or not in the form of a takeover) (in time);
- the company is unable to provide sufficient insight into the actual financial situation;
- management and the shareholders have a passive attitude towards the informal reorganisation.

It is striking that thirteen of the fifteen dossiers about failed informal reorganisations speak of a full or partial restart in the form of an assets trans-

action following liquidation. Therefore, *socially* and *economically* these cases are not a (fully) failed reorganisation since, despite liquidation, 'value' was retained because (potentially) profit-making business operations and employment were retained.

3.5 CONFRONTATION – SUCCESSFUL AND FAILED INFORMAL REORGANISATIONS

§ 3.3 and 3.4 describe the identified causes, measures and bottlenecks within the examined successful and failed informal reorganisations, as well as the decisive success and failure factors. This paragraph looks at the significant deviations.

As far as the *causes* of financial difficulties are concerned, a significant difference regarding *excessive investments* can be seen. Large past investments therefore often are a 'burden' which can obstruct a successful reorganisation. Within the restructuring of the business operations there is a significant difference with regard to the effectiveness of the initiated reorganisation. Companies whose informal reorganisation failed are often not able to *sufficiently restructure* the business operations (in time). As far as the measures within financial restructuring are concerned, major differences are observed with regard to attempted *takeovers* and the *transfer of finance agreements*. Taking into account the large differences in bottlenecks with regard to *investors pulling out* and the *reluctant role of shareholders*, this may indicate that informal reorganisations often (also) fail as a result of a *lack of risk-bearing capital*.[21]

The confrontation of success and failure factors (also) confirms the above conclusions. The chances of success/failure are determined mainly by the different attitude of management, the extent of transparency with regard to the financial situation and the informal reorganisation and the question whether risk-bearing capital can be found (in time).

3.6 CONCLUSION

Looking at all the successful and failed informal reorganisations, the following conclusions can be drawn.

Regarding the causes of financial difficulties it can be concluded that the problems mainly relate to poor management and an excessive cost structure, as well as an inadequate management information system. The results, particularly those regarding poor management, seem to correspond to studies by, among others, the Association of Business Recovery Professionals (R3) in the

---

21 In the case of a situation of financial difficulties, a transfer of a finance agreement in fact also involves risk-bearing capital since there is a significant risk of the company going into liquidation.

United Kingdom, as well as the European Federation of Accountants (FEE); the latter also identifies a dire need for adequate management of the company on the basis of financial information and this confirms the identified causes in the field of (poor) management information.[22] Unlike these foreign studies and the Dutch studies referred to in chapter 2, economic circumstances are often not the cause of the problems to such a great extent. Furthermore, only three dossiers speak of *possible* fraudulent activities. All causes, apart from economy, appear in the dossiers about failed informal reorganisations relatively more often than in the dossiers about successful informal reorganisations.

With regard to restructuring business operations, it can be concluded that appointing third parties, taking measures to improve the efficiency of the company[23] and improving the management information system are some of the most important measures. This is in line with the causes identified. Financial restructuring is aimed mainly at deferring repayments and proposing workout agreements with remission. In addition, companies often look for an injection of risk-bearing capital in order to improve the balance sheet ratios and to generate additional liquidity. Furthermore, during an informal reorganisation banks are often prepared to provide additional risk-avoiding capital in order to improve the chances of success. The results with regard to restructuring business operations and financial restructuring also correspond with the results of foreign studies. The afore-mentioned study by R3 showed for instance that cost reduction, debt restructuring, raising new equity, negotiating with banks, as well as improved financial controls and a change of management – including the appointment of third parties – are measures frequently taken in British turnaround situations. The study by Franks and Sussman (referred to in § 2.4.3) is also in line with this. They concluded for instance that management changes, asset sales, new finance and guarantees given by management are some of the popular measures. They also conclude that these measures generally affect the willingness of banks to help out the company in a positive manner. Remarkable is the fact that the factors regarding adjustments of the company's strategy and marketing tactics have been identified to a relatively minor extent. This while the poor state of affairs is often caused by lack of insight – as a result of poor management – into the market and the existing and potential needs of (potential) clients. This conclusion is also in line with for instance the studies by R3 and Franks and Sussman.[24]

22 See Survey R3, p. 13-21 and FEE, p. 7 ff. For more supportive evidence in this respect, see also Van Amsterdam 2004, p. 118-119, Davis and Sihler, p. 27 ff., Van Eyck van Heslinga, p. 8 and p. 22-24, Van Frederikslust *et al.* 2004, p. 130, as well as Slatter and Lovett, p. 21 ff.

23 This result is confirmed by a study by Van Frederikslust *et al.* into listed Dutch companies which experienced a slump in performance. It emerged that reducing costs or improving efficiency are among the most common reactions, see Van Frederikslust *et al.* 2000, p. 135. Since that study is not specifically aimed at companies in financial difficulties, the results are not further discussed in this context.

24 See Survey R3, p. 13-21 and Franks and Sussman, p. 2.

The results with regard to the generally positive role of banks in informal reorganisations too correspond with the results of the study by Elsas and Krahnen (see § 2.4.3).

Important bottlenecks can be found in the field of insufficient reorganisation measures and the insufficient provision of information by management. Furthermore it emerges that not being able to find risk-bearing capital (for instance because potential investors pull out) in combination with a slowly initiated reorganisation are decisive for the failure of an informal reorganisation. More in general, (as a result) creditors often lose confidence along the way.

Based on the above it can be concluded that the chances of a successful informal reorganisation improve in practice if the following conditions are met:

- active attitude by management and shareholders with regard to the informal reorganisation;
- involvement of important interested parties (financiers) in the reorganisation process;
- adequate reorganisation of the business operations;
- transparency with regard to the financial situation and the intended informal reorganisation;[25]
- injection of risk-bearing capital (whether or not in the form of a takeover).

We must however take into account the fact that in some cases potential takeover candidates prefer an assets transaction following liquidation. Initiating the informal reorganisation in an early stage may reduce the chances of this.

25 See also The Ostrich's Guide 2002 which confirms this fact for the United Kingdom, Lutskes, p. 63-64 and Slatter and Lovett, p. 180 ff.

4 Practical experiences and opinions: surveys and interviews

4.1 Introduction

Chapter 4 details the results of the surveys and interviews. These particularly aim to answer the question as to what measures are taken within the framework of informal reorganisation in the Netherlands, as well as what bottlenecks are encountered by interested parties of companies in financial difficulties.[1] First, § 4.2 to § 4.5 will detail the most important results and interpretations of the surveys per selected population. The corresponding tables with questions/statements and answers (expressed in absolute numbers, percentages[2] and – insofar relevant – averages and standard deviations) and the additional comments are included in appendix 6.[3] The text refers to the relevant questions/subjects in the survey by means of numbers (in brackets); furthermore, it is indicated when the text is (partly) based on additional comments. The stated percentages have been rounded off. In § 4.6 the main results of the interviews are detailed. Subsequently, the various results will be compared followed by a conclusion in § 4.7.[4]

4.2 Dutch trade organisation for credit management – Survey

The objective of the Dutch trade organisation for credit management (VVCM) is to raise professional standards in credit management, and to increase aware-

1 On the basis of this it has been decided to discuss the results of the two research methods in one chapter.
2 The calculated numbers may show small deviations as they have been rounded off – this applies to all tables. The sum of the presented numbers is therefore not always exactly 100%.
3 It needs to be noted that the surveys were set up in a broader context than necessary for the present study; this with a view to a more extensive future study. Therefore, not all the questions/statements have been dealt with.
4 When reading the presented results, one must take into account that respondents have different roles and interests in reorganisation processes. These factors can obstruct an objective opinion of the facts. For instance, in his judgement about the role of banks, a reorganisation advisor will most probably attach more importance to the availability of credit for companies in financial difficulties than the risks for banks of potential losses following an unexpected default.

ness of its importance as a management function. The VVCM counts over 800 members.[5]

4.2.1 Introduction

Credit management can be described as all activities within a company which are aimed at optimising the incoming (trade) cash flows, whereby the central focus is on attaining the best possible turnaround time of the receivable capital and on reducing risks with regard to debtors.[6] In practice, credit managers – as a result of these activities – may come across companies in financial difficulties. The assumption here is that they will often occupy the position of 'ordinary creditors' and as such have gained knowledge in the field of informal reorganisations in general and workout agreements in particular.

4.2.2 General details of the respondents

A survey was sent to all 802 VVCM members. A total of 238 (30%) was completed and returned. Exactly 76% of the respondents[7] indicate to be active as credit managers. Over 70% has more than five years' experience in their current position, whereas 48.5% indicates to have more than 10 years' experience. It appears that the majority of respondents represent so-called unsecured debt. In 2002,[8] only 4.9% of the respondents did not deal with clients in moratorium/liquidation. In 2002, nearly 90% of the respondents were interested parties in informal reorganisations.

4.2.3 Survey results

With regard to picking up signals that indicate a deteriorated state of affairs with a customer, a large majority of the respondents replies that this is expressed by means of structural arrears and rumours in the market. Companies themselves are not very quick to announce that problems do exist or that they are imminent (3.3). However, 80% (2.20) of the respondents react

5 See also www.vvcm.nl.

6 See Schneider-Maessen and Weiss *et al.*, p. 2 ff. and Credit Management, Best Practices 2004, p. 11.

7 In this case, those who answered a particular question/statement are referred to as respondents. In connection with the set-up of the survey and to prevent any inconsistency the total number of respondents per question/statement sometimes deviates.

8 The survey study was held in the latter part of 2003. However, a number of questions refer to 2002, in order to obtain a complete picture for certain information covering a whole year.

straight away to the signals received by stricter control of the credit policy[9] (2.18). This stricter control concerns in most cases (listed in order of decreasing frequency): cash on delivery only, ceasing to deliver goods/services, and discussing financial forecasts on the basis of which further deliveries will be made subject to (3.11 and 3.12). This may explain why companies often do not disclose their financial difficulties, as announcing these may result in a *self-fulfilling prophecy-effect* (see also § 2.5.1). After all, the credit facility by suppliers (delivery on account) may be reduced as a result. On the other hand, lack of information may be the very reason why the credit policy is put under stricter control; the fact is, a large majority of the respondents state that the provision of information regarding informal reorganisations is insufficient (78.6%; 2.10) and that the (desired) involvement does not always exist (3.13 and 3.14).

A tense relationship between the company in financial difficulties and the ordinary creditors emerges from the above. This tension can be traced back to the risk of non-payment of creditors on the one hand, and the limited liquidity position of the company on the other. Yet the respondents do recognise the importance of cooperation between the creditors and the company as regards the chances of survival (93.2%; 2.16). In general, the attitude towards informal reorganisations is positive (2.13) and there is sufficient recognition of the fact that informal reorganisations destroy less 'value' than formal reorganisations (2.15 and 2.22). However, 63% of the respondents indicate to be afraid that the rights of individual creditors will be compromised in the event of restructuring (2.12).

In practice, the following solutions are offered to (non-banking) creditors most often: temporary deferment of payment commitments, reducing the nominal debt and continued delivery under cash on delivery terms when existing payment commitments are suspended (3.5).

When considering the rendering of cooperation by creditors, it is examined per case what position is taken and whether there is any willingness to cooperate. It is important in this respect that it is made sufficiently clear that the recipient company does have chances of survival. According to the respondents, calling in third parties increases the chances of survival (2.4, 2.5 and 2.17). The extent to which approval is granted partly depends on a commercial consideration (future sales), the extent to which the creditor is informed, past experiences and the amount of the outstanding claim. It is noticeable that the policy mainly focuses on deferment of (re)payments. Agreeing to remission is often regarded as unjust as the providers of risk-bearing capital will take advantage of this at the expense of the creditors (3.6 and additional comments). However, in situations in which reduction of the

9 This refers to the policy regarding purchasing/acquiring services 'on credit'.

debt is requested, nearly 80% indicates to be able (and willing) to negotiate the amount to be remitted (3.8 and 3.10).

The role of the banks appears to be controversial. Only 13% of the respondents indicate that banks are useful in preventing moratorium/liquidation. In addition, over 75% indicates that banks always come off best at the expense of ordinary creditors (2.2 and 2.3).

4.2.4 VVCM – conclusion

There appears to be a tense relationship between (ordinary) creditors and companies in financial difficulties. It can be stated that lack of information with regard to the financial difficulties is part of the underlying reason for this tension. Nevertheless, creditors do indicate that they are, in general, prepared to cooperate with informal reorganisations. However, the following conditions must serve as a basis:

- complete openness must be pursued with regard to the problems;
- a clear business plan must serve as a basis for the reorganisation;
- an acceptable solution (workout arrangement) must be offered;
- it needs to be taken into account that financial restructuring must – in principle – not be at the expense of the creditors. After all, the advantages (appreciation of the company) will be for the company (owners) itself. Therefore, the preference is to defer payments rather than to reduce the nominal debts.

When the above conditions are not sufficiently met, a situation develops, in practice, whereby any proposed workout agreements will be received reluctantly.

The negative attitude with regard to the role of the banks is quite conspicuous. It would seem that this attitude can be traced back to the fact that banks have often stipulated secured claims when the credit agreement was entered into, whereby the risk for them, in regard to non-payment, is greatly reduced. In addition, in the eyes of the ordinary creditors the banks are in a privileged position as regards information, as they are more involved with the company.

4.3 Dutch Foundation for the provision of advice and support to SMEs – Survey

The Dutch Foundation for the provision of advice and support to SMEs (OKB) comprises more than 200 'member-consultants' (hereafter called: consultants) aiming to advise entrepreneurs in small to medium-sized enterprises (SMEs).[10]

4.3.1 Introduction

OKB consultants are retired entrepreneurs and managers 'who know their business' and who are affiliated on a voluntary basis. The consultants are appointed for periods of five years and advise between 2000 to 2500 entrepreneurs per year. The consultants act as a sounding board for practical and strategic questions regarding (operational) management during all stages of a company's life cycle. A group of over 50 consultants within OKB are actively involved in the so-called Liquidation Prevention Project, which is specifically aimed at preventing moratorium/liquidation of companies. It is assumed that this group holds knowledge about informal reorganisations regarding companies in financial difficulties, as well as the bottlenecks encountered in practice, in the prevention of moratorium/liquidation.

4.3.2 General details of the respondents

A survey was sent to 56 consultants. It concerns the group which is actively involved in the Liquidation Prevention Project. A total of 46 surveys were completed and returned (82%). The largest group of respondents (nearly 59%) has been with the foundation between one and five years. A group of over 30% has been affiliated between five and ten years.

4.3.3 Survey results

According to the respondents, the five most common causes of financial difficulties are (listed in order of decreasing frequency): weak (poor) management, poor administration/insufficient control of the company on the basis of management information, insufficient working capital management, and insufficient cost control as well as poor funding (2.2). It is also indicated that, in general, companies start reorganisations too late and any measures taken are generally not drastic enough (additional comments). This causes unnecessary destruction of value (3.31 and 3.10). When answering the question

10 See also www.ondernemersklankbord.nl.

who the initiator usually is, in regard to the implementation of measures (2.11), the respondents divide their replies near enough equally; company management (52.3%[11]) and banks (47.7%). Banks take action mainly in the following cases (listed in order of decreasing frequency): exceeding the credit limit, consistent losses and no longer meeting the conditions in the credit agreement. Over 88% of the respondents indicate that the bank's decision to place a company under intensive care is generally justified (2.4).

Over 84% of the respondents agree to the statement that informal reorganisations have less of a destructive effect as regards value compared to formal reorganisations (3.22) and 73% even indicates that viable companies must be reorganised outside the formal framework at all times (3.29). This underlines the importance of informal reorganisations in practice. However, a large majority states that the possibilities for a workout agreement are often insufficiently examined (3.7).

The most frequent measures within the framework of restructuring business operations are: dismissing personnel, improving purchase processes, improving the management information system, shutting down loss-making units as well as selling (profitable) operations which are not part of the core activities (2.10).

The three financial measures stated most are (listed in order of decreasing frequency): postponing the debt repayment terms, reducing nominal debt(s) with (ordinary) creditors and making available new financing (2.13 and 2.14). Over 61% of the respondents confirm that non-banking creditors are often insufficiently informed on the process of informal reorganisations (3.17). It seems, therefore, that these creditors are not always prepared to cooperate as a result of which restructuring operations can fail (3.18 and additional comments). The fact that moratorium must sometimes be requested to find protection against creditors, as well as to ratify a proposed workout arrangement with creditors, confirms this suspicion (2.6). Over 90% of the respondents state therefore, that improved cooperation between the company and creditors is required in order to increase the chances of success (3.2 and 3.23). Mediators could act as arbitrators here in the event of conflicts (3.24).

The four bottlenecks noted most often within informal reorganisations are (listed in order of decreasing frequency): withdrawal of credit/banks abandoning their confidence, suppliers refusing to deliver any longer, customers losing their confidence in the company as well as the incapability of management to start taking control of the costs (2.5 and 2.19 plus additional comments). In addition, nearly 61% of the respondents state that employees' employment protection disturbs rescue attempts (3.4).

It is noticeable that nearly 60% of the respondents indicate that they are not convinced that banks are useful with regard to preventing moratorium and liquidation (3.13). In addition, the majority is of the opinion that banks

11 Although the response is high the stated percentages must – in view of the limited scope of the survey population – be interpreted with the necessary precaution.

often come off best at the expense of ordinary creditors (3.12, 3.15 and additional comments). Combined with the bottleneck stated most (withdrawal of credit/banks abandoning their confidence) the picture emerges that there is a tense relationship in general between the banks and companies in financial difficulties.

4.3.4 OKB – conclusion

Based on the respondents' replies the following conclusions can be drawn. Companies start reorganisations generally too late; in addition, any measures taken are often not drastic enough. As a result, confidence among interested parties in the viability of the company and management reduces. Also, there seems to be a tense relationship between the company in financial difficulties and the ordinary creditors which can be partly traced back to insufficient provision of information with regard to the plan of reorganisation. It seems that the tense relationship with banks can be explained by the fact that withdrawal of the credit in many cases drains the funding possibilities of a company in financial difficulties, making liquidation inevitable. Management and its advisors often expect banks to continue to finance and do not always understand why a bank withdraws credit in a certain situation.

4.4 Federation of Dutch Insolvency Lawyers – Survey

The objective of the Federation of Dutch Insolvency Lawyers (Insolad) is, among other things, to promote expert professional practice by lawyers in the field of insolvency law.[12]

4.4.1 Introduction

Insolad endeavours to achieve its objective by organising seminars and courses or rendering its assistance to these activities. Lawyers who spend an important part of their time on insolvency matters (as a trustee/administrator) may obtain candidacy for membership and can become a full member when the specialisation course called 'Grotius' has been completed successfully and all other preconditions have been satisfied. On the basis of this, it is assumed that the members of this federation have experience and knowledge in the field of (informal) reorganisations of companies in financial difficulties.

12 See also www.insolad.nl.

4.4.2 General details of the respondents

A survey form was sent to all 429 members. A total of 89 forms were completed and returned (21%). It appears that the survey was mainly completed by highly experienced members. Over 84% of the respondents indicate to have more than ten years' experience as a trustee/administrator.

4.4.3 Survey results

In the event of financial difficulties the respondents are generally hired by management and their advisors (2.2). It is stated that informal reorganisations are often started too late, limiting any chances of success (see additional comments). In addition, it is indicated that workout agreements are often insufficiently examined (3.21). The importance of informal reorganisations is underlined by nearly 85% of the respondents as they indicate that it leads to increased proceeds for creditors (compared to formal procedures).

As it is assumed that lawyers within informal reorganisations are mainly involved with attempts to reach workout agreements, they were asked which financial measures are taken most often in the practice of informal reorganisations. They are (listed in order of decreasing frequency): reduction of nominal debt(s) with suppliers and other creditors, seeking new funding as well as postponing debt repayment terms (2.8 and 2.9). Nearly half of the respondents indicate that moratorium must on occasion be requested in order to reach an agreement in respect of reluctant creditors and the proposed solution (2.5). However, mediators enjoy little confidence with regard to solving such conflicts (3.2). Still, over 83% indicates that the role of Insolad-lawyers in informal reorganisations should be more extensive, which at the same time seems to be referring to resolving conflicts (3.12).

According to the respondents, bottlenecks within informal reorganisations are: the withdrawal of credit by banks, overly high costs for staff redundancies and the negative attitude of the ordinary creditors and tax authorities/Industrial Insurance Board (§ 2.5.2). High costs for staff redundancies seem to be regarded as the main bottleneck (2.4, 2.7, 2.14, 3.3 and additional comments). No dominant positive or negative perception seems to be present with regard to the role of the banks (3.4 and 3.9). Over 83% of the respondents indicate that the chances of survival are better when the parties involved have more confidence in each other. This indicates that lack of confidence between and among the interested parties is again an important bottleneck (3.23).

Since the respondents are often involved with formal procedures, they were asked whether courts of law require less time to come to a decision with regard to restart possibilities in case of moratorium or liquidation (following an informal reorganisation attempt). It appeared that the opinion was neither predominantly positive nor mainly negative (3.10). It seems that in general

the amount of time needed is not noticeably less. This can perhaps be explained by the fact that often insufficient information is provided by the company when moratorium is applied for (3.7). A large majority (71%) even confirms that a reorganisation plan is hardly ever submitted when moratorium is applied for (3.8). From this it can be concluded that attempts to reach workout agreements do not often involve a (n) (extensive) reorganisation plan. It is therefore difficult for the parties involved to form an opinion about the company's viability. However, over 70% of the respondents confirm that the viability in general can be more easily assessed in a formal procedure after an informal reorganisation attempt has been made (3.6).

Finally, the respondents indicate (88%) that they regard the transfer of assets following liquidation as an efficient manner of reorganising (3.1). This indicates an important advantage of liquidation over moratorium and informal reorganisation, that is to say company debts can be quickly rescheduled at a low cost whilst preventing (possible) 'skeletons in the cupboard' (3.1). For that matter, 67% of the respondents indicate that moratorium is – in principle – a suitable means to reorganise (3.16).

4.4.4 Insolad – conclusion

According to the respondents, reorganising a company in financial difficulties is often started too late. It furthermore appears that the possibilities for a workout agreement are not always sufficiently examined and that, more often than not, no reorganisation plan is included in the process. This could be the reason why creditors are not always inclined to cooperate with a workout agreement as a result of which a moratorium or liquidation must be applied/filed for. However, it has been detected that a restart in a formal procedure can be realised quicker when an attempt to reach a workout agreement has been made first.

According to the respondents, high costs for staff redundancies represent the main bottleneck in informal reorganisations. This perhaps also explains the reason why many moratoriums fail; when an informal reorganisation fails, a restart following liquidation just seems the better option as this enables the start of a 'clean slate' in a new legal entity.

4.5 Dutch Federation of Independent Accounting Firms – Survey

The Dutch Federation of Independent Accounting Firms (SRA) is a network of independent accounting offices geared mainly towards SMEs.[13]

13 See also www.sra.nl.

4.5.1 Introduction

The SRA-network includes over 360 businesses representing 576 offices. Since the offices focus on SMEs, it is assumed that knowledge of companies in financial difficulties and informal reorganisations is present. Also because in addition to their auditing task, accountants in Dutch SMEs often have an advisory and/or sounding board function.

4.5.2 General details of the respondents

A survey form was sent to the SRA contact persons at the various offices. A total of 92 forms were completed and returned (16%).[14] Nearly 72% of the respondents indicate to be chartered accountants.

4.5.3 Survey results

According to the respondents, the five most common causes of financial difficulties are (listed in order of decreasing frequency): weak (poor) management, overly-high level of costs, insufficient working capital management, poor administration/insufficient control of the company on the basis of management information, as well as doubtful accounts (2.3). More than 90% of the respondents state that 'destruction of value' can be prevented when entrepreneurs signal financial problems sooner (3.10, 3.31 and additional comments). The initiative to take measures is generally taken by the company management itself (77%; 2.12). Banks seem to be taking action mainly in the following cases (listed in order of decreasing frequency): consistent losses, lack of confidence in management and exceeding the agreed credit limit (2.4). Nearly 69% of the respondents indicate that the decision of banks in this respect is generally justified (2.5).

Over 81% of the respondents indicate that the effects of informal procedures are less destructive with regard to value compared to formal procedures (3.22). Over 71% even indicates that viable companies must be reorganised outside the framework of moratorium and liquidation at all times (3.29). This underlines the importance it represents to practice. However, over 50% states that

14 Based on the low response it remains to be seen to what extent the replies can be deemed representative. To this end, a comparison has been made between the answers to the (equal) statements from both the OKB consultants and those of the SRA respondents (after all, the activities in the field of *consultancy* are suitable for comparison). From the comparison it appeared that the replies from both survey populations do not differ significantly. On the basis of this it can be assumed that generalised conclusions can be made on the basis of the SRA response.

the possibilities for a workout agreement are in general insufficiently examined (3.7).

With regard to restructuring business operations the following measures are taken most often: cutting back on overhead costs, closing loss-making business units and dismissing personnel (2.11). The three financial measures stated most are (listed in order of decreasing frequency): deferring debt repayment terms, reducing nominal debt(s) with (ordinary) creditors and making available new financing (2.14).

The main bottlenecks during informal reorganisations are (listed in order of decreasing frequency): withdrawal of credit facilities by the banks, refusal of continued delivery by suppliers, overly-high costs for staff redundancies and customers losing confidence in the company. Over 81% of the respondents indicate explicitly that employees' employment protection disturbs rescue attempts. In addition, the attitude of the tax authorities/Industrial Insurance Board is often regarded as inflexible. This in particular concerns the slow decision-making process as well as the double percentage that, in accordance with the standard policy of the Dutch tax authorities,[15] is demanded in the event of (part) remission of debts (2.6, 2.9, 2.20, 3.4 and additional comments).

A large majority of the respondents states that the provision of information by companies in financial difficulties towards non-banking creditors is generally insufficient (3.17). Yet these creditors often appear to be prepared to enter into agreements as far as workouts are concerned. These agreements usually are: (temporary) deferment of payment commitments and reducing the nominal debt. Here, the percentage of debt reduction depends on the specific situation (2.15 and 2.17). Over 40% of the respondents state that moratorium is sometimes used as part of an informal reorganisation. The reason is (61%) to seek protection against the creditors (2.7). Furthermore, over 79% indicates that it takes only a number of creditors to disturb a restructuring operation (3.18 and additional comments). Therefore, the prevailing opinion is that improved cooperation between the creditors and the company increases the chances of success (3.2 and 3.23)

It appears that accountants are not regularly involved in situations of moratorium or liquidation in order to test the company's viability/restart plan (3.5 and 3.6). This is remarkable, as accountants have (commercial) knowledge par excellence in order to test the feasibility of such plans.

According to the accountants, too, the role of the banks during restructuring processes is controversial. Only a small percentage of the respondents (13%) indicate agreement with the statement that banks are useful in preventing moratoriums and liquidations (3.13 and additional comments). As such, a minority (12%) agrees with the statement that banks must be informed by accountants at an early stage to subsequently become involved in resolving the (imminent) problems (3.9). An important reason for this can perhaps be

15 See 'Collection Directive 1990', as well as Vos 2003, p. 394-395.

found in the fact that the decision-making process with regard to withdrawing the credit is regarded as non-transparent by over 67% (3.1). Accountants and management do not know when and under which circumstance the banks will withdraw credit, this is also apparent from the fact that credit withdrawal by banks is considered an important bottleneck.

4.5.4 SRA – conclusion

Accountants indicate that important bottlenecks with regard to informal reorganisations lie within the employees' employment protection and the attitude of the tax authorities and the Industrial Insurance Board (which is indicated as being not very cooperative). In addition, the role of the banks appears to be controversial. An important reason for this can be found in the fact that the decision-making process with regard to withdrawing credit is regarded as non-transparent. This creates the impression that informal reorganisations fail because the bank withdraws credit at a certain moment. However, the question is whether this is always the true reason for an informal reorganisation to fail.

Although the provision of information towards (non-banking) creditors is regarded as insufficient, it appears to be possible to enter into agreements in practise; here too the preference seems to be postponing rather than cancelling repayments.

4.6 INTERVIEWS

4.6.1 Introduction

This paragraph reports on the interviews. Overview 3 details the categorisation of the interviewees (see also § 1.4).

Overview 3: Categorisation of those interviewed

Interviewees	*Number*
Bank employees	8
Advisors	12
Other interested parties	3
Total	*23*

Partly on the request of a number of the interviewees it has been decided to keep the findings anonymous. Therefore, neither quotes nor direct reference to persons and institutions will be made. So-called standardized, open-ended

interviews were held using (a selection of[16]) the afore-mentioned 21 research questions (see § 1.3-1.4 and appendix 2).

4.6.2 Results of the interviews

The subparagraphs below will detail the findings from the interviews on the basis of the following subjects: causes of financial difficulties, informal reorganisations in general, the role of the banks, the role of non-banking creditors, the role of advisors, the role of management and the role of investors.

Causes of financial difficulties

Interviewees are of the general opinion that the main causes of financial difficulties can be traced back to management. Particularly the lack of insight into financial information and insufficient control of the company on the basis of financial details are mentioned in this respect. It has been frequently indicated that reorganisations – partly also as a result of lack understanding of the figures – are usually started too late. Accountants are expected to alert the entrepreneur to any (imminent) problems at an early stage. Some advisors balance the negative role of management somewhat by indicating that financial difficulties are simply inherent to entrepreneurial risks. Without taking risks, neither economic nor social progress will be made. Financial difficulties, therefore, are a logical product of the process of daring to take risks. It is of course important to subsequently solve the problems as soon as possible.

Informal reorganisation in general

Advisors and bank employees indicate that in first instance the aim will be to restructure the company, rendering additional liquidity and/or an 'offer' by creditors superfluous. The focal point, therefore, will be generating cash. The sooner action is taken, the higher the chances of success. Informal reorganisations must be carried out in relative peace in that respect (stabilisation). Hence the interested parties must be brought into line as much as possible. These interested parties are to be timely and fully informed and must be able to rely on the information (managing of expectations). A significant bottleneck could be that forecasts and agreements do not materialise or are not kept by management.

Frequent comments made by interviewees concerned the Dutch legislation on dismissals. It is stated that many informal reorganisations fail as dismissing personnel at a low cost is impossible. Any (possible future) legislative relaxation on dismissal in the light of moratorium must therefore also apply

16 Depending on experience and specific expertise of the interviewees.

to the informal pre-process. However, some advisors and bank employees indicate that abuse must be guarded against. Passing on the costs solely to the employees is – according to them – too severe a solution. However, after careful consideration the possibility to do so must be present in emergencies. When this possibility is not available, reorganisation processes will continue to end in moratorium and liquidation in particular.

With regard to organising an informal reorganisation, it is indicated that the success is mainly based on its flexibility. Since no rules are in place, possibilities may be created which are not available during moratorium. However, on multiple occasions it has been stated that for certain decisions an independent body (for instance a special department in the so-called Enterprise Division of the Amsterdam Court of Appeal[17] or a 'Committee of Experts') should be in place which can take certain (out-of-court) decisions, for example with regard to the previously mentioned dismissal problems, the enforcement of a so-called 'standstill period' and carrying through a workout agreement.

Interviewees indicate a preference for informal reorganisations over formal procedures. However, it is also indicated that the advantages of informal reorganisations must outweigh those of formal procedures. The fact that these take place outside the public domain is an advantage, however, this must counterbalance the advantages of moratorium and liquidation in which it is possible to, for example, dissolve lease contracts and (to a lesser extent in the event of moratorium) to dismiss personnel. Furthermore, tax legislation should not constitute an obstacle for informal reorganisations. Particularly the tax authorities' so-called right to claim compound bounded assets is considered a bottleneck by especially the banks. In addition, one of the advisors interviewed has indicated that offering an agreement within the Private person Fresh start Proceedings (PFP) often fails as the entrepreneur is practically always obliged to cease the operational activities. Continuing the business within the PFP could lead to higher proceeds for the creditors.

According to a number of interviewees, a code of conduct could contribute to the success of informal reorganisations. After all, a code of conduct expresses the fact that the parties have the intention of finding a solution together. However, in order to be successful all relevant creditors must be prepared to subject themselves to such a code of conduct. Perhaps a practical and/or governmental incentive is necessary in this respect. One interviewee indicated that this would make little difference as this idea is already applied in practice.

Role of the banks

Bank employees who were interviewed indicated that they do not profit from liquidation and therefore never pursue it as such. Continuity is always para-

17 A special court of law in the Netherlands for certain entrepreneurial issues in the judicial domain.

mount and an informal reorganisation will – in principle – always be initiated. It is stated that 60% – 80% of companies in (imminent) financial difficulties are successfully guided within the various Intensive Care Departments.

Banks claim and fulfil an important 'incentive' role. Since banking credit is an important funding source for companies, there will be regular contact with the bank with regard to the state of affairs within the company. Banks consider it their task to monitor this and, where necessary, to signal that the situation is deteriorating. Depending on the situation, a plan of attack will be formulated in consultation with the company and the bank. In the event that certain conditions in the credit agreement have already been violated, the bank's negotiating power will increase; however, banks will not take the place of management. According to the banks' respondents, the possibility to dissolve the credit agreement serves as an important means of coercion which is to be applied with care. Banks must be able to exert a healthy amount of pressure on management to ensure a timely reorganisation. A (possible) legal obligation to continue finance will conflict with this means of coercion and will lead to a more stringent credit policy. The reproach that banks have a privileged position compared to other creditors – as they have the opportunity to have a look 'behind the scenes' of the company – is negated by a number of interviewed bank employees with the statement that each and everyone can inform himself of the financial situation of the company by enquiring and conducting research.

It is often emphatically stated that the bank as a credit institution is geared towards providing risk-avoiding capital. As a result, in the event of increased risks with regard to a company (read: in the event of a deteriorated financial situation) the required liquidity need must in first instance be provided by either the company itself (by means of internal funding[18]) or its shareholders (owners). Also, this way the balance sheet ratios will not deteriorate (any further). After all, the basic principle of banking credit is that only interest shall be received on the loans granted, as well as repayment of the principal sum; that is the risk-avoiding factor.[19] Providers of risk-bearing capital receive fluctuating repayments, but are at the same time entitled to appreciation of the company ('upside potential'). As a result, risks (depreciation of value) must be carried by them also. Therefore, interviewees state that the company cannot shift its risks to the providers of loan capital. However, higher risks are frequently taken on in the interest of reorganising companies despite the fact that banks provide risk-avoiding capital. This often leads to losses when the companies nevertheless go into liquidation. Bridging loans (very high-risk at

18 This means that the company by means of measures in the field of *efficiency* (see chapters 2 and 3) must create the required cash funds.

19 One of the interviewed bank employees typified the banks' activities in this framework as 'leasing money'.

that actual moment) – when made available – must therefore at all times be given priority when repayments are taking place.

It has been regularly stated that banks in general are satisfied with the current Dutch Bankruptcy Act. A recurring reaction among bank employees is that the company can in fact no longer be saved when an informal reorganisation fails and moratorium is requested. The informal reorganisation has in many cases taken a long time, cash resources are not available, the interested parties have lost confidence and there is no longer any prospect for the introduction of additional (risk-bearing) liquidity. The parties have tried everything, but have run out of possibilities. Subsequently, it would be an illusion to think that during moratorium things will turn round. According to the respondents, this is especially the case within companies where the personnel issue forms an obstacle.

The aspect of trust appears to be important in the company/bank relationship.[20] Banks indicate that when there is open communication and transparency with regard to the situation, that there are then ample opportunities available. A situation of damaged confidence and unfulfilled agreements is fatal, and could lead to credit being withdrawn quicker. However, a number of advisors – in a more general sense- indicated that it is not always clear why a bank at a certain moment refuses to provide any (additional) funding. According to them, the bank's considerations in this respect must therefore be clearer to the company. This latter remark is in line with the survey results.

Role of the non-banking creditors

The reluctant attitude of ordinary creditors can obstruct a workout agreement. The reason why creditors are reluctant is – according to a number of advisors and a single interested party – often due to the lack of information provided to the creditors, and to poor communication in general between the company and the creditors. Creditors do not want to have an agreement imposed, but do want to be able to think along with the company and to be able to negotiate on the subject.

It appears that so-called 'out-of-court compulsory agreements' are, in practice, used on a regular basis. The basic principle here is that when a qualified majority of the ordinary creditors agrees, the reluctant creditors are told that in a legal procedure (moratorium/Private person Fresh start Proceedings) the court would impose the agreement on all creditors.[21] In addition, it is stated that the proceeds will often be considerably lower as a result of the costs of legal proceedings. The aim is to insure, in this manner, that the

20 For confirmation of this fact in the Netherlands see for instance Ecorys-Nei, p. 63 and Van Amsterdam 2004, p. 273. In order to have this evidenced with regard to the United Kingdom, see Armour 2004, p. 4.
21 On the basis of (Dutch) case law; as described by Wessels. See § 2.5.2.

reluctant parties will eventually concur with the agreement and that all the parties will form one cohesive front. However, creditors sometimes continue to refuse for reasons of principle. This can often be traced back to a lack of information and communication on behalf of the company, and to past experiences of the creditor with other debtors in difficulties. In addition, another interested party indicated that ordinary creditors, like banks, provide risk-avoiding capital. Imposing an agreement with remission of debt owed to the ordinary creditors does in fact mean that the providers of risk-avoiding capital will be 'footing the bill'. However, the providers of risk-bearing capital profit from this situation in the end, as the balance is rescheduled and they can then take advantage of the (future) increase of value for the company. The interested party considers this unjust.

Role of the advisors

A number of bank employees and advisors indicate that with regard to the role of advisors and interim managers it is they who in particular must show confidence. Advisors must in 'their directional role' take into account the interests of all parties involved. Another important role of the advisor is – in addition to seeking commercial solutions – resolving (potential) conflicts. A number of interviewed advisors stated that mediators could take on the role of the conflict-resolving party par excellence. Also, a number of remarks were made with regard to the quality level of advisors. It appears that, as in all sectors, there are good advisors and bad advisors. According to a number of interviewees a professional association which would operate under a code of conduct and which would provide courses/training could make a contribution as regards the quality level, and help separate the wheat from the chaff.

Practice shows that trade unions are often not timely involved in informal reorganisations. Although it is indicated that too much interference in an informal reorganisation will perhaps not be to the advantage of employees (*checks and balances* between trade unions and companies threaten to be disturbed), the trade unions do realise to a sufficient extent that when a reorganisation is required, this often must be at the expense of the employees. However, the starting point is – in principle – compensation in accordance with the so-called sub-district court-formula. Practice shows however that all too often this can not (or no longer) be met.

Role of management

Interviewees indicate that management is expected to be fully and sincerely committed in order to make the informal reorganisation a success. Timely action and full transparent provision of information is crucial in that process. Banks are particularly sensitive in this respect. Breach of trust between the

company and interested parties is – as stated previously – an important cause for the failure of informal reorganisations.

Role of the investors

In general, investors are sought within informal reorganisations to introduce risk-bearing capital. The interviewees – particularly a number of advisors and bank employees – found that these investors often pull out at a certain moment; when no other investors can be found in the short term, liquidation becomes necessary as a result. Following liquidation, it is often exactly these investors who (are prepared to) take over the (restructured) company activities in the form of a transfer of assets. An explanation for investors pulling out is mainly sought in the fear of finding 'skeletons in the cupboard' (still unknown commitments and/or bigger problems not yet known at the time) and the wish to simply avoid higher reorganisation costs (including personnel redundancy costs). This 'bonus' of a transfer of assets is then equal to the advantages of an informal reorganisation. A number of bank employees explicitly indicated that when business and jobs can be retained both from a social and economic point of view, the (informal) reorganisation can ultimately not be labelled as a complete failure.

4.6.3 Interviews – conclusion

In general, interviewees are of the opinion that the process of informal reorganisations can harbour great advantages. In particular, the fact that this concerns a flexible process taking place in relative silence, can contribute to a successful reorganisation. However, disadvantages are that certain decisions/actions cannot be enforced. Creditors can neither be forced to cooperate with a workout agreement nor can they be forced into a voluntary standstill agreement. Additional issues here are the problems regarding the legislation on dismissal.

In order for informal reorganisations to be successful, action must be taken in time and subsequently, the relevant (large) creditors must be brought into line. Company management in this respect must communicate in complete openness and show that appropriate measures have been (or will be) taken. Restoring confidence here appears to be a crucial factor for success. The deployment of advisors/mediators can instil confidence in the process on the condition that their quality level is sufficient and that in practice they truly take into account the interests of all parties. It also appears that the focal point must be on rescheduling the company's balance sheet by means of introducing risk-bearing capital.

In addition, a code of conduct – provided it has been formulated in detail – in combination with a specialised and independent body (with objectives

relating to overcoming deadlocks and taking decisions regarding staff redundancies and the positions of creditors) can contribute to the success of informal reorganisations.

4.7 Conclusion

The previous paragraphs describe the separate results of the surveys and interviews. Below the conclusions on the basis of the overall results are presented.

The interviews and the surveys with OKB, Insolad and SRA show that the main causes of financial difficulties can be – according to the respondents – traced back to poor management. In particular, a lack of financial information followed by insufficient guidance and control of the company on the basis of management information has been noted. Reorganisations are (partly as a result thereof) started too late. In addition, it has been often indicated that reorganisation measures are not drastic enough and that the possibilities for a workout agreement are not always sufficiently examined.

A preference for informal reorganisations instead of formal ones appears to be present among all the respondent groups. This preference can be traced back to the fact that the process is bound to few rules, that it takes place in relative silence and that the interested parties themselves can determine the outcome. As shown in the OKB and SRA surveys, most measures taken during the process of informal reorganisation – within the framework of restructuring business operations – are aimed at reducing the costs (personnel and other overhead costs), and terminating loss-making activities, as well as improving the management information system. The most frequent (attempts to take) financial measures as stated in the Insolad, SRA and OKB surveys concern the deferment of repayments, and the reduction of nominal debts with suppliers and other creditors, as well new financing being made available. During the interviews, in particular, it was evident that restoring confidence is vital during the process of informal reorganisation. The interested parties must be brought into line; an important condition in this respect is that they are timely and fully informed. In addition, forecasts and agreements must materialise and be honoured respectively. Advisors generally contribute to the intended restoration of confidence. The reactions in the interviews and surveys show that the deployment of mediators in informal reorganisations is not common practice as yet; however, many respondents do – in principle – react positively to their possible deployment. Insolvency lawyers on the other hand show little confidence in mediation (as yet).

The surveys and interviews indicate the presence of a tense relation between companies in financial difficulties and the non-banking creditors. Informal reorganisations appear to fail on a regular basis as these creditors are not prepared to cooperate with a workout agreement. The reason for their

reluctant behaviour can be traced back to the fact that they are often insufficiently informed about the (financial) situation, and to the fact that many companies particularly focus on cancelling rather than deferring repayments. In addition, the OKB, Insolad and SRA surveys show that the tax authorities and the Industrial Insurance Board are often inflexible and thus hamper workout agreements. Banks indicate that the tax authorities' so-called right to claim compound bounded assets is regarded as a bottleneck (see also § 2.4.3).

The role of the banks is controversial. Although interviews with bank employees often indicate that banks are geared towards continuity and thus to rendering assistance to a company in financial difficulties, the surveys (advisors, credit managers, accountants) show that the positive role of the banks is doubted. Not only is this expressed by the fact that 'withdrawal of credit' is often indicated as the main cause for the failure of informal reorganisations, it has also been indicated that the useful role of banks within these processes is generally doubted; a hidden indication that the stated respondents expect a different role from the banks. Reference is made here to a role as providers of more risk-bearing funding, that is to say to allow themselves to run any (additional) risks in situations of financial difficulties. In addition, it is not always clear when and why a bank decides to withdraw the credit facilities.

Other important bottlenecks can be found in the field of employment protection and raising risk-bearing capital among investors. The OKB, Insolad and SRA surveys show that informal reorganisations often fail because it is not possible to dismiss personnel at a low cost. This is followed by the fact that potential investors often prefer a transfer of assets after liquidation, as this enables the entity to start 'with a clean slate'. In this way, an expensive reorganisation (including the dismissal of personnel) as well as surprise commitments ('skeletons in the cupboard') can be prevented.

5 Informal reorganisation in the future: towards an Institutionalised Informal Approach

5.1 Introduction

The previous chapters discussed the practice of informal reorganisation in the Netherlands. They highlighted a number of bottlenecks which can often be traced back to the interrelations of interested parties at the company in financial difficulties. Below, some essential observations from the case studies, surveys and interviews are shown again:

- creditors often have a reluctant attitude towards informal reorganisations in general and agreements in particular;
- the relations between banks and 'other creditors', as well as between 'other creditors' in relation to each other, often tend to be strained;[1]
- the relation between banks and the management of companies can often be qualified as strained;
- the provision of information from companies to the relevant interested parties is often inadequate;
- it is often difficult to find the required additional funding (equity or debt) during the informal reorganisation.

It was found that restructuring operations are jeopardised by said factors. Furthermore, important reasons for the failure of the informal reorganisations that were studied can be traced back to this. The question is, therefore, if it is at all possible to eliminate these complications. In order to be able to answer this question, this chapter first discusses the so-called prisoner's dilemma during financial difficulties (§ 5.2). This will present, in any case, a major incentive for the interested parties to work on an informal reorganisation together.

On the basis of literature, chapter 2 concludes that the introduction of a code of conduct (voluntary rescue framework) can contribute to the success of informal reorganisations. After all, this way the parties involved will know what can be reasonably expected from each other at the start of a rescue

1 See also Blomkwist, p. 345 and Van den Heuvel, p. 173-176 for some interesting differences of opinion about the (required) procedure of banks with respect to companies in financial difficulties in general, and the role of confidence in the company's management in the case of credit loans in particular.

operation. § 2.6 shows a number of general principles for voluntary rescue frameworks and the Statement of Principles of INSOL International – consisting of eight principles – is introduced. In § 5.3 these principles – also on the ground of the findings made in chapters 3 and 4 – will be worked out in detail.

The study in question also demonstrated that the relation between bank(s) and company is important. Indeed, this relation is often contributory to the success or failure of an informal reorganisation. In order to remove the (possibly) tense atmosphere in the case of (imminent) financial difficulties, agreements as to how to act in the event of possible future problems could be made as early as at the start of the credit agreement. This way, 'tensions' can be removed or limited in advance and both parties will better know where they stand. To this end, a proposal for a code of conduct between banks and (small and medium-sized) companies is formulated in § 5.4 on the basis of the findings of the study and international developments in this respect.

Although the introduction of the afore-mentioned codes of conduct should give rise to the expectation that the chance of success will increase during an informal reorganisation, it sometimes also seems advisable to involve independent mediators in the process of resolving disputes between the company and its creditors, as well as among the creditors themselves. Their task could be to facilitate and support the process of informal reorganisation in order to break through (any) deadlocks and to prevent (further) escalation to the point where a governmental judge could impose a solution (read: where one would have to enter into legal procedures). § 5.5 further discusses this so-called phenomenon of alternative resolution of disputes and the definition is placed within the framework of informal reorganisation.

5.2 Individual or joint action: the prisoner's dilemma of interested parties

Chapter 2 has shown that an informal reorganisation is less expensive than a formal reorganisation[2] and this is mainly caused by the relative silence which surrounds this process and the control which parties can have over it. A major drawback however, is that voluntary cooperation from the creditors is required. When relevant (often large) creditors are not prepared to cooperate in a financial restructuring, chances are no agreement will be reached, ultimately resulting in having to follow the road of a formal procedure.

The refusal of creditors to cooperate in such cases can often be traced back to lack of information and the corresponding insecurity about whether the debtor is still viable (*information-asymmetry*) and if the individual rights of the

2 As a result of lower direct and so-called opportunity costs.

creditors are properly observed (*coordination-problem*).[3] A result of this refusal (also called: holdout[4]) is that a so-called race to collect[5] may be created among creditors, whereby their own interest is all that prevails (they try to obtain as large a part of the 'cake' as possible, at the expense of the other). Mortgage and pledge holders for instance will try to secure the underlying assets and a preferential creditor (in the Netherlands this would be the tax authorities for instance) will probably try to have the debts paid by attaching the property found on the premises.[6] Suppliers of as yet unpaid goods will, if possible, invoke retention of ownership and reclaim the goods supplied. In such cases, certain creditors will also petition for liquidation or threaten to do so.

However, the above actions often do not result in reaching the objective (full payment of the debt). After all, the individual actions will make the going concern value of the company rapidly decrease (even further), as a result of which the individual profit will only fall (in potential). This is also called the common pool[7] problem of creditors: although each creditor has and, depending on the acquired right, can exercise its individual rights, paradoxically it will be better off when controlled action is taken in cooperation with the other creditors. Creditors are in fact condemned to each other and they are thus confronted with the classic prisoner's dilemma[8] when they try to achieve the highest possible result.

The above observations hold the core of the problems concerning the alternative resolution of disputes and codes of conduct: drastic destruction

3 Sometimes creditors refuse to cooperate in order to put the company under pressure so that they will pay them in full, at the expense of those creditors who *are* prepared to cooperate. This phenomenon is also called *free-rider behaviour*. See for instance Boot and Ligterink, p. 18, White, p. 467 ff., Roe, p. 351 ff. as well as Gorton and Kahn, p. 332. Couwenberg (2003, p. 9) says – translated freely – that coordination problems and information dissymmetry cannot be avoided in situations of renegotiating incomplete contracts. Only when all contracts are reviewed simultaneously and only when there is a full and reliable flow of information towards all parties, can favouritism (or the perception thereof) be avoided. For more information about incomplete contracts, see also Hart and Moore, p. 115-138 and Jensen and Meckling, p. 305-360.

4 See Gilson *et al.* p. 315 ff. and Chen, p. 2.

5 See Bhandari and Weiss, p. 25 ff. and Armour 2001, p. 113 ff.

6 See Ecorys-Nei, p. 71 which concludes – in respect of the Dutch situation – that silent restructuring (turnaround) operations with regard to which the tax authorities are not informed in the first instance, have a de-escalating effect and prevent the 'race'.

7 See Chatterji and Hedges, p. 14-15 and Gilson *et al.*, p. 315 ff.

8 See Armour 2001, p. 99 ff. and Jackson, p. 39 ff. In the classic example of the prisoner's dilemma, two suspects of a crime – which by the way they *did* commit together – are each offered a deal separately. It reads: If both confess, they will each receive a four-year prison sentence, if they both deny they will each receive a two-year prison sentence. However, if one confesses and the other denies, the one who confesses will go unpunished while the other will be sentenced to prison for five years. Individual acts (confessing while hoping the other one denies) can therefore lead to acquittal (i.e. the highest result), but it can also lead to the highest punishment (i.e. the worst result). Denial by both (i.e. cooperation of creditors) seems to be the safest tactic.

of capital can be prevented to an extent by cooperating instead of acting on an individual basis (read: fighting each other). An attitude of *enlightened self-interest*[9] by creditors, but certainly debtors too will be better for all parties. Management, the banks, the tax authorities and the Industrial Insurance Board, as well as other creditors will have to be aware of this. In such cases they will therefore have to exchange any competitive attitude they may have for a more problem-solving attitude, so that the parties involved – including themselves – fare better as a result.[10]

As a result of the simultaneous introduction of the two codes of conduct to be discussed later and the institutionalisation of mediation during restructuring operations, chances can be created for (certain) countries – including the Netherlands – in order to improve their existing practice of restructuring operations of companies in financial difficulties; with this *institutionalised informal approach*, taking into consideration the above findings, considerable value can be created.

5.3 INSOL Statement of Principles

This paragraph further explains the INSOL Statement of Principles (hereafter also called: the Statement). As stated before, this code of conduct seems perfectly suitable for a more informal approach in the practice of companies in financial difficulties. Provided it is widely supported by the banking industry, government and the business sector, it will have a stabilising effect on rescue operations in the relevant country. After all, interested parties will know where they stand and the chance of a disastrous race to collect will thus be prevented. In addition, it offers relatively risk-avoiding opportunities for additional debt financing, so that any required cash flow will become available as a result.

In the Netherlands, its introduction would contribute considerably to the removal of the afore-mentioned bottlenecks and the failure factors of informal reorganisations.

5.3.1 The eight principles

The eight (possible) principles are given consecutively, as are short interpretations of the underlying principles.[11]

9 See The Ostrich's Guide 2002, p. 1 ff.
10 See Brown and Marriott, p. 104 ff. for a more detailed explanation of theories about negotiation methods in relation to the alternative resolution of disputes.
11 For a more detailed description of the underlying principles, see the (INSOL) Statement of Principles, p. 4 ff.

Principle 1: Cooperation

Where a debtor is found to be in financial difficulties, all relevant creditors should be prepared to cooperate with each other to give sufficient time ("stand still period") to the debtor for information about the debtor to be obtained and evaluated and for proposals for resolving the debtor's financial difficulties to be formulated and assessed, unless such a course is inappropriate in a particular case.

Cooperation

The objective of the first principle is to make clear that all relevant creditors must be involved in the process of reorganisation. As stated in chapter 2, a company in (imminent) financial difficulties must first try to solve its problems by restructuring its business operations. If this is unsuccessful, a financial restructuring must be implemented at the same time or afterwards. Strictly speaking, the Statement should be implemented in this phase. It seems wiser however – within the framework of early warning – to notify the housebank (if any and if it was not already aware of the problems) at an early stage, as well as to propose to deal in accordance with the principles of the Statement (banks in their turn could do the same). This way, the required clarity will be there from an early stage and it will be possible to work on the rescue plan in consultation, thereby automatically creating part of the required basis. In principle by the way, this process is detached from the Banks and Businesses Code to be described later. Which other creditors must be involved depends on each specific case. However, the underlying principle is that those creditors must be involved who are most vital – relevant – for continuation of the company (or put the other way round: those who are in a position to 'close down' operations). This will mainly concern major creditors such as (other) banks, the tax authorities and the Industrial Insurance Board, as well as important trade creditors.

The most important principle of the code of conduct is in fact to (further) slow down the individual acts of the creditors involved. The fact that contractual rights are not exercised will ensure that the company will be able to look for solutions in relative peace. In general it would be wise to have a standstill agreement signed by the company's management and creditors involved. This will record the 'rules' specifically agreed upon for the relevant workout. These rules may consist of for instance: (a) creditors may not exert pressure in order to have certain amounts paid, (b) no attempts should be made to improve the individual position at the expense of other creditors (by demanding additional securities for instance) and (c) existing credit lines and (other) facilities must be kept available.

The *Lease* and *Renting Out* case studies contain interesting elements which can be traced back to the principles discussed here. *Lease* for instance clearly shows – in respect of principle 1 – that not being able to come to a standstill agreement can delay the progress of a workout. The case study *Renting Out*

on the other hand shows that – despite the length of the entire workout process – a standstill agreement can positively contribute to the required peace.

Vital for the implementation of the Statement is that it can only be applied when it is sufficiently made clear, as soon as possible, that there are some perspectives for the future, as well as a basis for trust. In cases of (alleged) fraud for instance, the code is and need not be applicable. However, it needs to be taken into account that in these cases too the *going concern value* sometimes demands continuation of financing.

Finally, since voluntary cooperation is the basis (see also chapter 2), a creditor must – for specific reasons – at all times have the possibility not to cooperate. In that case, however, it may be expected that this creditor substantiates his reasons for the remaining creditors who do intend to render their cooperation. A mediator can possibly offer a solution in these types of circumstances (see also below).

Principle 2: Relative positions to be respected

During the standstill period all relevant creditors should agree to refrain from taking any steps to enforce their claims against or reduce their exposure to the debtor, but are entitled to expect that during the standstill period their position relative to other creditors and each other will not be prejudiced.

Relative positions to be respected

In exchange for temporarily not executing their rights, as already made clear in principle 1, the creditors are promised that their relative positions will not deteriorate. In practice, this promise by the company will not always be kept easily. After all, the (theoretical) valuation of the company in financial difficulties and the coherent chance of survival depend on many unknown factors (for example, the ability to raise new risk-bearing capital and/or the level of success of the business reorganisation). It may be clear that these problems apply specifically for those creditors who – whether or not via a mortgage and/or pledges – enjoy a high level of repayment guarantee for their claim in the event of liquidation. As such, the incentive to render cooperation to the informal reorganisation is not really there, apart from possible moral reasons. Since it is especially this group of creditors that often plays an important role regarding the financing of the company, it is best to keep them 'on board'. This can be done by having all creditors agree that in the event of a collapse, which hopefully will not occur, the 'privileged' creditors are

Principle 3: Debtors' integrity

During the standstill period the debtor should not take any action which might adversely affect the prospective return to relevant creditors (either collectively or individually) as compared with the position at the standstill commencement date.

somehow compensated for a possible reduction in their value of cover (see also principle 8), for example, by means of so-called loss-sharing provisions.[12]

Debtors' integrity
During the standstill, payments arising from the ordinary business activities must continue as normal. This refers to paying employees, trade creditors as well as the remaining creditors who are not (yet) involved with the informal reorganisation; this way the 'peace' is kept and the chances of continuity being under even greater threat are reduced. However, the debtor must not take any other action – other than the normal business activities – which can negatively affect the possible proceeds of the participating creditors. This for instance involves preferential treatment of certain creditors in the form of providing securities, selling assets under the nominal value and taking on new debt without consulting (further deteriorating the solvency).

Principle 4: Coordinated response

The interests of relevant creditors are best served by coordinating their response to a debtor in financial difficulty. Such coordination will be facilitated by the selection of one or more representative coordination committees and by the appointment of professional advisors to advise and assist such committees and, where appropriate, the relevant creditors participating in the process as a whole.

Coordinated response
Particularly in large informal reorganisations, involving many relevant creditors, it can be advisable to form so-called creditor committees. Examples of these could be: (committees of) banking creditors with and without secured claims, trade creditors with and without privileges (for instance with regard to retention of ownership), tax authorities/Industrial Insurance Board, bondholders as well as possible other creditors. Subsequently, each committee delegates a representative (a so-called coordinator) who on behalf of the committee conducts the negotiations and who provides feedback in this respect. The advantage is that the number of persons in the negotiations is reduced, increasing efficiency. By forming committees and appointing representatives, any conflicts/differences of opinion among and between 'equal' creditors can be settled with the company away from the negotiating table. This too can affect the informal reorganisation positively. The committees could further engage advisors – lawyers, restructuring specialists, accountants, business valuators and other experts – who together assist in the process of information

12 A loss-sharing provision can be defined as follows: the mechanism whereby, in the event of an overall shortfall being registered during a standstill, such adjustments are made between its participants as are necessary to ensure that the collective loss (or gain) is shared between the participants pro rata to their relative exposures at the start of the standstill. See Chatterji and Hedges, p. 191-197.

gathering and negotiation. In addition, mediators could be engaged to settle (possible) conflicts between and among creditors (see also below).

In principle, the costs incurred by these committees must – within the margins of reasonableness – be covered by the debtor; as such it is important that action is taken quickly and adequately and that communication within and among committees is efficient so that the costs are kept to a minimum.

Principle 5: Access to information

During the standstill period the debtor should provide, and allow relevant creditors and/or their professional advisors reasonable and timely access to all relevant information relating to its assets, liabilities, business and prospects, in order to enable proper evaluation to be made of its financial position and any proposals to be made to relevant creditors.

Access to information

An important bottleneck – as found in, for example, the *Furniture* and *Steel* case studies, as well as the interviews – is that the company provides the relevant creditors with insufficient (reliable) information. As a result it is often difficult, if not impossible, to properly balance the future expectations of the company, the suggested (strategic) plans and a possible compromise with creditors. In addition, offering and/or 'imposing' agreements without consultation is by many creditors deemed unacceptable; it even represents an important motive to display (deliberate) reluctance. Therefore, as much information as possible must be available, taking into account existing competition conditions. Principle 5 explicitly underlines this interest.

Principle 6: Reflection of law

Proposals for resolving the financial difficulties of the debtor and, so far as practical, arrangements between relevant creditors relating to any standstill should reflect applicable law and the relative positions of relevant creditors at the standstill commencement date.

Reflection of law

Informal reorganisations take place in the 'shadow of the law'. That is to say, those involved will modify their intended decisions in accordance with the statutory alternatives. Subsequently, they will determine to what extent (further) cooperation is rendered to the restructuring. In order to prepare a proper benchmark and to comply with the (statutory) rights of the creditors, the proposals by the company – with regard to the workout – must therefore be made in the context of these statutory procedures. Ideally, it will collect and present as much – objective – reference material (in respect of statutory procedures) as possible, so that creditors are (even more) convinced of the (financial) benefit of a workout agreement.

This aspect can be clearly seen in the case studies *Candy*, *Lamps* and *Training*; the advisors involved therein presented – successfully – the clear outlines of possible consequences of a failed workout.

Principle 7: Confidentiality

Information obtained for the process concerning the assets, liabilities and business of the debtor and any proposal for resolving its difficulties should be made available to all relevant creditors and should be treated as confidential.

Confidentiality

As indicated previously, an open flow of information should be coming from the company in order to best facilitate the creditors in their consideration to either or not cooperate (any further). However, in order to retain as much of the going concern value as possible, the parties must treat the information as confidential. After all, the success of informal reorganisation houses in the 'relative silence' in which that process takes place. When the information enters the public domain there is the danger of an uncontrolled race to collect, with possible disastrous consequences. Principle 7 clearly re-emphasises the importance of confidentiality.

Because of the high importance of confidentiality it would be sensible to record this in a 'declaration of confidentiality' which (possibly) is part of the standstill agreement. The excerpt below serves as an example and was taken from the so-called 'Debtor-Creditor Agreement on Debt Restructuring Process'; a voluntary rescue framework – showing great similarity to the Statement – used by businesses and banks in Thailand.

> '(…) Each recipient shall protect in strict confidence and shall refrain from disclosing any non-public information ("Confidential Information") provided by the Debtor or any other party and not use any Confidential Information except in the debt restructuring process (…) Notwithstanding the foregoing, no recipient shall have any obligation to preserve the confidentiality or restrict the use of any information which (i) was previously known (…) or is disclosed to third parties by the owner [debtor] thereof without restriction, or is or becomes available to any member of the public (…) or was or is independently developed by the recipient, or is by agreement of the owner released for disclosure by a third party (…)'[13]

This way it is endeavoured to facilitate the necessary transparency (from the company) as much as possible.

---

13 See Debtor – Creditor Agreement on Debt Restructuring Process, section 5, www.insolvencyasia.com.

Principle 8: Priority for bridging loan

If additional funding is provided during the standstill period or under any rescue or restructuring proposals, the repayment of such additional funding should, so far as practical, be accorded priority status as compared to other indebtedness or claims of relevant creditors.

Priority for bridging loan

An informal organisation often requires additional funding ('new money'). When it is not possible or desirable to introduce risk-bearing capital, loan capital will often be sought within the existing group of creditors. Although in essence risk-avoiding, in practice this new money represents a very high risk profile; after all, it is made available in the light of an imminent discontinuity of the company. The financier will therefore often demand that repayment of this new money will be given increased priority, in the event the company nevertheless collapses. Principle 8 fulfils this need. Creditors will need to agree that – apart from existing positions and privileges – the provider of this funding will be compensated in line with a possible formal procedure, should the informal reorganisation nevertheless fail. This way the company can acquire the necessary additional 'survival cash flow'; funds that would probable not have been available otherwise.

This principle can be considered an extrajudicial version of the phenomenon Debtor-in-Possession (DIP)-financing, as is known from the (formal) reorganisation procedure Chapter 11 in the United States. The idea behind this facility is that the (financial) parties which in situations of (imminent) insolvency of a company 'risk their necks' (read: make additional funding available) must be compensated in this respect with a so-called 'super-priority claim'. By means of a – possibly subsequent – liquidation procedure this loan is in any way repaid to the providers thereof.[14]

The importance of this last principle seems to be considerable – for the Netherlands in any case. After all, the chances of failure of an informal reorganisation can often be traced back to the impossibility of finding additional financing.

5.3.2 A number of concluding comments with the eight principles

The eight principles that could be applied in the event of an informal reorganisation have been stated above. Although the principles were – in principle – formulated for large-scale reorganisations in which many creditors are involved ('Multi-Creditor Workouts'), they could also be applied to situ-

14 See US Bankruptcy code, sections 364 (c) and (d).

ations concerning only a handful of creditors (see also § 2.6). After all, the main elements concern the recovery of peace and trust – or the creation thereof – among the various interested parties in relative silence; the numbers involved do not really matter.

In theory, an informal reorganisation will be particularly successful within companies whose liquidation value is considerably lower than the going concern value;[15] this often concerns companies with relatively high intangible assets. Such situations represent a clear incentive for the relevant creditors in the form of a potential loss they will suffer in the event of a possible liquidation. More generally, the creditors who in the event of liquidation come off worst should in principle be the ones displaying the highest preparedness to participate in an informal reorganisation. Paradoxically, in practice this role is often fulfilled by banking creditors who, at least theoretically, often enjoy sufficient cover in the event of a possible liquidation.

In order to increase the number of successful reorganisations the business and banking sectors in a relevant country should – whether or not with the help of the central bank – introduce a voluntary rescue framework in line with the Statement of Principles concept of INSOL International.[16] The eight principles as previously described would suit the Netherlands perfectly.

In order to achieve this in the Netherlands, the following institutions, at least, should to the best of their abilities support, promote and instigate such Statement of Principles among its members: (this list is not exhaustive) the Dutch Federation (consultative body) of Banks (NVB), the Dutch trade organisation for employers in SMEs (MKB Nederland), the Federation of Dutch Insolvency Lawyers (Insolad), the Royal Dutch Institute of Chartered Accountants (NIVRA), the Dutch Federation of Accountants (NOvAA) and the Dutch Federation of Independent Accounting Firms (SRA), the Dutch Federation of Employers (VNO-NCW), the tax authorities and the Industrial Insurance Board (IIB), the recently established trade organisation for turnaround specialists and financiers called Turnaround Finance Group Nederland, The Dutch Chambers of Commerce as well as the Dutch trade organisation for credit management (VVCM). The benefits to be gained by them must be explained for and to them; any (possible) prejudices must be removed. With regard to the implementation,

15 See also Gilson *et al.*, p. 315 ff.

16 See for example the Framework for Corporate Debt Restructuring [in Thailand] from Thailand signed by the Board of Trade of Thailand, the Federation of Thai Industries, the Thai Bankers' Association, the Association of Finance Companies and the Foreign Banks' Association (www.insolvencyasia.com). This interesting voluntary rescue framework comprises 19 principles for that matter, which can be considered as a detailed version of the Statement of Principles by INSOL International. For example, principle 1 clearly states that a workout is not allowed to solely comprise a financial restructuring, but must also be geared towards operational and strategic restructuring ('the long-term viability of the debtor'). The Statement of Principles of INSOL International incorporates this 'message' more implicitly in principle 5 ('prospects').

they must ideally form a joint taskforce. With a view to recent projects by the Dutch Ministry of Justice concerning a broader application of possibilities for alternative dispute resolution (mediation) in addition to legal proceedings – including business disputes – this ministry seems to be the party par excellence who can stimulate and facilitate this process, whether or not in conjunction with the Ministry of Economic Affairs.[17]

And finally – regardless of the question whether a specific rescue operation will be successful by using what I shall call a *Statement of Principles for Informal Reorganisations* – when adopted, it will certainly bring the parties closer. That is to say, it urges parties to enter into a dialogue, to conduct a discussion and in any case to have the opportunity to exchange wishes, uncertainties and frustrations. This will never cause the situation to deteriorate, even if the reorganisation ends – whether or not by the actions of a single reluctant creditor – in a formal procedure. Subsequently, in this undesired procedure a court is in any case able – ruling on the basis of the norms of reasonableness and fairness – to take the course of the preceding process into consideration in its decision to possibly force compulsory participation in an agreement; provided of course that the relevant jurisdiction has the power to do so. In the Netherlands this is possible under strict conditions – as described in § 2.5.2.

5.4 Banks and Businesses Code

The conclusion made earlier in this study that the relation bank – company is not always the best possible, does not appear to be new. Since the end of 2002 – partly under the influence of Basel II[18] – a code of conduct between banks and SMEs is being discussed on a European Level, the basic principle being the improvement of this relationship. The objectives are, in particular, the stimulation of mutual understanding and the clarification of the responsibilities of both parties. Important key concepts here are trust, transparency and openness. With a view to the success and failure factors of informal reorganisations found in the case studies, as well as the tension between banks and other interested parties as found in the interviews and surveys, the implementation

17 In his letter to parliament (Letter Minister of Justice, April 2005) the Dutch Minister of Justice – in reply to this suggestion in the WODC-report (see Adriaanse *et al.* and § 1.1) – indicated not to be reluctant in this respect. However, he prefers to see the formulation and implementation thereof to be conducted by a number of the parties here stated. See also www.rechtspraak.nl.

18 In this respect, see www.dnb.nl among other things. What exactly the effect of Basel II will be on the relationship company in financial difficulties – bank, is not yet known. However, it is expected that banks will to an (even) greater extent be fixated on tackling problems with regard to high-risk loans as quickly as possible in order to keep the so-called capital requirements as low as possible. The pressure to reorganise quickly and successfully is therefore expected to increase. See, for instance, Moses, p. 23 and Benink, p. 33-40.

of such a code of conduct would appear to be useful; for the Netherlands in any case.

As a result of the action by France and Italy – and to the annoyance of the European SME Employers' Organisation, among others – the currently formulated general European code of conduct has not yet been implemented by the European Banking Federation.[19] However, since it involves a voluntary code of conduct, individual countries are entirely free to implement such a code of conduct. Therefore, below you will find a proposal for institutionalisation of a general code of conduct – which I shall name the *Banks and Businesses Code* – which could be adopted by businesses and banks in a relevant country. This code of conduct is entirely based on the Statement of Principles which – with the assistance of the UK high street banks – was implemented by the British Bankers' Association [hereafter called: the BBA-Statement] on 1 July 1997.[20] The BBA-Statement could be considered a forerunner of the European code of conduct still to be implemented. Therefore, table 29 shows the principles of the BBA-Statement.

Table 29: BBA-Statement

1	Getting things right at the outset	· We [the bank] will confirm the terms of any facility in writing · We will recommend that you [management] seek independent advice before accepting the facility · We will co-operate with your advisers to explain the nature of any facility and to clarify anything during the relationship · Before you accept the facility we will agree with you what sort of monitoring information we require and how frequently you should supply it
2	Sharing concerns if problems occur	· You should discuss any concerns you have about your business with us as soon as possible. If we have concerns about your business and/or our relationship with you we will let you know in writing · To help us work together to solve the underlying problems, we may ask for additional financial information · We may suggest an independent review of your business

19 See Annual report of the Dutch Federation (consultative body) of Banks (NVB), 2003, p. 47, Code of Conduct between credit institutions and SMEs, Commission Staff Working paper, Council of the European Union, 2004, p. 3-10 and UEAPME 2003.

20 The BBA-Statement was revised early 2001 and has been operational as from 1 June 2001. For more information see www.bba.org.uk.

3 Agreeing the way forward	· Where a review of your business is undertaken, we will discuss with you (and your advisers) the information provided before reaching any conclusions or taking any action · We will support a rescue proposition, if we believe it will succeed · If you make the changes needed early enough to preserve the underlying business, we will not, other than in exceptional circumstances, start action for the recovery of your borrowing · If we do not believe the rescue proposal will succeed, we will explain the reasons why and help you and your advisers consider other options · If, after reviewing all the options with you, credit termination is considered to be the most appropriate action to take, the decision to do this will be confirmed within the bank at a senior level
4 Making a complaint	· We have procedures to help resolve complaints and disagreements. We will act fairly and reasonably and seek to resolve problems quickly · You can appeal to the *Banking Ombudsman* if you feel we have not kept to these procedures

The BBA-Statement clearly shows to entrepreneurs/managers that banks are geared towards working together with small and medium-sized businesses, whilst it is important that the relationship is healthy from the outset so that when the business nevertheless runs into financial difficulties, a cooperation model can be created. This shows that banks aim towards cooperation emphasising that this cooperation is best achieved when owners and managers seek to be informed at an early stage (by banks and/or specialised advisors) in order to take subsequent action. It is explicitly made clear that disclosing (possible) problems *in time*, enables a *joint* search for a solution. Currently it is often *thought* and *felt* that the company is put 'in receivership', a prospect with a demoralising effect for the management of a company. By means of a Banks and Businesses Code in line with the BBA-Statement concept, banks can unambiguously show that this is not the objective. The stated point of criticism will disappear as the relationship becomes more transparent and objective; both parties know exactly where they stand and are able to take satisfactory measures in time.

As concluded previously, banks as providers of a large part of loan capital can – by removing credit facilities – exert pressure on the management of companies in (imminent) financial difficulties. The very fact that pressure can be exerted, with the ultimate sanction to induce liquidation, ensures that companies are often reorganised at an early stage. This study has not found any indications that banks misuse this possibility. On the contrary, practice shows that banks often actively contribute to preventing liquidations. However, many interested parties consider the role of the bank to be less positive. This

image could be removed by implementing a Banks and Businesses Code – at least in the Netherlands.

As a conclusion it can be stated that at the beginning of a credit relationship the so-called Banks and Businesses Code could be declared applicable. It will be the basis for the business – bank relationship. Subsequently, in the event of (imminent) financial problems the parties know exactly where they stand. It should be very clear for both parties that entering into this relationship must not be taken too lightly; after all, henceforth a lot is expected from each other. They must be well aware of that. Finally, if the unfortunate situation arises where the bank, nevertheless, withdraws the credit facilities, the courts – when the debtor disputes the decision – can test the preceding process more objectively and rule to what extent the withdrawal was 'reasonable and fair'.

For the implementation of this code of conduct a role would seem to be reserved for the umbrella association of banks in a relevant country; with regard to the Netherlands this would be the Dutch Federation (consultative body) of Banks (NVB). They have already indicated the wish to introduce such a code of conduct in the near future.[21] All the elements of the BBA-Statement seem to be appropriate to the Dutch model, particularly so as it will clearly increase transparency in the bank – business relationship (especially sections 2 and 3 contribute in this respect). As established in the paragraphs 2.4.3, 4.3.3, 4.5.3 and 4.6.2, among others, in this study, the points of criticism expressed by interested parties linked to companies in financial difficulties can – especially with regard to the moment of credit withdrawal by banks and the reasons given – for an important part be removed.

5.5 Alternative resolution of disputes and mediation

In future, the above-mentioned codes of conduct can contribute to more efficient rescue operations of companies in financial difficulties. However, the fact remains that these reorganisations always take place in the light of imminent discontinuity as a result of (past) losses and a low, if not 'dried up' liquidity. Creditors, therefore – as indicated by the case studies and interviews for instance – will not always be prepared to cooperate with an organisation 'just like that', nor will they always be ready to agree with restructuring proposals which in their eyes are too rigorous. The problem here is that assessments must be made with regard to future scenarios, whilst it remains to be seen whether these will materialise; assessments are made with regard

21 After the manuscript was closed, a code of conduct was signed between the Dutch trade association for employers in SMEs (MKB-Nederland) and the Dutch Federation (consultative body) of Banks (NVB). See www.nvb.nl. However, this code of conduct is not as extensive as proposed here.

to a theoretical going concern value.[22] In addition, the relationship has often 'cooled' as a result of the deteriorated state of affairs and the required mutual trust is often no longer present. Therefore, as previously established – in chapters 3 and 4 particularly – the efforts of third parties in the restructuring process are almost always necessary. Advisors in the field of business restructuring and interim managers can assist in the commercial and statutory processes; mediators can assist in resolving mutual disputes 'alternatively', as well as removing frustrations among management and the creditors.

§ 5.5.1 generally discusses the concepts of alternative resolution of disputes and mediation,[23] after which in § 5.5.2 the link will be established between mediation and informal reorganisation.

5.5.1 Definitions

Alternative dispute resolution can be described as a form of dispute settlement during which the public courts are not engaged. As such, mediation can be considered as a species of the genus alternative dispute resolution, with the distinguishing feature that no ruling party is involved. It is the parties involved themselves who will try and find a solution together, assisted by a neutral third: the mediator. Mediation can be described as follows:

> Mediation is a form of conciliation in conflicts during which a neutral mediation expert, the mediator, guides the negotiations between both parties in order to reach a jointly supported result which in their true interest is best for each involved.[24]

It is, therefore, a negotiation process during which an independent person – without the power to impose decisions – uses certain procedures, skills and techniques to assist the parties involved in resolving their differences together.

Roughly speaking, the role of the mediator when guiding professional conflicts[25] can be typified as *facilitating* and/or *evaluating*.[26] This means that facilitating strongly focuses on guiding the negotiating process of parties. During evaluation, the mediator is also involved with the contents of the

22 See also Bebchuk, p. 139 ff.

23 Alternative resolution of disputes is sometimes referred to as ADR, which is short for Alternative Dispute Resolution. In the business sector, mediation is sometimes referred to as *professional conflict mediation.* See, for example, FD 10 August 2004.

24 See Brenninkmeijer *et al.*, p.1. See for similar descriptions Brown and Marriott, p. 127, Kovach, p. 26, Moore, p. 15, Prein 2004, p. 14 and ABI Guide, p. 4-5.

25 A conflict can be described as 'a manifestation of differences working against one another' or 'the existence of a clash of interests, values, actions or directions'. See Brown and Marriott, p. 1 respectively Kovach, p. 1-2.

26 See Brenninkmeijer *et al.*, p. 152 ff. and Prein 2004, p. 22-23. The concept of Transformative mediation – in which the emphasis is not primarily put on the negotiating result, but much more on the relation between the persons involved – will be ignored in this context.

matter; he provides vocational information and (non-binding) value judgements regarding issues which are current between the parties. In addition, he (further) guides the parties in clarifying the conflict and formulating possible solutions. The social field in which the conflict is placed will in general determine to what extent the mediator will also be 'evaluating' in his approach.

A number of important advantages of mediation are listed below.[27]

- *The parties find a solution together.* Because it is the parties themselves who determine the outcome, the level of acceptance will be higher. The decision is not imposed, but found together. This decreases the chance of (further) frustration in this respect. In addition, the pace can be set by the parties themselves and they are in full control thereof.
- *A suitable solution can be found.* Mediation is not geared towards 'resolving an issue' and/or finding a compromise. It is much more about finding a suitable solution *together:* a win-win situation.
- *Where appropriate, the law can be deviated from.* Mediation is sometimes described as 'negotiations in the shadow of the law'. As such, the prevailing law is used as a guideline rather than an established fact. Accordingly, the advantage is increased flexibility. The parties can make a joint decision to (partly) deviate from the rights and obligations that apply to both, whereby a solution is brought closer, without being imposed on the parties.[28]

In summary, the essence of mediation is not imposing decisions, but conducting a joint search for the best possible solution according to the circumstances: a win-win situation. The mediator involved in this process is deemed to be capable – from his neutral position – of keeping the negotiations between both parties going.

Mediation as an alternative in addition to legal proceedings is gaining ground rapidly both in and outside Europe. Mediators are used not only in the private sector; the business sector too starts taking more and more advantage of the possibilities offered by mediation.[29] Governments and other regulators recognise the importance of mediation and therefore projects and programmes to promote and institutionalise mediation are being started at various levels. For example, in 2004 the Dutch Minister of Justice announced that more legal disputes must be resolved out-of-court and – in line with that – a number of mediation programmes were started at the courts early in 2005

27 Among other things, see Brenninkmeijer *et al.*, p. 15 ff., Moore, p. 8 ff., Brown and Marriott, p. 128 ff. Kovach, p. 21 ff. and www.mediation-bedrijfsleven.nl.

28 A legal basis in this respect can be found in art. 7:900 ff. Dutch Civil Code regarding the so-called 'agreement on juristic relations'.

29 See Jagtenberg and De Roo, p. 54 ff and Kleiboer, p. 9.

(see also § 5.3.2).[30] The European Commission too has recognised the importance of promoting mediation in civil and professional law disputes and is currently preparing a directive.[31] In addition, all around the world, in the recent past or in some cases a little longer ago, trade associations have been established to promote ADR/Mediation.[32]

5.5.2 Mediation during informal reorganisations

Little is known about the process of mediation in relation to informal reorganisations/workout agreements. The Statement of Principles of INSOL International for instance does describe the role of so-called coordinators (principle 4) – who in certain situations must make use of mediation techniques – but no further details are provided. Also, within the 'Bangkok Rules' framework, mediation is mentioned as an 'instrument' in the event of a workout, but the process itself is not really described.[33] Therefore, this paragraph will further explore and study this subject. First of all, the concept of alternative dispute resolution will be linked to informal reorganisation; subsequently, the possible role of a mediator therein will be described.

The institutionalisation of mediation in *formal* insolvency procedures was started in the United States over 20 years ago. Currently, more than 40 Bankruptcy courts (more than 40% of the total) have at their disposal special mediation programmes for bankruptcy cases; as such, courts can refer conflicts between parties within a formal procedure (for example the statutory reorganisation procedure Chapter 11)[34] to a mediator. Mediation in relation to formal reorganisation is therefore better known and documented. For example, early in 2005 the American Bankruptcy Institute (ABI) published the so-called 'ABI Guide to Bankruptcy Mediation'; a small-sized handbook for lawyers and their clients concerning the use of mediation to resolve disputes arising in bankruptcy cases. In addition, studies have been conducted – including the national 'Mediation in Bankruptcy-study' by Niemic – whilst the procedures/rules of certain mediation programmes are available via the Internet; for instance those of the Central District of California (the state in

30 See Letter Minister of Justice, April 2004. On 20 January 2005 parliament – in line with this – agreed to the corresponding plans and the first programmes were started 1 April 2005 (www.rechtspraak.nl).
31 See (proposal for a) Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, 2004, p. 2 ff.
32 For international organisations in the field of ADR/mediation see for instance Brown and Marriot, p. 541 ff.
33 See the Debtor-Creditor Agreement on Debt Restructuring Process, section 7, www.insolvencyasia.com.
34 US Bankruptcy Code, section 1101-1174.

which the number of bankruptcy mediation cases is highest).[35] Although the emphasis in these publications is on formal procedures, insights can be derived for describing mediation in relation to informal reorganisations; therefore, these have been used below in addition to a few other publications.[36]

5.5.2.1 Alternative dispute resolution and informal reorganisation

The present study is geared towards restructuring routes that take place without statutory tools such as – in the Netherlands – moratorium, Private person Fresh start Proceedings (PFP) and liquidation. To this end, chapter 2 details a division in restructuring business operations and financial restructuring. Initially, during the process of restructuring business operations, conflicts may arise with staff (representatives), for instance, regarding a redundancy package. In addition, during the process of financial restructuring it is often necessary to negotiate with creditors regarding the adjustment of existing financing (read: postponement and/or cancellation of payments). The two codes of conduct described previously truly arise from mainly the 'financial' conflicts in practice and as such can be typified as tools in the dispute resolution process – the workout – between parties involved in a restructuring.

The basic principle of workouts in general and the codes of conduct in particular is that parties try to reach a mutual agreement. In order to smooth this process the codes of conduct can, as stated before, be introduced as the 'rules of play'. However, this does not guarantee that restructuring will indeed be successful. After all, the parties involved may still not reach an agreement, whether or not prompted by 'unilateral pragmatism'. At that moment, or preferably before that, a specialised mediator for informal reorganisations may be the answer. He [she] can bring the parties together, facilitate the negotiations and provide them with expert advice whilst evaluating the situation (using the basic principles of the codes of conduct in the process).[37]

The objective of an informal reorganisation is to continue the business activities within the same legal entity. However, as a result of the deteriorated state of affairs it is often not possible, as concluded earlier, to meet the agreed obligations with regard to the creditors; in addition, the Dutch system for instance also requires ample discussion regarding a redundancy package for employees. Therefore, compromises must be found which are practicable for the company on the one hand and which can be considered as acceptable by the stakeholders involved on the other. The latter will be an important factor

35 See United States Bankruptcy Court, Central District of California, www.cacb.uscourts.gov.
36 See ABI Guide, p. 3 ff., Levy, p. 1-3, Meier, p. 4-5, Niemic, p. 5 ff., United States Bankruptcy Court/California, 1999, p. 1-16 and Verougstraete, p. 1-5.
37 See also Meier, p. 4-5 who provides a brief outline for the implementation of a London Approach in Switzerland commenting that this procedural process can be improved by incorporating principles of mediation therein.

to the preparedness to cooperate, particularly among the creditors. After all, in first instance – at the time the contract was concluded – full payment had been expected. On the other hand, employees too – in the event of (mass) redundancy – had expected employment to continue. The challenge of informal reorganisation in general and mediation in particular is, therefore, finding a workout agreement which – considering the circumstances in which initial agreements can no longer be (fully) kept – is satisfactory to all parties involved.[38]

5.5.2.2 Competency of the Reorganisation Mediator

A mediator is merely appointed to guide and facilitate the negotiating process. He is not to take any substantial decisions. In principle, a mediator can therefore, as a result, be deployed in any conflict. However, with a view to the complex interests and the many bottlenecks during informal reorganisations, the question arises whether any mediator can act as such in these circumstances, or whether specific knowledge is nevertheless needed to the extent that additional competencies are required. The answers to these questions will not always be uniform. The mediator must of course have knowledge and skills showing affiliation with mediation in general. These include qualities in the field of (non-)verbal communication, conflict theory, methods in dealing with conflicts, negotiation techniques, structuring skills and the ability to deal with emotions and resistance. However, in my opinion the mediator – with regard to informal reorganisations – must ideally also have specific knowledge in the field of:

- Business economics, particularly with regard to strategic, marketing-technical and financial concepts and processes (including business valuation and business financing);
- Consequences pertaining to tax and industrial laws following insolvency and reorganisation;
- Reorganisation alternatives in general and (possibly) restructuring measures in particular. The mediator must be able to assess a (proposed) rescue operation on its own merits, without imposing it either implicitly or explicitly;
- Civil (procedural) law and insolvency law in particular. Since informal reorganisations take place in the 'shadow of the law', knowledge must be present in this respect, all the more in situations in which parties – whether or not from a strategic point of view – can opt to use legal possibilities.

38 See also Kilpi, p. 177 ff. As such, initial agreements also include fixed term/permanent employment contracts.

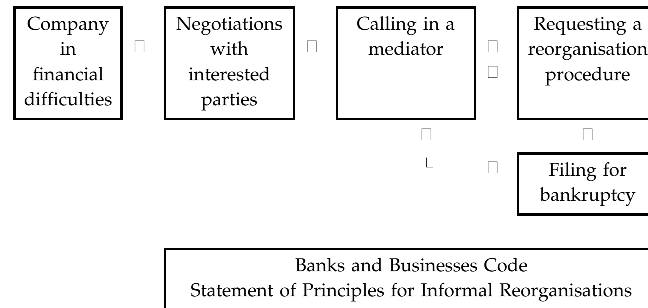
However, the danger of an evaluating mediator with specific expertise in the field of reorganisation is that his independence may be compromised. At a certain moment, he can – whether consciously or not – steer the process too much as regards content; as a result, one or more parties may have the feeling that the impartiality is being compromised. However, the advantage is that as an independent third party he is able to steer the parties at certain moments, when he thinks that both parties are heading for agreements which – from a commercial and/or legal point of view – may not be sensible. It is here where the ultimate challenge lies, for (what I shall call) the *Reorganisation-mediator*. Experience from the United States shows in any case that specific experience and expertise of the mediator increases the chances of success in cases of such kind.[39]

5.5.2.3 Moment to call in a mediator

Conflicts between a company and its interested parties can be removed by deploying an independent mediator. However, the basic principle should at all times be that parties try to find a solution themselves first, whether or not by using one or multiple codes of conduct. Therefore, the ideal sequence of action would be that parties call in a mediator when (it is evident that) they are going to fail to find a solution themselves, and following that, that they will only start a formal reorganisation procedure if and when – despite the efforts of the mediator – no agreement has been reached. Subsequently, the appointed courts could still render the decision to have a final mediation attempt take place. This is also called Court-Ordered-Mediation (or Court-Annexed ADR);[40] the stated mediation programmes in the United States contain actual examples thereof. Only when this last attempt fails, does liquidation remain. Strictly speaking, there can still be an attempt to try and reach an agreement ('liquidation-composition') in that process (see also chapter 2 for the Dutch situation); however, the emphasis during that process will probably not be on the continuity of the company, but rather on a proper completion of the liquidation. Figure 2 shows the process described above in a diagram.

39 See ABI Guide, p. 29-30.
40 See for instance Brown and Marriott, p. 28-29. Brenninkmeijer *et al.*, p. 247 and Niemic, p. 7.

Figure 2: Process of calling in a mediator



Based on the above it can be stated that mediation need not – or preferably, must not – be limited to informal reorganisations alone. In formal procedures too – which it is hoped will not occur – an approach can be selected in which 'voluntarily' chosen solutions come first. Not only can the judiciary be relieved as such, the completion of these legal procedures can be speeded up at the same time: a win-win situation for both creditors and the judiciary.

As stated before, the parties involved must at all times be geared towards resolving disputes together. However, it seems recommendable that whilst negotiating within the framework of an informal reorganisation, agreements should already be made, in advance, with regard to the possible deployment of a mediator. As such, (possible) (pre)conditions can be determined as well as the moment ('reference date') that he will be deployed. This will considerably increase the efficiency of the entire process, so that in the event of an unexpected failed attempt of the first negotiations a new attempt can be undertaken relatively quickly. In addition, it offers an important 'safety net' for parties. When no agreement is reached in first instance, a second informal round will follow; a negotiation round which, contrary to a public reorganisation procedure, can still take place in relative peace and quiet.

5.5.2.4 Conflict relationships

Based on the Dutch situation a number of – non-exhaustive – possible 'conflict relationships' will be described below within the framework of informal reorganisation, for which the deployment of a mediator may be desired.

- *Works council/trade unions – company;* As previously concluded, during informal reorganisations it is often necessary for part of the workforce to be made redundant. Depending on the number of staff to be made redundant, negotiations are often required regarding the composition of the group to be discharged and the (possible) amount of the redundancy payments. During this process, staff representatives (works council/trade unions) act as the negotiating partners for the company. In addition, these parties are necessary to create the required base of support with the com-

pany and to keep the 'peace'. In the event of (imminent) conflicts in this respect a mediator can be called in.

- *Banks – company;* Because of the important role of banks in the financing of companies, the relationship bank/company is of paramount importance for the success of informal reorganisations. The banks will need to have confidence in management and the reorganisation plan, or they may withdraw credit facilities instead. A mediator can act as a liaison in (restoring) this relationship.

- *The tax authorities/Industrial Insurance Board (IIB) – company;* The tax authorities can rely upon the so-called right to claim compound bounded assets, partly on behalf of the IIB. The possible use thereof will often result in the banks applying a lease construction (see chapter 2). Consequently, the company will in principle be brought to a standstill as a result of which liquidation is almost inevitable. In addition, the tax authorities normally apply a rather rigid policy with regard to workout agreements (double the percentage compared to ordinary creditors).[41] Therefore, negotiations are often necessary to ensure the success of an informal reorganisation; not only to prevent attachment of the property found on the premises, but particularly also to send a positive signal to the banking creditors (to prevent the stated lease construction).

- *Other creditors – company;* Particularly ordinary creditors (trade creditors) have indicated in the present study that they are in many cases not prepared to cooperate with a workout agreement (see chapter 4). In addition to the fact that they are often not or insufficiently heard, there frequently are little direct incentives to actively render cooperation towards a solution. After all, the impression many times is – and is in general mostly justified – that the outstanding debt must be largely written off anyway. Therefore, management's challenge within this relationship is 'to win' these creditors for the reorganisation plan. In this respect, lease companies, debt-collection agencies and credit insurers too must be actively approached to render their cooperation towards a solution.

- *Creditors among themselves;* As stated previously, at the beginning of financial restructuring the question remains whether all relevant creditors are prepared to cooperate. Not only the company, but the other creditors as well may be worse off as a result. In addition, during the negotiating process a situation may arise in which creditors among themselves have a difference of opinion regarding the intended reorganisation plan, as well

41 See Collection Directive 1990.

as their positions therein. A mediator can again be called in the event of such conflicts.[42]

It can be stated as a fact that, in principle, each interested party of the company, of which it can be expected that it (or the interest group it is part of) has the ability to exert a certain influence on the reorganisation (read: disturb the reorganisation), qualifies for participation in a mediation procedure. Therefore, in practice various parties will be involved at virtually all times and thus also multiple conflict relationships will exist.[43]

5.5.2.5 The mediation process

Below you will find a description of how the mediation process could take shape in the informal reorganisation practice. The phases to be distinguished have been derived from a general approach which does justice to various opinions on the mediation process and have subsequently been tested against the descriptions in the ABI guide and the California Mediation Programme.[44] They are: (1) the preparatory phase, (2) the plenary mediation phase and finally (3) the post-mediation phase.

The *(1) preparatory phase* can be regarded as the phase between the first mediation meeting and the initial contact of the commissioning party/parties and the mediator. As stated previously, this phase could commence at the moment the ordinary negotiations with the parties involved have failed or are on the brink of failure. It is of course possible that contact was made at an earlier stage. Ideally – as also stated previously – an agreement in this respect would already be in place at the beginning of the first negotiations within the framework of the informal reorganisation.

During this preparatory phase, the mediator contacts the intended parties for the mediation process in writing and/or verbally. The company in financial difficulties will often be directly involved in the conflicts. As such, it is the company's duty to instruct the mediator accordingly and to provide him with all the relevant information regarding the parties involved. They concern address details, contact persons (with sufficient authorisation) and the specific involvement of the relevant parties with the company and the remaining interested parties. If so desired, the mediator will provide the parties with information regarding mediation in general and the mediation procedure at

42 In this respect, the so-called *CPR Banking Industry Dispute Resolution Commitment* is interesting. It concerns a statement – signed by various American banks – in which the intention is expressed to resolve mutual conflicts through (informal) negotiations at all times and – if nevertheless required – mediation. See www.cpradr.org.

43 See also ABI Guide, p. 7-8 confirming this fact for the American practice.

44 See Brenninkmeijer *et al.*, p. 109 ff. , ABI Guide, p. 34 and United States Bankruptcy Court/California, 1999, p. 13-14. For comparable descriptions see Brown and Marriott, p. 154 ff., Kovach, p. 35 ff., Moore, p. 211 ff., Prein 2001, p. 226 ff. and Prein 2004, p. 27-28.

hand in particular. He will also investigate the nature of the specific conflict and whether the parties show 'sufficient commitment' (see also below).[45] Intake-interviews are an option at this stage, but depending on the conflict, contact by telephone or in writing may also suffice. However, during this phase it is important that the mediator will, as yet, not comment on the conflict as regards content; any semblance of prejudice must be avoided. In addition, the mediator must not study the specific conflict too much; there may be a risk that, on the basis of the files, he will start to form an opinion which may compromise his impartiality during the procedure to be followed.

After inviting the parties, setting a date and choosing a (preferably) neutral location, the *(2) plenary mediation phase* will commence. This may comprise a so-called opening phase, exploration phase, categorisation phase, negotiation phase followed by a concluding phase. These various sub-phases will be briefly described below.

The opening phase commences with a (further) introduction of those present. Here the mediator will try and create a positive environment for negotiations. In addition, he will further explain the mediation process. He will also verify the mandates, the commitment as well as the preparedness of the parties to treat any information disclosed as confidential. During this phase it is important that he will (again) emphasise his impartiality. After all, within the framework of an informal reorganisation the impression may be created among certain parties (the creditors for instance) that the mediator was mainly engaged to save the company from liquidation. The mediator must therefore make it clear that in any case that is not his objective: the sole reason for his presence is to facilitate the negotiations. This phase will also see the 'timing'/phasing of the negotiations and the agenda of the further course of the mediation process being set.

In the subsequent exploration phase the parties present will be given the opportunity to phrase the conflict from their own point of view. Most parties are expected to determine their positions here with regard to previously stated restructuring (workout) proposals made by the company. During this phase, therefore, it seems recommendable to allow the other parties to speak first (unless the company is not directly involved, for example in the event of conflicts among the creditors themselves) after which the management of the company can subsequently word its viewpoint. This phase is concluded by the mediator who lists and summarises the expressed interests, wishes and objectives. The objective of this phase is on the one hand for the parties to feel they have been heard as regards content and emotion, which helps in de-escalating the conflict and reducing the tension between the parties. On the

45 Commitment goes further than simply expressing the preparedness to negotiate. The parties must indeed truly be geared towards de-escalating the conflict, which in the case of informal reorganisations often means that they must have a sincere intention to come to a workout agreement. In this context see also Deutsch and Coleman, p. 437 ff.

other hand this is the phase in which the mediator tries to gain an insight into the true objectives and wishes of the parties.[46]

Subsequently, in the so-called categorisation phase, the mediator will actively try to reduce the problems into neatly organised proportions, as well as induce the parties to view the situation from the perspective of other parties. In addition, he will try and furnish the parties with a helicopter view of the problems. He does this by re-formulating the wishes and preferences (interests) expressed in the previous phase in consultation with them, for instance by using a flipchart. At the end of this listing session the mediator will detail possible individual and joint interests that have not been expressed as yet and of which he suspects – on the basis of his knowledge in the field of reorganisation and insolvency – that they are/may also be a factor. Subsequently, he will categorise all these issues in so-called *joint*, *reconcilable* and *contradictory* interests;[47] this will be the agenda for the negotiations. Starting point here is that the – at face value – easy issues are started with first, to subsequently deal with the more complex problems.

Then the negotiating phase will start. During this phase the parties will first start formulating the options with regard to the various categorised interests. After these have been listed the negotiations can begin. During this phase the mediator will try and induce the parties to work towards finding solutions in a creative manner, whilst taking into account the interests of others at the same time. If so required, he can also do this in separate sessions with them, so that a certain party can then consult with him in all openness; this is sometimes referred to as *caucuses*.[48] This phase will in effect only be completed after the parties have reached agreement regarding all the interests and as such have solved the conflicts. However, additional negotiating rounds may often be required here. In that case, each negotiating round ends with a concluding phase during which the mediator – in a positive manner – summarises the mediation process and subsequently tries to arrange a next meeting.

When all the phases have been completed and – in an ideal situation – all the conflicts have been solved the *(3) post-mediation phase* will commence. In this phase the mediator will for a final time summarise the negotiating results that have been reached. Subsequently, if so desired by the parties, a 'post-mediation settlement agreement' will be signed which incorporates the agreements that have been made.[49] When the parties have signed this, the procedure is completed.

---

46 See Brenninkmeijer *et al.*, p. 123 ff.
47 During complex procedures it will sometime be necessary to further sub-divide within a category into so-called clusters.
48 See for instance ABI Guide, p. 4.
49 See ABI Guide, p. 39.

5.5.2.6 Voluntary cooperation

Just as with the application of voluntary rescue frameworks, cooperating with a mediation procedure is – as previously stated – in principle unenforceable.[50] Consequently, the problem can be that one or more parties involved do not recognise the necessity of mediation and as a result decide not to cooperate; as such there is a lack of commitment. It may also be the case that a party tries to deliberately avoid this process, with the intention to, for example, enforce (full) payment (*free-rider behaviour*). Hence, a somewhat paradoxical danger is lying in wait during this type of process. On the one hand, the very strength of mediation is that parties come to solutions *because* of the voluntary aspect and on the other hand, this is the very *reason why* any party can disturb (the start of) the process and block a solution. Therefore, mediation in connection with reorganisation routes must in any case be accepted at an institutional level in order to solve the stated problems. Interest groups in the business and banking sectors must encourage mediation in the event of financial difficulties.[51] In the Netherlands they are (this list is not exhaustive): the Dutch trade organisation for employers in SMEs (MKB-Nederland), the Dutch Federation of Employers (VNO-NCW), the Dutch Federation (consultative body) of Banks (NVB), the Federation of Dutch Insolvency Lawyers (Insolad), the Royal Dutch Institute of Chartered Accountants (NIVRA), the Dutch Federation of Accountants (NOvAA) and the Dutch Federation of Independent Accounting Firms (SRA), the Dutch trade organisation for credit management (VVCM), the tax authorities and the Industrial Insurance Board (IIB), but also, for instance, trade unions and the Dutch Federation of Debt collection companies (NVI). They must explain the advantages among their supporters and decide on the concrete details of a specific framework for mediation in concrete cases. The ministries of Economic Affairs and Justice and the Dutch Foundation for the promotion of Mediation (NMI) must fulfil an inspiring role in this respect. More in general, those directly involved in an (intended) mediation procedure must exert pressure on those who are reluctant. Finally, courts of law – at least in the Netherlands – must take into consideration the preparedness shown by parties to participate in mediation, in their decisions regarding the possible imposition of out-of-court compulsory agreements (*forced participation in a workout agreement*, see also § 2.5.2) onto reluctant creditors. This way, responsibility for a solution is truly given to the interested parties. After all, by cooperating, and under threat of an 'imposed' decision, parties are able to 'make the best of a bad job' and exert influence on a possible solution.

50 It has been explained (see § 5.5.2.3) that a court can rule that parties try and find a solution by means of mediation. However, in this situation too the *solution* is unenforceable.

51 See for example www.mediation-bedrijfsleven.nl, among other things.

5.5.2.7 *Costs of mediation*

Engaging a mediator does of course involve costs. Depending on the scope and the complexity of the problems, they can mount up considerably. As the mediation procedure does in this case take place within the framework of financial difficulties, it is important to come to proper agreements in this respect. The parties with whom the management is negotiating with are, in principle, probably not prepared to contribute in this respect. After all, the negotiations will often lead to a 'sacrifice' on their part. Although, strictly speaking, all the costs incurred by the company in such situations are at their expense, from a pragmatic viewpoint it would thus be better when the company takes care of the costs.[52] However, this does create a potential bottleneck. Because the company pays for the mediator, the impression may be created that impartiality is compromised. It is, therefore, the task of the relevant mediator to remove this impression by acting independently and without prejudice and to also state this explicitly. For example, by declaring that a Code of Ethics applies to his activities (or to have these declared applicable).[53] Furthermore, the mediator has, of course, a natural advantage over advisors/ interim managers because the latter will in principle be regarded more as an extension of management and the stakeholders, as they are *in effect* hired to this end. This in contrast with the mediator, who has been specifically appointed to serve the common interest (win-win).

5.6 CONCLUSION

Three ideas aimed at improving informal reorganisation processes have been (further) detailed above. In actual fact, they can be regarded as mutually amplifying means. After all, preventing and resolving financial difficulties already starts at the beginning of the credit relationship. The bank, as an important financier, explains by means of the so-called Banks and Businesses Code (based on the BBA-Statement) how it regards the future relationship as well as how it will act in the event of (imminent) difficulties[54] (1). When nevertheless financial difficulties do occur, the company can – also in relation with other relevant interested parties – make use of the eight principles of the Statement of Principles of INSOL International which I – more generally – have indicated as Statement of Principles for Informal Reorganisations (2).

52 Within this context, see ABI Guide, p. 15.

53 In practice, various standards apply in this respect. See for example the Code of Conduct for the 'NMI-Mediator' (www.nmi-mediation.nl), the so-called Joint Code in Kovach, p. 528 ff. and the Professional Practice Guidelines in Moore, p. 472 ff.

54 Also, in the Banks and Businesses Code to be formulated reference could already be made to the possibilities of mediation – for example under *(4) making a complaint*.

Should the application thereof not ultimately lead to the desired result, an attempt may still be made by means of mediation – ideally institutionalised by the business sector, the government and the banking sector – to come to a solution (3).

Informal reorganisation in general and codes of conduct in combination with mediation in particular, appear – in essence – to be more efficient than formal procedures (chapter 2). In order to facilitate Dutch practice and thus remove important bottlenecks and failure factors, it is urgent that a (further) debate should take place among the afore-mentioned parties to subsequently come to institutionalisation.[55] Certainly now that a drastic revision of the Dutch Bankruptcy Act – especially with regard to the reorganisation procedure (moratorium) incorporated therein – seems to be taking shape. After all, the principles of informal reorganisation, codes of conduct and alternative settlement of disputes must be placed in that perspective, and vice versa.

Finally, the implementation of the approach as described above should not create the illusion that all future informal reorganisations will be successful. Each case has its own specific problems and all parties have their own agenda; furthermore, some companies simply cannot be saved on account of commercial and social reasons. In such cases liquidations are unavoidable, if only for the fact that certain parties sometimes also profit from liquidation, since it enables them to accumulate or continue business operations in a relatively inexpensive way (see also chapter 3). However, a more informal yet institutionalised approach – as described in this chapter – can in many cases contribute to a smoother and more objective interaction between the parties, increasing the chances of success at any rate. The afore-mentioned international developments, Statements of Principles and comparisons between the study results in question and a number of foreign studies show that the 'principles of informal reorganisation' can be applied across the border. The organisations hereby mentioned in the Netherlands as well as similar organisations abroad must therefore be given the challenge to pick up on the initiatives described – insofar as they have not done so yet – and to place them in their own context next to existing insolvency legislation: towards an *Institutionalised Informal Approach*. Following on from the London Approach, *Dutch Approach* would, for the Netherlands, be an extremely applicable name.

55 Ideally, a structural evaluation programme must be developed and set up at the same time.

6 The main findings

This study has tried to answer the question regarding what measures are taken in Dutch practice to prevent formal reorganisation procedures, what the bottlenecks are and whether these can be removed (whether or not by new legislation). The conclusions are listed in § 6.1. In § 6.2 concluding observations are expressed, in which the findings will be placed in a (more) international context. § 6.3 lists a number of suggestions for further research.

6.1 Conclusions

This paragraph will detail conclusions on the basis of the formulated sub-definitions and research questions.[1]

A. In theory and practice, what is meant by informal reorganisations and workout agreements?

A.1 What is meant by a workout agreement and/or informal reorganisation and which types can (theoretically) be distinguished?

An informal reorganisation is a reorganisation route which takes place outside the statutory framework, with the objective of restoring the health of a company in financial difficulties within the same legal entity. Within an informal reorganisation it will often be necessary to reach an agreement with the creditors with regard to agreements made earlier. This can be typified as a workout agreement, provided such a solution is found without using statutory procedures.

The results of the case studies confirm that informal reorganisations in many cases comprise two parts: restructuring of the business operations and financial restructuring. Here, the restructuring of business operations is aimed at restoring the health of operational management. The measures to be taken relate to marketing, management, information and efficiency. Financial re-

1 For a full overview of the sub-definitions on the problem and research questions, reference is made to appendix 2.

structuring is aimed at restoring the company's balance sheet ratios. Therefore, this form of treatment (often) consists of reaching a workout agreement on the one hand and, if so required, raising risk-avoiding and/or risk-bearing capital on the other. The measures to be taken relate to – theoretically – repayments, interest and increasing cash funds, although it emerged from the case studies that in practice many other (non-financial) measures are taken as well (see also C6). In addition, it appears that measures with regard to (changing) interest commitments are relatively uncommon in Dutch practice.

B. In what way do workout agreements and/or informal reorganisations distinguish themselves (in a legal and practical sense) from normal operational management on the one hand and moratorium, Private person Fresh start Proceedings or liquidation on the other?

B1 How do informal reorganisations relate to formal reorganisations (moratorium, Private person Fresh start Proceedings or restart following liquidation)?

The case studies confirm the literature, in that informal reorganisations particularly distinguish themselves from moratorium, Private person Fresh start Proceedings or (restart following) liquidation because of their voluntary character (management and other interested parties need to cooperate voluntarily), flexibility, and the relative silence in which they take place (away from the public domain). During the process, management continues to fully administer the company (from a legal point of view), contrary to reorganisations within formal procedures.

B.2 In what way do informal reorganisations/workout agreements distinguish themselves (in a legal and practical sense) from normal operational management on the one hand and (agreements within) moratorium, Private person Fresh start Proceedings or liquidation on the other?

In general it can be stated that informal reorganisations – in relation to normal operational management – mainly take place in the light of an imminent state of insolvency. As a result, the financial pressure under which informal reorganisations take place is higher compared to a reorganisation under normal circumstances. Timely compliance with the agreements made regarding interest and repayment commitments should be a focal point within normal operational management. When these agreements can no longer be met, the parties endeavour to reach a workout agreement. The literature search shows that solutions (compositions) with regard to moratorium, Private person Fresh start Proceedings and liquidation are mainly geared towards offering an agreement to the ordinary creditors in which (part of) the debt is remitted. In the practice of informal reorganisation on the other hand, as is demonstrated in the case

studies, interviews and surveys, the primary focal point is deferment of the repayments. In addition, creditors indicate that the remission of debt forwards 'the bill' to the providers of risk-avoiding capital. After all, in the end the increase of value arising from it ends up with the providers of risk-bearing capital. This is often considered unjust.[2]

B.3 How do informal reorganisations relate to so-called (hybrid) pre-pack procedures?

'Pre-pack procedures' are a tool for carrying out informal reorganisations. When during an informal process attempts to bring about a (full-scale) reorganisation are unsuccessful, a formal reorganisation procedure is requested in order to commit reluctant creditors to an agreement (or have them committed) or to announce a formal Cooling-off period, so that creditors are temporarily kept 'at bay'. Their use in practice as well as the underlying motives has been confirmed in the interviews and surveys. However, no 'pre-packs' have been found in the case studies. In such cases, though, it appears that formal procedures are used as a threat in order to induce reluctant creditors to settle on an agreement after all. As such, it would be just to refer to 'implicit pre-pack-procedures'.

B.4 What are the pros and cons of workout agreements and/or informal reorganisations compared to formal procedures (expressed in criteria such as: employment, recovery rates, costs, residual debts, satisfaction of creditors, time and transparency)?

Employment. When an informal reorganisation is initiated at an early stage, as appears from both the case studies and the surveys, the process of value destruction will not be as advanced as yet. As a result, the necessity for reducing staff numbers will practically always be less. Formal procedures almost always result in the loss of customers, reduced turnover and therefore an increased necessity for cutbacks (in staff numbers).

Recovery rates/costs/residual debts. The surveys confirm the literature in that in practice formal procedures involve both direct and indirect costs. Examples are legal costs and so-called opportunity costs respectively – that is to say, negative effects on operational management (for instance customers leaving and/or suppliers refusing to deliver). Because of the relative silence in which informal reorganisations take place, it is the opportunity costs in particular that can be kept to a minimum. This has a positive effect on the recovery rate

2 See also De Ranitz, p. 17-18.

and the corresponding residual debt. As such, informal reorganisations appear to be cheaper than formal reorganisations.

Satisfaction of creditors. Within the framework of companies in financial difficulties, creditors, as is demonstrated in both the interviews and the surveys, in fact pursue a double cause. In the first instance they demand payment of the claim and secondly, they want to secure their future turnover. Successful informal reorganisations often lead to higher recovery rates; in addition, (part of) the company is preserved, (partly) securing future turnover. The outcome of formal procedures is less certain because of the costs involved and the dependency on third parties (courts, trustees, administrators). During successful informal reorganisations in which the relative position of the creditors is taken into account, the chance of satisfaction will thus be better compared to formal procedures.

Time. A disadvantage of formal procedures is that parties depend on the decisions and decision terms of third parties (courts, administrates, trustees). The case study research shows that in an informal reorganisation, management enjoys control of the entire process and as such also the time involved. A fast, adequate and self-orchestrated reorganisation can contribute to the going concern value, as full attention can soon be paid to normal operational management again.[3]

Transparency. The case studies, surveys and interviews all show that insufficient transparency during informal reorganisations can form an important bottleneck. Formal procedures take place in the public domain and are more transparent as such. However, the relative silence in which informal reorganisations take place is an advantage in order to prevent indirect costs that are (too) high. This seems paradoxical were it not that insufficient transparency is mainly experienced by important, directly involved creditors who, on the basis of the information provided, decide whether or not to cooperate in trying to reach a solution. Therefore, the relative silence in which an informal reorganisation takes place is a practical advantage, provided that the information provided towards the relevant creditors is transparent.

B.5 Will informal reorganisations and/or workout agreements lead to a successful and permanent continuation of the companies concerned?

The case study research did not indicate any significant differences between informal and formal procedures with regard to durability. A number of case studies show that the period directly following the reorganisation is crucial

3 See also Weiss, p. 161.

(see for instance *Raw*, *Cable, Machines II* and *Steel*). When profit does not show any (prospect of) recovery, the companies will immediately run into difficulties again. Therefore, it can be generally stated that formal and informal reorganisations are only truly successful when the restructuring of the company has led to a structural recovery of the profits, or will do so in future. As such, financial restructuring (for instance in the form of a workout agreement or a composition within a formal procedure) or a transfer of assets following liquidation will only be successful when there is any perspective with regard to the long-term viability of the company.

B.6 If a (or an attempted) reorganisation and/or workout agreement nevertheless leads to legal proceedings, will the judge have sufficient insight into any preliminary stage and will this lead to the courts spending more or less time on this case?

The Insolad survey shows that the time spent by the courts is probably not significantly less. This can be explained by the fact that most requests for moratorium made in the Netherlands are not accompanied by proper reorganisation plans (this is confirmed by a number of case studies; see, among other things, *Machines I*, *Systems* and *Techno*). As such, insight into the preliminary stage is insufficient. However, it has been stated that in general the viability can be determined quicker in a formal procedure, after an attempted informal reorganisation has taken place first. As a result (any) formal procedures during which a (full or partial) restart takes place can be carried out more efficiently, enabling considerable going concern value to be maintained.

C. Which measures within the framework of informal reorganisation are discovered in practice, and is it possible to make an estimate of the number of (attempted) workout agreements/informal reorganisations occurring in the Netherlands each year?

C.1 In which situations or at which moments is an attempt made to realise an informal reorganisation and/or workout agreement?

The survey shows that in general it is the companies themselves who are showing the initiative to take reorganisation measures, but banks do play an important role in this respect. The case studies and interviews confirm this role by the bank. Banks appear to be involved in the reorganisation process from an early stage. They claim and fulfil an important 'incentive' role here. Banks mainly insist on a reorganisation in the event of consistent losses and (structurally) exceeding the credit limits. In practice, a workout agreement is sought when it is not (or no longer) possible to restore the company by

restructuring the business operations alone, and when other funding possibilities are not (or no longer) available (see also C.5).

C.2 How many informal reorganisations are realised in the Netherlands each year?
C.3 How many workout agreements are realised in the Netherlands each year?

Since informal reorganisations are carried out in (relative) silence and because they are not publicised as such, it is not possible to give a concrete figure on the number of informal reorganisations taking place in the Netherlands each year (no supportive evidence was found in both the literature search and the interviews). Banks – as appears from the literature search – claim that 60 – 80% of the companies in financial difficulties are successfully reorganised by means of their Intensive Care Departments. However, research by Van Amsterdam has led to an adjustment of this figure to 48-61%. Nevertheless, the importance of informal reorganisations – and the positive role of banks therein – is underlined by these figures. Below you will find an estimate of the number of informal reorganisations that may have taken place in the Netherlands in 2003. This estimate is based on circumstantial evidence and as such must be interpreted with the necessary care.

In 2003, 6,386 companies and institutions were declared bankrupt in the Netherlands. In 2004 this number was 6,648.[4] When it is assumed that a company's insolvency process takes 2 years on average and that nearly all companies (up to the last moment) more or less try to avoid liquidation (that is, in any case, measures are taken to prevent this) then – with due care – it could be stated that in 2003, a minimum of 13,034 companies and institutions were involved in informal reorganisation processes that ultimately failed. After all, all the companies and institutions ultimately went bankrupt. When on the basis of the figures by the banks and the Van Amsterdam research it is assumed that a maximum of 50% of the companies in financial difficulties ultimately recover, the total number of informal reorganisations in the Netherlands in 2003 should come to about 26,000. The number of (attempted) workout agreements will be much lower in this respect, since both the surveys and interviews show that the possibilities for workout agreements are not always sufficiently investigated. However, because of insufficient material it is impossible to make an estimate in this respect.

C.4 Are the possibilities in respect of informal reorganisations and/or workout agreements studied sufficiently in practice?

As indicated above, according to the respondents of interviews and surveys, the possibilities for a workout agreement are not always sufficiently investigated. However, the case studies show that attempts in this respect are

4 See www.cbs.nl.

made frequently. Consequently, respondents seem to mainly indicate that the attempts made are not always sufficiently carried through, as result of which they fail. Supportive evidence in this respect can also be found in the studied group of failed informal reorganisations. For that matter, other bottlenecks too seem to be playing a role with regard to the failure. For example, the case study details the following failure factors with regard to informal reorganisations:

- management and shareholders have a passive attitude with regard to the informal reorganisation;
- the company provides the interested parties with insufficient insight into the true financial situation;
- the company is not able to timely raise risk-bearing capital (either or not in the form of a takeover).

Therefore, attempted informal reorganisations/workout agreements mainly fail as a result of a combination of these elements.

C.5 Who takes the initiative for a workout agreement and why?

Although banks frequently insist on an informal reorganisation at an early stage, in practice the initiative to come to a workout agreement with (unsecured) creditors, as appears from both the surveys and the interviews, often lies with management and the advisors/interim managers who have been called in. The case studies show that the reason in many cases lies in the fact that it is impossible to generate sufficient positive cash flows and new funding respectively by restructuring the business activities and/or financial restructuring, making an external 'sacrifice' inevitable; see for example the cases studies *Sound*, *Office* and *Advertising*.

C.6 What agreements are made and how are suggested constructions/measures set up, financed and executed?

As concluded before, an informal reorganisation often consists of restructuring the business operations and financial restructuring. Within the framework of restructuring business operations, the main measures are appointing third parties (advisors/interim managers), improving the company's efficiency (for instance reducing costs and shutting down loss-making units) and improving the management information system. This is in line with the causes of financial difficulties that are found most often. These causes include poor management, a cost level that is too high and a poor management information system; supporting evidence in this respect has been found in the case studies, the surveys and the interviews. It is remarkable here that particularly the case studies show that economic circumstances are often not the true reason for

financial difficulties. Furthermore, only three dossiers speak of *possible* fraudulent activities.

The most common workout agreements within the framework of financial restructuring are, as shown by both the case studies and the surveys, deferring repayments and reduction of the nominal debts with (unsecured) creditors. Additionally, companies often look for new risk-bearing capital (whether or not in the shape of a takeover) in order to finance the reorganisation process and to improve the balance sheet ratios. Furthermore, the case studies also show that banks are often prepared to provide additional funds during an informal reorganisation, as well as to grant so-called waivers in order to increase the chances of success. The case studies further show (see also A.1) that in practice more possibilities are used in respect of financial restructuring than *generally* mentioned in the literature. Some examples are: banks threatening to withdraw the credit (to induce the company to actually reorganise), providing additional securities, cash sweeps and taking over finance agreements. The so-called Financial Aid Programme Entrepreneur-Debtors scheme appears to be a good option to finance a workout agreement for small companies.

As demonstrated in the case studies and the interviews, successful informal reorganisations have the following elements in common with regard to their execution:

- the business operations are quickly and efficiently reorganised by management (often with the help of third parties);
- important interested parties (financiers) are involved in the reorganisation process;
- the financial situation and the intended informal reorganisation are transparent;
- an active search to introduce risk-bearing capital is underway (whether or not in the form of a takeover).

In addition to restoring profitability and the rescheduling of the balance sheet, restoring confidence among the interested parties is a crucial factor.

D. Which external interested parties of companies in financial difficulties can be indicated?

D.1 Who are the interested parties in the case of informal reorganisations and/or workout agreements and to what extent are their interests and preferences met?

All sub-studies show that the main interested parties in informal reorganisations and workout agreements concern: management, advisors/interim man-

agers, (house)banks and non-banking creditors (for instance trade creditors and the tax authorities/Industrial Insurance Board). In addition, a role is often reserved for (potential) providers of risk-bearing capital.

As stated previously, banks play an important role in the early detection of problems and insisting on reorganisation measures; in addition, it appears that during the informal reorganisation, they frequently continue to provide finance voluntarily. Management in its turn will need to carry out the reorganisation timely and efficiently. It appears that advisors/interim managers play an important role in restoring confidence among the other interested parties (mainly creditors) of the company. Providers of risk-bearing capital are often required to restore the balance sheet ratios and to make available the necessary liquidity in order to finance the reorganisation. The case studies and the surveys demonstrate that in general the non-banking creditors are prepared to cooperate with workout agreements, provided the company's perspectives are sufficiently clear (transparency) with room for negotiation/consultation with regard to the suggested solution. In addition, the workout agreement must be a reflection of the actual financial situation, whilst the relative positions of the creditors must be taken into account. When the above conditions are not met – as appears from the case studies among other things – the chances of the informal reorganisation failing will increase.

D.2 Will the debtor himself continue to manage the company during an informal reorganisation, or will the creditors temporarily take over?

Both the case studies and interviews show that management remains 'in control' at all times. However, during the interviews bank employees indicated that their negotiating powers increase as the situation deteriorates. After all, the worse the financial situation is, the smaller the chance that (risk-avoiding) capital can be raised elsewhere in the event that existing financiers withdraw their credit. Therefore, it can in fact be stated that from a *practical* point of view the administration of the company during an informal reorganisation partly shifts towards the banks.

E. What is the attitude of external interested parties with respect to companies in financial difficulties in general, and with respect to informal reorganisations and workout agreements in particular?

E.1 What is the attitude of (external) parties involved with respect to companies in financial difficulties in general, and with regard to informal reorganisation and suggested workout agreements in particular?

A preference for informal reorganisations instead of formal ones appears to be present among all the respondent groups. This preference can be traced

back to the fact that the process is bound to few rules, that it takes place in relative silence and that the interested parties themselves can determine the outcome. By taking action in time, that is to say within an informal reorganisation, further 'destruction of value' can be prevented.

Workout agreements must – as stated previously – reflect the relative positions of the financiers. By this the respondents mean that workout agreements must not lead to a less favourable outcome compared to a solution found within a formal procedure. The case studies indeed show – see for instance *Furniture* and *Tree nursery* – that the formulated solutions can only be successful when this is truly taken into account. The VVCM survey and the interviews show that creditors – as stated previously – prefer to have repayments deferred rather than cancelled (in the form a remission). The reason can be found in the fact that the increase in value (as a result of the remission) will be to the account of the company (owners). This way the bill is paid by the providers of risk-avoiding capital (loan capital) instead of the providers of risk-bearing capital (equity capital) and as such the relative positions of the financiers are not satisfied.

E.2 Do creditors of companies in financial difficulties have a basis for rules of conduct with regard to the process of informal reorganisation in accordance with a so-called Multi-Creditor Protocol, within which the relevant creditors of a company in financial difficulties voluntarily agree to a standstill period to give the company time to work out a solution on the one hand and to actively contribute to the formulation and realization of a possible solution on the other?

Interviews and surveys indicate that improved cooperation between the company and the creditors can contribute to the success of informal reorganisations. A code of conduct ('Multi-Creditor Protocol') can – under the right preconditions and provided that the relative positions of creditors are taken into account – contribute to this. In order to better clarify the rights and obligations to the parties involved with regard to an informal reorganisation and with that create a basis of trust, the implementation of a code of conduct is an appropriate means. The key to such a code of conduct is that the company and its relevant creditors (mostly banks, large trade creditors plus the tax authorities/Industrial Insurance Board) voluntarily comply with a number of fundamental 'rules of play'. The INSOL International Statement of Principles can – in the Netherlands at least – serve as an excellent basis for a general *Statement of Principles for Informal Reorganisations*. The banking and business sectors, as well as the government of a country must accept this Statement as the generally applicable standard. The possible core elements in such a code of conduct – based on the literature search, the INSOL International Statement of Principles and findings in the case studies (bottlenecks, success and failure factors) – is once more outlined below:

1. Deferment of payment is voluntarily agreed to ('standstill period' by creditors);
2. The debtor ensures that the relative positions of the creditors are maintained;
3. The debtor refrains from any action that may jeopardise the proceeds for the creditors;
4. Creditor committees are set up, if so required;
5. The debtor provides the creditors with relevant information;
6. Reorganisation proposals are made in the light of the applicable law;
7. The parties treat all information confidentially;
8. New financing during the process will be given priority status.

Compliance with these rules has a potential stabilising effect on the situation at hand, as clarity is created among all parties concerned. A certain extent of objectivity is built into the process. Creditors are required to sit back whilst the company 'in return' must do everything it possibly can to reverse the current negative situation. However, voluntary cooperation must be the basis; the Statement as such must therefore receive wide social support. Specialised advisors/mediators can play an important role in this respect.

In practice – as appears from the case studies (see for instance *Car*, *Lease* and *Renting out*) and the interviews – certain aspects of the Statement are, on occasion, already applied in mainly larger companies. As such, there seems to be no reason for withholding implementation among smaller companies.

As a result of international developments in this field – for instance the initiatives by the European Commission, UNCITRAL and the World Bank (§ 2.6) to promote informal (out-of-court) workouts – the need to institutionalise voluntary rescue frameworks for workouts/informal reorganisations will for many countries (including the Netherlands) certainly be a growing necessity.

F. What are the practical bottlenecks with regard to informal reorganisations and workout agreements?

F.1 Looking at Dutch practice, what are the bottlenecks with regard to workout agreements in relation to (agreements within) moratoriums, Private person Fresh start Proceedings and liquidation prior to the restart of companies?

F.2 What problems are observed in practice with regard to (informal) reorganisation?

As indicated by all sub-studies, an important bottleneck can be found in the fact that companies often start the necessary reorganisation too late. In particular, the case studies with regard to the failed informal reorganisations confirm that this increases the chances of failure.

The case studies further indicate that the role of the banks in informal reorganisation is crucial and generally positive. Banks – as they say so themselves – do not benefit from liquidations. Not only does any future turnover cease as a result, loans too are often not sufficiently covered via secured claims such as pledge and mortgage. As such, liquidation can lead to significant losses. This is an important reason why banks often take on a 'guiding and disciplinary role' in relation to management. When compliance is not satisfactory in this respect the pressure will be increased, for instance by threatening to withdraw credit (in the long or short term). Such means of coercion can in fact be regarded as an 'implicit workout'. In addition to some (positive) pressure on management, it is often indicated that the company must start looking for additional risk-bearing capital, especially when the company is not able to rationalise the business via a restructuring of the business operations alone. This will partly restore the balance sheet ratios, whilst solvency becomes healthier (again). It is therefore remarkable that many interviewees (advisors, credit managers and accountants) consider the role of banks in respect of companies in financial difficulties as negative. The element of withdrawing credit in particular and additional credit being made available (the refusal thereof) plays an important role in this. Banks take the position that they as providers of risk-avoiding capital cannot allow themselves to run any additional risks in situations of financial difficulties and for that reason they are extremely careful in their decisions to continue financing (not to withdraw credit) or to make additional credit available. However, many interested parties regard the bank as *the* organisation to keep or make credit available in times of trouble. Furthermore, other parties are often of the opinion that banks are always better off than the ordinary creditors due to the many securities issued. From this a moral duty implicitly arises (this seems to be the opinion anyway) to make additionally required liquidity available in times of financial difficulties. Banks, however, regard these securities as a necessary tool to minimise normal risks. In addition, they draw attention to the lower realisable value of assets during a possible liquidation; the case studies show – see for example *Raw* and *Services* – that banks, despite issued securities, must often make provisions for loans which (possibly) cannot be repaid. The subsequent argument that banks always dispose of more information compared to the ordinary creditors is parried with the statement that anyone can familiarise himself with the financial situation of a company by making some enquiries.

The above differences of opinion lead to a tense relationship between the various interested parties. Informal reorganisations may be jeopardised as a result of this. A so-called *Banks and Businesses Code* could be introduced in this respect. This code, in accordance with the British BBA-Statement, should be aimed at improving the relationship between bank and company, by making clear to each other at the start of the credit relationship what is to be expected from each other, especially in the event of (imminent) financial difficulties.

The expectation is that the process of providing credit becomes more transparent and objective as a result. This may create a win-win situation for both parties.

From all sub-studies it appears that it is important for parties to trust each other and to reach agreement about the reorganisation measures. An important reason for informal reorganisations to fail can be traced back to the loss of trust between the company and its interested parties. Trade creditors are often 'kept in suspense' and at a certain moment they are no longer prepared to cooperate on a workout agreement. Banks lose confidence as soon as management underestimates the seriousness of the situation and takes inadequate action. This is enhanced by insufficient insight (non-transparency) among creditors into the true financial situation of the company which is often the result of (over) optimistic prognoses in combination with an inadequate management information system; the case studies *Furniture* and *Steel* are striking examples thereof.

Reorganising companies in financial difficulties can involve high costs. The study shows that many informal reorganisations fail, as the action taken is not sufficiently drastic and therefore the costs are not under control quickly enough. From interviews and surveys it appears that redundancy costs/ employees' employment protection are major bottlenecks. It appears to be difficult in the Netherlands to dismiss personnel in an inexpensive manner during informal reorganisations. This is a significant disadvantage compared to, for instance, a formal reorganisation procedure such as the transfer of assets following liquidation. A number of case studies confirm this bottleneck – see for example *Knowledge*, *Service* and *Wood* – although other factors, such as insufficient (strategic) reorganisation measures, insufficient provision of information and lack of risk-bearing capital, appear to be more dominant in practice.

Another disadvantage of informal reorganisations is that an agreement which has been adopted by a qualified majority of the ordinary creditors can be imposed on reluctant creditors only under special circumstances. From the case studies and interviews it appears that in practice this is often handled in a flexible manner. The argument that a court of law *is* capable of imposing such an agreement within the procedure of moratorium and that the return in a formal procedure will be lower, often speeds things up; see for example *Candy* and *Lamps*. Also, there appears to be a bottleneck with regard to agreements with remission of the remaining debt. As stated previously (B.2), in the surveys and interviews, creditors indicate to find it unjust to have to suffer a loss in favour of the owners of the company. The reluctant attitude of many creditors in practice can also be traced back to this. Creditors prefer deferment of repayments if possible and insofar as is necessary. After all, this preserves, in a better manner, the relative positions of the creditors in relation to the providers of risk-bearing capital.

The surveys show that the tax authorities and the Industrial Insurance Board are often slow and inflexible when it comes to workout agreements. Informal reorganisations may be jeopardised as a result of this, according to some respondents. Interviews with bank employees further indicate that the tax authorities' so-called right to claim compound bounded assets can lead to the failure of informal reorganisations. However, this appears to be hardly evident in the companies examined in the case studies.

It has been previously stated that at a certain moment 'new money' may be required, that is to say, either risk-bearing or risk-avoiding money will need to be injected; with a view to the deteriorated balance sheet ratios, risk-bearing capital will often be preferred (at least by banks). If a shareholder (or private entrepreneur) is not prepared or able to invest money, then, in principle, neither will the banks. This is how a deadlock is created. Small entrepreneurs have the possibility to apply for a so-called FAE-loan (Financial Aid Programme for Entrepreneur-Debtors) in order to reorganise the company and finance an agreement. Larger companies however will usually try and find takeover candidates/investors or a party who is prepared to take over the existing finance agreements. In a deteriorated situation, an existing provider of risk-avoiding capital will only make funds available provided that its relative position is no further undermined. Guarantees for the money being repaid (insofar possible) must therefore be issued. This does not always prove to be possible.

The examination of the case studies shows that potential investors, who could contribute risk-bearing capital, often pull out at a late stage. This is partly due to the high costs and risks involved in reorganisations. These costs and risks concern personnel, but also the closure and/or restructuring of loss-making business units. Furthermore, there is a lot of uncertainty about possible 'skeletons in the cupboard' in the form of deferred (as yet unknown) commitments. This pulling out is frequently accompanied by a virtually 'dried-up liquidity'. Banks and other interested parties often regard the investors pulling out as the signal for loss of confidence in the company's future. This will in many cases mean that the moratorium procedure is a foregone conclusion. Moratorium subsequently often results in liquidation. It is many times the same or other investors who, following liquidation, purchase part of the going concern via a transfer of assets (restart). Profitable activities can be continued 'with a clean slate'. The question presents itself whether this practice must or can be avoided.[5] On the one hand liquidation seems to be used to 'avoid' commitments, while on the other 'value' remains intact because business

5 See also Kortmann 2000, p. 29-30: 'The risk of 'skeletons in the cupboard' is prevented. No financiers of the agreement need to be found; etcetera. The new entrepreneur can thus make a restart with a more or less clean slate' (translation).

operations are continued.[6] From the case studies, at least, it appears that transfers of assets following liquidation can in certain cases not be avoided (thirteen of the fifteen examined dossiers about failed informal reorganisations speak of a full or partial restart in the form of an assets transfer following liquidation).[7] In addition, it has emerged that when an informal reorganisation has taken place (on the basis of a properly detailed plan) a restart can be realised quicker. This way 'value destruction' is further minimised. In that sense, a failed informal reorganisation can from a social and economic point of view still be regarded as a success. The latter has also been confirmed by bank employees.

Summarising, it can be stated that informal reorganisations mainly fail due to insufficient strategic and operational reorganisation measures (insufficient *restructuring of the business operations*), lack of transparency with regard to the relevant creditors and the impossibility to (timely) raise risk-bearing capital. As a result, creditors often lose confidence in management plus the company whilst preparedness to cooperate with workouts diminishes.

G. Is additional legislation or regulation necessary in order to have informal reorganisation routes and workout agreements function (better) as restructuring tools?

G.1 Is there any existing legislation which stands in the way of informal reorganisations and workout agreements?

As stated previously, in a number of case studies and in the surveys and the interviews it is demonstrated that the employment protection of employees in the Netherlands can form an important bottleneck with regard to informal reorganisations. Both the dismissal terms and the so-called sub-district court-formula can lead to high reorganisation costs. Funds are often not available in this respect, whilst (potential) financiers are not prepared to invest in this. Partly because of that, a transfer of assets following liquidation often appears to be the more attractive option. During the interviews it was more than once stated that a relaxation in the possibilities to dismiss within informal reorganisations will lead to an increased number of companies being able to be reorganised within the same legal entity. It was indicated though that abuse must be guarded against. This could be monitored by a specialised body (for

6 In relation to possible management liability within the framework of restarts, Huizink even speaks of: '(…) combating the senseless destruction of capital' (translation). See Van Frederikslust *et al.* 2004, p. 336 – 337.

7 See also Couwenberg 2003, p. 19: '(…) it should not be thought that with the implementation of more concrete statutory reorganisation regulations the now common transfer of assets with regard to liquidations will pass into disuse' (translation).

example a department within the Enterprise Division of the Amsterdam Court of Appeal). Within that capacity it should additionally, in a more general sense, be able to take decisions regarding bottlenecks in (informal) reorganisations.

The literature search, the case studies and the interviews show that – in principle – sufficient legal possibilities are available to impose (out-of-court) compulsory agreements in the event of reluctant creditors. However, a specialised body – such as stated above – could play a role in this process as well, particularly with a view to the assessment as to what extent a company is (still) viable and to what extent creditors can be expected to cooperate with an agreement. The case studies for that matter did not show any court-approved forced participation in agreements. This seems to confirm that interested parties mainly pursue voluntary cooperation in (amicable) solutions.

One of the advisors interviewed indicated that offering an agreement within the PFP scheme often fails as the entrepreneur is practically always obliged to cease the operational activities. Therefore, the possibility for natural persons/ companies to reorganise within this scheme – as described in the literature search – does not always seem to work in practice. In the Netherlands, an explicit (legal) possibility to continue the operational activities should be considered as this could preserve the going concern value in such cases.

The following can be stated with regard to (possible future) legislation in the Netherlands. It appears that formal insolvency procedures come with important disadvantages, particularly with regard to the publicity and the fact that the parties involved can no longer determine the outcome themselves; as a result important going concern value is lost. Therefore, the legal reorganisation tool of moratorium is – in principle – a tool which is best avoided in the Netherlands. An amendment of this regulation entailing reduced thresholds to carry through compositions with (ordinary) creditors – as introduced by the Dutch legislator in January 2005[8]- could lead to an increased number of companies applying for moratorium. The question is whether this effect is desired.

If the aim is, in principle, to attempt to reorganise companies via an informal procedure – the respondents in the surveys and interviews confirm this plus this is the current international development – the advantages of a statutory reorganisation procedure such as moratorium should also apply to informal reorganisations. The afore-mentioned reduction of the threshold for agreements in moratoriums should therefore also be extended to the informal phase (see also G.2).

G.2 Are there any possibilities for the Dutch government and/or other authorities to promote informal reorganisation and/or workouts (by means of, for instance, rules of conduct, laws for granting credit facilities, continued financing,

8 See Parliamentary Documents II 1999/2000, 27 244, no. 2 and 3 and www.minjus.nl. See also § 2.5.2.

continued provision of products and services)? If so, what would such incentives look like and how would they work?

This study shows that companies must start reorganising in time. Interested parties in relation to companies must play an important role in the timely observation of (potential) problems (early warning). Trade organisations and the authorities could play a role in making entrepreneurs and their interested parties (more) aware of imminent financial difficulties and how to deal with them. In the Netherlands one could consider (and this list is not exhaustive) employers' associations such as the Dutch trade organisation for employers in SMEs (MKB-Nederland) and the Dutch Federation of Employers (VNO-NCW), accountancy organisations such as the Dutch Federation of Independent Accounting Firms (SRA), the Dutch Federation of Accountants (NOvAA) and the Royal Dutch Institute of Chartered Accountants (NIVRA), the Ministry of Economic Affairs, the Dutch Federation (consultative body) of Banks (NVB) and the Turnaround Finance Group Nederland.

Although the appointment of advisors/interim managers is generally regarded as a positive thing, it is advisable to examine whether it is possible or desirable to set up a knowledge centre in the Netherlands for all players in the (consultancy) field of companies in financial difficulties. This way it will be possible to work on continued professionalisation, more specific training and systematic research. The authorities and trade organisations can act as a 'catalyst' in this respect. Furthermore, it needs to be considered – partially on the initiative of the Dutch Foundation for the promotion of Mediation (NMI) – to what extent specialised mediators (*Reorganisation-mediators*) can be (increasingly) deployed in the practice of informal reorganisations to restart and successfully complete negotiations that have failed or which are on the brink of doing so. Chapter 5 explored this subject in broad outlines.

The creditors concerned must be well aware of everyone's rights and obligations. This way, misunderstandings on the relative positions of creditors with regard to a company in financial difficulties can be prevented. It appears that the difference between risk-bearing and risk-avoiding financing is not always recognised in practice. Misunderstandings and miscommunication can be avoided by means of more information and awareness in this field, through training by the authorities plus the earlier stated trade organisations and/or banks.

Implementing a *Statement of Principles for Informal Reorganisations*, such as described before, can provide an opportunity to restore mutual confidence and to (better) clarify the rights, expectations and obligations for all parties concerned. This Statement of Principles must receive wide social support and as such be supported by the government, the business sector and financial institutions. Further investigation into the application of such a Statement in the Netherlands is desired. The Ministry of Justice could take the lead in this

respect, the more so since its current policy explicitly pursues an increase in the future number of out-of-court settlement of legal disputes.[9]

An important bottleneck in informal reorganisations can be found in the employees' employment protection. In order to increase the number of successful informal reorganisations in the Netherlands, it should be possible to make staff redundant in a less expensive manner. When – to this end – the possibilities within the legal reorganisation regulation 'moratorium' are increased, these possibilities must at least be created in informal reorganisations as well.[10] Misuse must be avoided at all times however. As stated before – a specialised body could be established which deals with issues concerning informal reorganisations, taking into account legal and commercial aspects and the interests of all parties concerned.

It should be possible to conclude workout agreements in the same manner as agreements (compositions) within legal proceedings. If this is not possible, (more) companies are set to enter into a legal procedure quite unnecessarily. Legal reorganisation procedures such as moratorium must be regarded as *tools* to ratify informal reorganisations ('pre-pack-procedures') and, in principle, not as independent *means* to reorganise companies. This must always be taken into account when making decisions about the review of insolvency legislation (in the Netherlands at least).

When additional liquidity is required it is – in principle – possible to raise risk-bearing or risk-avoiding capital. In the Netherlands, small independent entrepreneurs can – under certain circumstances – apply to receive a so-called (municipal) FAE-loan, which can be used to finance an agreement. Raising risk-bearing capital (among shareholders or other investors/takeover candidates) will often be the only possibility for larger companies to prevent further deterioration of the balance sheet ratios. If so desired, the authorities could investigate to what extent they – within the current possibilities of (international) legislation – are able to provide risk-bearing capital when no alternative is available or when none can be found, for example, in the form of surety agreements. In reply to the WODC-investigation (see § 1.1) the Dutch legislator has in any event indicated not to regard this as its task.[11]

It appears that banks often continue to finance a company within informal reorganisations for a prolonged period of time; the case studies confirm this finding. Trade creditors too often continue to deliver voluntarily despite outstanding accounts. Legislation in this respect – as a result of which these parties in certain situations have the legal obligation to continue to finance or deliver – can lead to a less flexible attitude among these creditors at an earlier stage, as the risks of non-payment are less controllable and may increase. The result will probably be that the willingness to deliver or finance

9 See Letter Minister of Justice, April 2004.
10 See for a discussion in this respect also Vriesendorp 2001, p. 42. and Jacobs *et al.*, p. 75 ff.
11 Letter Minister of Justice, April 2005.

will diminish in advance. More generally, the question should be raised to what extent risks may be transferred to the providers of risk-avoiding capital. The implementation of a *Banks and Businesses Code* – as stated previously – could contribute to an improved relationship between banks and companies. In the Netherlands, the Dutch Federation (consultative body) of Banks (NVB) and the trade association for employers in SMEs have recently jointly undertaken this task.

6.2 In conclusion

> …In the Clocket, Paddet, Skynnham & Glote workout, the law firm's senior partner, Herbert Skynnham, had been so desperate, he had listed a $ 40,000 Patek Philippe watch as collateral…
>
> … At a breakfast session Harry had asked if by any chance he had it with him. Yes, said Skynnham. Harry asked if he could inspect it. Skynnham took it off his wrist and handed it to him. Harry weighed this dazzling golden wafer with its gleaming band tenderly in his palm, then smiled, slipped it into the left-hand side pocket of his jacket, and said, "Thank youuuuu"…
>
> …With that, Harry Zale became a legend in his own time. PlannersBanc's chief executive officer, Arthur Lomprey, lord of the forty-ninth floor, was so impressed, he bought a fake Patek Philippe watch from a Senegalese street vendor out in front of Underground Atlanta with $ 65 of his own money and had it engraved TO HARRY. THANK YOUUUUU! Arthur.
>
> Tom Wolfe, *A Man in Full*

When the intention is to guard an increasing number of companies/entrepreneurs from liquidation by means of informal reorganisations, the following must be taken into account.

First of all, the awareness that reorganisations are only successful when business operations are restructured timely and efficiently must be increased, that is to say, management must – either with or without the help of third parties – restore profitability as soon as possible or show some prospects thereof, in any case. The (Intensive Care Department of a) bank can be of great importance in that respect. A good relationship between the housebank and the company is crucial here. The management of a company must recognise that credit facilities by banks are based on trust; this trust can only be established (or restored) when in addition to the initiated reorganisation, openness with regard to the financial situation is pursued and when the forecasts are realistic. Informal reorganisations often fail as the basis of trust between the

company and the bank has gone.[12] The relationship bank/company can from the start be objectified by means of a *Banks and Businesses Code* and as such contribute to the required confidence. It does need to be taken into account however, that banks will be prepared to make available risk-bearing funding in highly exceptional cases only. When additional financing is required, banks expect this to be made available by the injection of risk-bearing capital from, for example, the shareholders, either or not in the form of a complete or part takeover. Companies, therefore, must actively search for opportunities to generate risk-bearing financing rather than to expect the bank to provide the required cash. An additional effect here is that at the same time it generates a positive signal with regard to the company's future perspectives; as a result, the creditors often (re)gain confidence, reducing the chances of 'withdrawal' and thus compulsory liquidation. This effect could be typified as a *positive* self-fulfilling prophecy-effect.

Requesting 'sacrifices' from (unsecured) creditors (for instance by offering an agreement entailing remission of debt) in order to prevent liquidation is – theoretically – a good method of informal reorganisation. However, it should be taken into account that in this situation creditors – although strictly speaking voluntarily – are pressurised into cooperation. After all, the consideration to cooperate is made in the light of a potentially worse scenario: a formal procedure. Constructions within informal reorganisations aimed at sacrifices from creditors must therefore not be a reflection of the various positions of the creditors alone, in which a minimum return is offered equalling the amount that could be generated in the event of liquidation or a restart.[13] More important, open communication with creditors regarding the backgrounds and perspectives of the informal reorganisation must be – insofar as is possible – taking place as much as possible. Focussing on deferment of payment rather than cancellation (remission) will also increase the chances of success here. After all, this shifts the loss away from the creditors.

The practice of informal reorganisation would benefit from a so-called *Statement of Principles for Informal Reorganisations*. By complying with it, all the interested parties indicate that they have certain expectations from each other. Also, parties are better informed as to what they can expect from each other. Cooperation here is paramount. Such a code of conduct will contribute to increased transparency and provides the parties with a basis. However, the implementation and application thereof must be supported by all the interested parties concerned. Authorities, trade organisations and banks will have to act as 'catalysts' in respect of the introduction and implementation of such a code. International economic developments and the stated initiatives for the promotion of voluntary rescue frameworks demonstrate that institution-

12 In that sense Tom Wolfe's quotes from his great book *A Man in Full* – which are used in this dissertation – are indicative as to how things should not be done.
13 See also Couwenberg 2003, p. 16-17.

alisation and promotion is urgently required. Time is of the essence for countries – including the Netherlands – which still have to take action on an institutional level.

It needs to be taken into account that informal reorganisations will only be successful when they offer clear benefits compared to formal reorganisation possibilities. A relaxation of statutory reorganisation procedures can lead to an increased number of companies taking this 'public' road. The question is whether this effect is desired. In addition, it remains to be seen whether relaxation of statutory reorganisation procedures will indeed result in a rise of companies being reorganised successfully. After all – as evidenced in this study by the failed informal reorganisations – when this course of action is pursued the interested parties have often fully lost confidence, whilst previous rescue operations have proved unsuccessful and the company's cash recourses are often (nearly) gone. However, when the possibilities to reorganise a company within the same legal entity have run out, a transfer of assets following liquidation can be a means to quickly continue operational activities and to retain social and economic value. As such, a well-prepared restart plan (as a 'worst-case scenario') must be in place within an informal reorganisation in order to secure the transfer of assets and continuation of operational activities.

Summarising, the focus within (Dutch) practice of informal reorganisations should be on realising cooperation and (restoring) trust between the relevant interested parties, transparency, timely and efficient restructuring of the business operations and, if necessary, attracting additional risk-bearing capital. The institutionalisation of a *Statement of Principles for Informal Reorganisations*, a *Banks and Businesses Code* and principles for mediation focused on restructuring operations could be a significant contribution to the improved functioning of the current practice.

6.3 Suggestions for further study

This study outlines Dutch practice of companies in financial difficulties and in particular the manner in which informal reorganisations are used to try and prevent liquidations. A number of important success and failure factors as well as bottlenecks have been highlighted herein. Partly on that basis, three proposals have been formulated with the objective to improve practice to an even greater extent. The facts that have been found and the three proposals as such again form basic principles for renewed study. Suggestions in this respect are made by means of a number of questions and considerations – these are of course not exhaustive.

- The role of banks in relation to companies in financial difficulties appears to be controversial. The question is, therefore, how commercial credit

relations – whether or not by means of a Banks and Businesses Code – can be improved. How do the parties with a direct interest (companies and banks) regard such a code of conduct? Do they recognise any practical opportunities in this respect?

- A wide application of mediation in informal reorganisation could be a means in the fight to prevent liquidations. This specific form of alternative dispute resolution has been outlined in chapter 5. The question rises whether it is indeed desirable to widely implement and/or institutionalise this in practice. When the answer to this is positive, how should this then be done?
- Is it in fact desirable to institutionalise a code of conduct for informal reorganisations (in the Netherlands)? If so, how should this be given shape in practice? What could and/or should the role of the government and business and banking sectors be therein?
- The role of the tax authorities in relation to companies in financial difficulties seems to be somewhat controversial in the Netherlands, particularly in respect of the so-called right to claim compound bounded assets. Is it in effect desirable – from a social and economic perspective – to retain the right to claim compound bounded assets? Especially now that subjects such as entrepreneurship, innovation and the reduction of the number of liquidations seem to be so high on the (international) political agenda.
- It has been found that transfers of assets following liquidation (restarts) can often not be prevented. The question is therefore to what extent a revision of the Dutch Bankruptcy Act – particularly with regard to the moratorium arrangement – will indeed be helpful. Additional research should be conducted into the reasons why investors and banks (sometimes) pull out and whether this bottleneck could and/or should be removed. In addition – more generally – it should be considered to what extent a relaxation of statutory reorganisation procedures would affect the practice of informal reorganisations.

A number of suggestions for further study are detailed above. These suggestions too, for that matter, could raise new questions. However, I trust that answering at least a number of the formulated questions will contribute to a more efficient practice of informal reorganisations in the Netherlands; perhaps it will also offer – hopefully in combination with this study – some useful insights for interested parties in international practice.

Summary

…Durante causa durat effectus…

This study focuses on the practice of restructuring companies in financial difficulties, and so-called informal reorganisations in particular. An informal reorganisation is a reorganisation route which takes place outside the statutory framework – in the 'shadow of the law' – with the objective of restoring the health of a company in financial difficulties within the same legal entity. Within an informal reorganisation it will often be necessary to reach an agreement with the company's creditors about changing agreements made earlier with regard to provided capital. When this change is effected on a voluntary basis, this is a case of a so-called workout.

For this study, the following problem definition has been formulated (chapter 1):

Which measures are discovered in Dutch companies in financial difficulties which can prevent legal proceedings such as moratorium, Private person Fresh start Proceedings (PFP) and liquidation? Are there any practical bottlenecks which can be removed (whether or not with new legislation)?

In order to be able to answer the problem definition, I conducted a literature search (chapter 2) and carried out 35 comprehensive case studies at the four largest Dutch banks and three consultancy agencies in the field of business restructuring (chapter 3). Furthermore, four surveys were held among credit managers, accountants, insolvency lawyers and management advisors, while 23 interviews were held with various stakeholders (advisors and bankers in particular) of informal reorganisations (chapter 4). Partly on that basis, three proposals were formulated, that is to say the introduction of a so-called 'Statement of Principles for Informal Reorganisations', a so-called 'Banks and Businesses Code' and the structure of mediation during informal reorganisations (chapter 5). The three proposals are an attempt to achieve a more institutionalised approach to informal reorganisations ('Institutionalised Informal Approach') and they aim to increase the efficiency of restructuring processes. Following on from the London Approach, I have called the Dutch version of this approach 'Dutch Approach'. Chapter 6 concludes the study with an overview of the main findings.

From the case studies, interviews and surveys it emerges that the main causes for financial difficulties can be traced back to (a combination of) poor management (management not reacting adequately to both positive and negative developments within and outside the company, often on a strategic level), an excessive cost structure and, following on from this, inadequate management of the company based on (financial) management information. It is remarkable that the case studies show that economic conditions are often *not* the cause of financial difficulties. Furthermore, only three dossiers speak of *possible* fraudulent activities.

Respondents have indicated to prefer informal reorganisations to formal reorganisations. However, the later an informal reorganisation is initiated, the bigger the chances of failure. In general we can say, as all sub-studies show, that companies often start a necessary reorganisation too late. Interested parties in companies (for example banks, accountants and advisors) must play an important role in the timely observation of (potential) problems ('early warning'). Trade organisations in the business sector, the banking sector and the authorities can make entrepreneurs and their interested parties (more) aware of imminent financial difficulties and how to deal with them.

It is difficult to gauge the number of informal reorganisations in the Netherlands, since these processes occur in (relative) silence and are not registered. However, a conservative estimate, based on the success percentages of banks and liquidation figures for the period 2003-2004, yields a result of about 26,000 informal reorganisations in 2003.

Both the literature search and the case studies demonstrate that informal reorganisations often consist of two processes which are closely connected: *restructuring the business operations* and *financial restructuring*. When a company runs into difficulties, the first attempt will be to try and make the business operations, which are usually loss-making, profitable again. This is often done by appointing third parties (advisors/interim managers), improving the company's efficiency (reducing costs and closing loss-making business units), as well as improving the management information system. This is in line with the causes identified. It is striking that strategic reorientation often does not have the highest priority, while most problems can be traced back to this.

Appointing advisors/interim managers/mediators can be a major contribution to the success of an informal reorganisation. The main reason for this is that the relationship between management and creditors has often already been under pressure for quite a while. A third party, as a relative outsider, may be able to prevent or heal a breach of trust. Although the appointment of third parties is generally regarded as a positive thing, it is advisable to examine whether it is possible or desirable in the Netherlands to set up a knowledge centre for all players in the (consultancy) field of companies in financial difficulties. This way it will be possible to work on continued professionalisation, more specific training and systematic research. The authorities and trade organisations can act as a 'catalyst' in this respect. Furthermore,

we, partially on the initiative of the Dutch Foundation for the promotion of Mediation (NMI), must consider to what extent and in what way specialised mediators (so-called *Reorganisation-mediators*) can be (increasingly) deployed in the practice of informal reorganisations.

When it is not possible to make a company viable again just by restructuring the business operations, an attempt is often made to implement financial restructuring either simultaneously or afterwards. All sub-studies show that this requires careful handling, as this form of restructuring often entails a 'sacrifice' of one or more creditors involved. The most common measures within the framework of financial restructuring are, as demonstrated by both the case studies and the surveys, deferring repayments and reduction of the nominal debts with (ordinary) creditors. Furthermore, the search is often on for new risk-bearing capital (equity) in order to finance the reorganisation process and to improve the balance sheet ratios. The case studies also show that banks are often prepared to provide additional funds and to grant so-called waivers in order to increase the chances of a successful informal reorganisation. In addition, the case studies demonstrate that in Dutch practice more (non-financial) options are used in respect of financial restructuring than *generally* mentioned in the literature. Some examples are: banks threatening to withdraw the credit (to induce the company to actually reorganise), providing additional securities, cash sweeps and taking over finance agreements. Trade creditors, like banks, also often continue to deliver despite outstanding accounts. Legislation regarding commitments in this respect could lead to a less flexible attitude of these creditors in an earlier stage, since their risks will increase. The result will probably be that the willingness to deliver and/or finance will diminish in advance. More generally, interested parties in companies in financial difficulties must ask themselves to what extent risks may be transferred to the providers of risk-avoiding capital (debt).

In the Netherlands the role of the banks during informal reorganisation is crucial and in general positive. As they say themselves, banks do not profit from liquidations. Not only is future turnover lost as a result, but loans are often insufficiently covered by rights of pledge and mortgage. Liquidation can lead to extensive losses. This is one of the main reasons why banks frequently assume a 'supervisory and disciplinary role' with regard to management. If this is not complied with, the pressure will be increased. In addition to a (healthy) pressure on management, it is often indicated that the company must try and find additional risk-bearing capital, whether or not in the form of a takeover (especially when the company is unable to rationalise the company via strategic and operational restructuring alone). This partly restores the balance sheet ratios and creates healthier solvency (again). It is striking that many interviewees (advisors, credit managers and accountants) regard the bank's role in companies in financial difficulties as negative. The element of withdrawing credit in particular and the refusal to make additional credit available – when the occasion arises – plays an important role in this.

Banks take the position that they as providers of risk-avoiding capital cannot allow themselves to run any additional risks in situations of financial difficulties and for that reason they are extremely careful in their decision to continue financing (not to withdraw credit) or to make additional credit available. However, many interested parties regard the bank as *the* organisation to keep or make (additional) credit available in times of trouble. Furthermore, other parties are often of the opinion that banks are always better off than the ordinary creditors due to provided securities. From this a moral duty implicitly arises (this seems to be the opinion anyway) to make additionally required liquidity available in times of financial difficulties. Banks, however, regard these securities as a necessary tool to minimise normal risks. In addition, they draw attention to the lower realisable value of assets during a possible liquidation (the case studies show that banks, despite issued securities, must often make provisions for loans which cannot be repaid). The subsequent argument that banks always dispose of more information compared to the ordinary creditors is parried with the statement that anyone can familiarise himself with the financial situation of a company by making some enquiries. The above differences of opinion lead to a tense relationship between the various interested parties. Informal reorganisations may be jeopardised as a result of this. It appears that the difference between risk-bearing financing and risk-avoiding financing is not always seen in practice. Misunderstandings and miscommunication can be avoided by means of more information and awareness in this field, through training by the authorities, trade organisations and/or banks. A so-called 'Banks and Businesses Code' should be introduced following on from the Statement of Principles of the British Bankers' Association, in the Netherlands at least.[1] This code, in accordance with the British model, should be aimed at improving the relationship between bank and company, by making clear to each other at the start of the credit relationship what is to be expected from each other, especially in the event of (imminent) financial difficulties. The expectation is that the process of providing credit becomes more transparent and objective as a result. This may create a win-win situation for both parties.

From all sub-studies it appears that it is important for parties to trust each other and to reach agreement about the reorganisation measures. An important reason for informal reorganisations to fail can be traced back to the loss of trust between the company and its interested parties. Trade creditors are often 'kept in suspense' and at a certain moment they are no longer prepared to cooperate on a workout agreement. Banks lose confidence as soon as management underestimates the seriousness of the situation and takes inadequate

1 After the manuscript was closed, a code of conduct was signed between the Dutch trade association for employers in SMEs (MKB-Nederland) and the Dutch Federation (consultative body) of Banks (NVB). See www.nvb.nl. However, this code of conduct is not as extensive as proposed here.

action. This is enhanced by insufficient insight (non-transparency) among creditors into the true financial situation of the company which is often the result of (over) optimistic prognoses in combination with an inadequate management information system. Failed informal reorganisations share the fact that, as demonstrated by both the case studies and the interviews, the following elements are present in its execution:

- Management and shareholders have a passive attitude with regard to the informal reorganisation.
- The company provides the interested parties with insufficient insight into the true financial situation.
- The company is not able to timely raise risk-bearing capital (whether or not in the form of a takeover).

Successful informal reorganisations on the other hand share the fact that the following elements are present in its execution:

- The business operations are efficiently and quickly restructured by management (often with the help of third parties).
- Important interested parties (financiers) are involved in the reorganisation process.
- There is sufficient transparency with regard to the financial situation and the intended informal reorganisation.
- An active search for injection of risk-bearing capital (whether or not in the form of a takeover) is undertaken.

Based on the above it can be concluded that the chances of a successful informal reorganisation improve in practice if the following conditions are met:

- Active attitude by management and shareholders with regard to the informal reorganisation.
- Involving important interested parties (financiers) in the reorganisation process.
- Adequate reorganisation of the business operations.
- Transparency with regard to the financial situation and the intended informal reorganisation.
- Injection of risk-bearing capital (whether or not in the form of a takeover).

Reorganising companies in financial difficulties can involve high costs. From some case studies, as well as the interviews and surveys, it appears that redundancy costs and employees' employment protection are major bottlenecks in the Netherlands. It appears to be difficult to dismiss personnel in an inexpensive manner during informal reorganisations. This is a significant disadvantage compared to a formal reorganisation procedure such as the transfer

of assets following liquidation (restart). In order to make a higher number of informal reorganisations a success, it should be possible to make staff redundant in a less expensive manner. When the possibilities to this end are increased within a legal reorganisation procedure such as – in the case of the Netherlands – moratorium, these possibilities must at least be created in informal reorganisation procedures as well. Misuse must be avoided at all times however. A special body could be set up in the Netherlands (for example a department of the Enterprise Division of the Amsterdam Court of Appeal) which specialises in issues that arise during informal reorganisations and which takes into account both legal and commercial interests.

Another disadvantage of informal reorganisations is that a workout agreement (which has been adopted by a majority of the ordinary creditors) can be imposed on reluctant creditors only under special circumstances. From the case studies and interviews it appears that in practice this is often handled in a flexible manner. The argument that courts can impose such an agreement within the procedure of moratorium and that the return of a formal procedure will be lower, often speeds things up. Also, there appears to be a bottleneck with regard to agreements with remission of the remaining debt. In the surveys and interviews, creditors indicate to find it unjust to have to suffer a loss in favour of the owners of the company (the reluctant attitude of many creditors in practice can also be traced back to this). Creditors therefore prefer deferment of repayments if possible and insofar as is necessary. Next to that, workout agreements must be concluded in the same manner as compositions within the moratorium scheme. If this is not possible, (more) companies will enter into a legal procedure quite unnecessarily. Moratorium must be regarded as a *tool* to ratify, if necessary, informal reorganisations ('pre-pack procedure') and not as an independent instrument to reorganise companies. This must be taken into account when making decisions about reviewing insolvency legislation, in the Netherlands at least.

The surveys show that the tax authorities and the Industrial Insurance Board are often slow and inflexible when it comes to workout agreements. Informal reorganisations may be jeopardised as a result of this, according to the respondents. Furthermore, interviews with bank employees have shown that the preference the tax authorities in the Netherlands have over other creditors can lead to the failure of informal reorganisations. However, the companies examined in the case study showed no such thing.

It has been mentioned before that, at a certain moment, either risk-bearing or risk-avoiding capital must be introduced (with a view to the deteriorated balance sheet ratios, risk-bearing capital will often be preferred; at least by banks). If a shareholder (or private entrepreneur) is not prepared or able to invest money, then, in principle, neither will the banks. This is how a deadlock is created. In the Netherlands, small independent entrepreneurs have the possibility to apply for a so-called FAE-loan (Financial Aid Programme for Entrepreneur-Debtors) with which they can (financially) reorganise the com-

pany and finance a workout agreement. Larger companies however will usually try and find takeover candidates/investors or a party who is prepared to take over the existing finance agreements.

The examination of the case studies shows that potential investors (who could contribute risk-bearing capital) often pull out at a late stage. Some of the reasons for this are the high costs and risks involved in reorganisations. These costs and risks concern personnel, but also the closure and/or restructuring of loss-making business units. Furthermore, there is a lot of uncertainty about possible 'skeletons in the cupboard' in the form of deferred (as yet unknown) commitments. This pulling out is frequently accompanied by a virtually 'dried-up liquidity'. Banks and other interested parties often regard the investors pulling out as the signal for loss of confidence in the company's future. This will in many cases mean that a moratorium procedure is a foregone conclusion. Moratorium subsequently often results in liquidation. It is many times the same or other investors who, following liquidation, purchase part of the going concern via a transfer of assets (restart). Profitable activities can be continued 'with a clean slate'. The question presents itself whether this practice must or can be avoided. On the one hand liquidation seems to be used to 'avoid' commitments, while on the other 'value' remains intact because business operations are continued. From the case studies, at least, it appears that transfers of assets following liquidation can not, in certain cases, be avoided (thirteen of the fifteen examined dossiers about failed informal reorganisations speak of a full or partial restart in the form of an assets transfer following liquidation). In addition, it has emerged that if an informal reorganisation has taken place – on the basis of a properly detailed plan – a restart can be realised quicker. This way 'value destruction' is further minimised. In that sense, a failed informal reorganisation can from a social and economic point of view still be regarded as a success.

Both the interviews and the surveys indicated that improved cooperation between company and creditors can add to the success of informal reorganisations. A code of conduct ('Multi-Creditor Protocol') can contribute to this, provided the relative positions of creditors are taken into account and that it takes place under the appropriate pre-conditions. It is an efficient tool to clarify the rights and obligations in an informal reorganisation to each other and to use this to create a basis of trust. The core of such a code of conduct is that the company and its relevant creditors (mainly banks, large trade creditors and the tax authorities/Industrial Insurance Board) voluntarily observe a number of fundamental 'rules of play'. INSOL International's Statement of Principles can for many countries – including the Netherlands – serve as a basis for a (specific) 'Statement of Principles for Informal Reorganisations'. Observing the rules has a potentially stabilising effect on the situation created, because there is clarity on all parts. A certain amount of objectivity is incorporated in the process. Creditors are asked to hold back ('stand still') for a while, and 'in exchange for this' the company must do everything it can to recover

from the bad situation. Voluntary cooperation must be the basis however, and the Statement therefore must receive wide social support. From both the cases studies and the interviews it appears that some of its aspects are already applied, especially among larger companies. Nothing seems to stand in the way of applying it to smaller companies. The necessity to introduce a code of conduct for informal reorganisations increases as a result of international economic developments and initiatives in the field of voluntary rescue frameworks of, among others, the European Commission, UNCITRAL and the World Bank. Further research into the application of such a Statement in the Netherlands is desirable; the Ministry of Justice could lead the way, the more so since its policy is to settle future legal disputes – including commercial ones – more and more outside the courtroom.

Taking an overall view we can say that, within the practice of informal reorganisations, the focus should be on realising cooperation and (restoration of) trust between the relevant interested parties, transparency, timely and efficient reorganisation of the business operations and, if necessary, attracting additional risk-bearing capital. The institutionalisation of a Statement of Principles for Informal Reorganisations, a Banks and Businesses Code and principles for mediation focused on restructuring operations could be a significant contribution to the improved functioning of the current practice, both in the Netherlands and hopefully far beyond.

Samenvatting (summary in Dutch)

…Durante causa durat effectus…

HERSTRUCTURERING IN DE SCHADUW VAN DE WET. INFORMELE REORGANISATIE IN NEDERLAND

In dit onderzoek staat de praktijk van herstructureringen van ondernemingen in financiële moeilijkheden centraal, meer in het bijzonder zogenoemde informele reorganisaties. Een informele reorganisatie is een herstructureringsprocedure die zich afspeelt buiten wettelijke kaders – 'in the shadow of the law' – en ten doel heeft het herstellen van de gezondheid van een onderneming in financiële moeilijkheden binnen dezelfde juridische entiteit. Binnen een informele reorganisatie zal het veelal nodig zijn om tot overeenstemming te komen met schuldeisers van de onderneming over wijziging van eerder gemaakte afspraken met betrekking tot ter beschikking gestelde financiering. Wanneer deze wijziging ('akkoord') op vrijwillige basis tot stand komt is sprake van een zogenoemde workout.

Voor het onderzoek is de volgende probleemstelling geformuleerd (hoofdstuk 1):

Welke maatregelen treft men bij Nederlandse ondernemingen in financiële moeilijkheden aan ter voorkoming van wettelijke procedures als surseance van betaling, WSNP en faillissement? Zijn er in de praktijk knelpunten die kunnen worden weggenomen (al of niet met nieuwe wetgeving)?

Om de probleemstelling te kunnen beantwoorden heeft literatuuronderzoek plaatsgevonden (hoofdstuk 2) en zijn 35 uitgebreide casestudies gedaan bij de vier grootste Nederlandse banken en bij drie adviesbureaus op het gebied van business restructuring (hoofdstuk 3). Daarnaast zijn vier enquêtes uitgezet onder credit managers, accountants, insolventieadvocaten en management adviseurs en zijn 23 interviews gehouden met verschillende belanghebbenden – voornamelijk adviseurs en bankiers – van informele reorganisaties (hoofdstuk 4). Mede op basis daarvan zijn drie voorstellen geformuleerd, te weten de invoer van een zo te noemen 'Statement of Principles for Informal Reorganisations', een zogenoemde 'Banks and Businesses Code' en de structurering van mediation bij informele reorganisaties (hoofdstuk 5). De drie voorstellen betreffen een poging om tot een meer geïnstitutionaliseerde benadering van

informele reorganisaties te komen ('Institutionalised Informal Approach') en zijn gericht op het verhogen van de efficiëntie van herstructureringsprocessen. In navolging van de 'London Approach' heb ik deze aanpak voor Nederland aangeduid als 'Dutch Approach'. Het onderzoek wordt in hoofdstuk 6 afgesloten met een overzicht van de belangrijkste bevindingen.

Uit de casestudies, interviews en enquêtes blijkt dat de belangrijkste oorzaken van financiële moeilijkheden zijn terug te voeren op (een combinatie van) zwak management – het onvoldoende reageren van het management op zowel positieve als negatieve ontwikkelingen binnen en buiten de onderneming; vaak op strategisch niveau – een te hoge kostenstructuur en, in het verlengde hiervan, onvoldoende sturing van de onderneming op (financiële) managementinformatie. Opvallend is dat uit de casestudies blijkt dat economische omstandigheden veelal niet ten grondslag liggen aan financiële moeilijkheden. Daarnaast blijkt in slechts drie dossiers sprake van *mogelijk* frauduleuze handelingen.

Respondenten hebben aangegeven informele reorganisaties te prefereren boven formele reorganisaties. Hoe later echter met een informele reorganisatie wordt gestart, des te groter de kans op mislukken. In het algemeen kan worden gesteld, zo blijkt uit alle deelonderzoeken, dat ondernemingen vaak te laat starten met een noodzakelijke reorganisatie. Belanghebbenden bij ondernemingen (bijvoorbeeld banken, accountants en adviseurs) dienen een belangrijke rol te spelen in het tijdig signaleren van (mogelijke) problemen ('early warning'). Brancheorganisaties in het bedrijfsleven, de bankensector en de overheid kunnen ondernemers en hun belanghebbenden (meer) attent maken op dreigende financiële problemen en de manieren om daar mee om te gaan.

Het aantal informele reorganisaties dat jaarlijks plaatsvindt in Nederland is moeilijk te meten aangezien deze processen in (relatieve) stilte plaatsvinden en niet worden geregistreerd. Een voorzichtige schatting, gebaseerd op succespercentages van banken en faillissementscijfers over de periode 2003-2004, leidt echter tot een uitkomst van bijna 26.000 informele reorganisaties in 2003.

Uit zowel het literatuuronderzoek als de casestudies is naar voren gekomen dat informele reorganisaties veelal bestaan uit twee processen die sterk met elkaar verbonden zijn: *herstructurering van de bedrijfsactiviteiten* en *financiële herstructurering*. Wanneer een onderneming in moeilijkheden is geraakt, zal allereerst worden getracht de bedrijfsactiviteiten, die meestal verliesgevend zijn, weer renderend te maken. Dit geschiedt veelal door het aanstellen van derden (adviseurs/interim managers), het verbeteren van de efficiëntie van de onderneming (verlagen van kosten en sluiten van verliesgevende onderdelen) evenals het verbeteren van het management informatiesysteem. Dit sluit aan bij de geconstateerde oorzaken. Opvallend is dat strategische heroriëntatie veelal niet de hoogste prioriteit heeft, dit terwijl de problemen veelal hier op terug zijn te voeren.

De inzet van adviseurs/interim-managers/mediators kan een belangrijke bijdrage leveren aan het succes van een informele reorganisatie. Voornaamste

reden hiervoor is dat de relatie management – crediteuren vaak al enige tijd onder druk staat. Een derde kan, als relatieve buitenstaander, een vertrouwensbreuk voorkomen c.q. doorbreken. Hoewel de inzet van derden in het algemeen als positief wordt ervaren, verdient het aanbeveling in Nederland te onderzoeken of het mogelijk dan wel wenselijk is een kenniscentrum op te richten voor alle actoren op het (advies)gebied van ondernemingen in financiële moeilijkheden. Op deze wijze kan worden gewerkt aan verdere professionalisering, meer specifiek onderwijs en stelselmatig onderzoek. De overheid en brancheorganisaties kunnen hierbij als 'katalysator' optreden. Daarnaast dient te worden bezien, mede op initiatief van het Nederlands Mediation Instituut, in hoeverre en op welke wijze gespecialiseerde mediators (zogenoemde 'Reorganisatie-mediators') in de praktijk van informele reorganisatie (meer) kunnen worden ingezet.

Wanneer het niet mogelijk is een onderneming alleen via herstructurering van de bedrijfsactiviteiten weer gezond te maken dan wordt veelal getracht om gelijktijdig, of opvolgend, een financiële herstructurering door te voeren. Uit alle deelonderzoeken blijkt dat hiermee zorgvuldig en voorzichtig moet worden omgegaan omdat deze vorm van herstructureren veelal een 'offer' met zich meebrengt van een of meerdere belanghebbende crediteuren. De meest voorkomende maatregelen in het kader van financiële herstructurering betreffen, zo blijkt zowel uit de casestudies als de enquêtes, het uitstellen van aflossingen en reductie van nominale schulden bij (concurrente) crediteuren. Daarnaast wordt veelvuldig gezocht naar nieuw risicodragend kapitaal (eigen vermogen) om het reorganisatieproces te financieren en de balansverhoudingen te verbeteren. Ook blijkt uit de casestudies dat banken vaak bereid zijn additionele financiering ter beschikking te stellen en zogenoemde 'waivers' te verlenen om de slagingskans van de informele reorganisatie te vergroten. Uit de casestudies blijkt verder dat in de Nederlandse praktijk meer (niet-financiële) mogelijkheden worden benut ten aanzien van financiële herstructurering dan *veelal* in de literatuur worden genoemd. Voorbeelden hiervan zijn het dreigen met kredietopzegging door banken (om de onderneming te bewegen daadwerkelijk te reorganiseren), het verstrekken van aanvullende zekerheden, 'cash sweeps' en het overnemen van financieringsovereenkomst(en). Ook handels- en kostencrediteuren blijven, gelijk banken, ondanks openstaande rekeningen vaak vrijwillig doorleveren. Wetgeving betreffende verplichtingen hiertoe kan bij deze crediteuren leiden tot een minder soepele houding in een eerder stadium omdat hun risico's zullen toenemen. Gevolg zal waarschijnlijk zijn dat de bereidheid om te leveren en/of te financieren bij voorbaat zal afnemen. Meer in het algemeen dient door belanghebbenden bij ondernemingen in financiële moeilijkheden de vraag te worden gesteld in hoeverre risico's afgewenteld mogen worden op de verschaffers van risicomijdend kapitaal (vreemd vermogen).

De rol van banken in informele reorganisaties is in Nederland cruciaal en in het algemeen positief. Banken zijn – zoals ze ook zelf stellen – niet gebaat

bij faillissementen. Niet alleen verdwijnt hierdoor toekomstige omzet maar vaak zijn kredieten ook niet volledig gedekt door pand- en hypotheekrechten. Een faillissement kan dan ook tot grote verliesposten leiden. Hierin ligt een belangrijke reden dat banken vaak een 'begeleidende en disciplinerende rol' aannemen ten opzichte van het management. Wordt hier geen gehoor aan gegeven dan zal de druk worden opgevoerd. Naast een (gezonde) druk op het management wordt veelal aangegeven dat de onderneming op zoek moet gaan naar additioneel risicodragend vermogen, al dan niet in de vorm van een overname (vooral wanneer de onderneming niet in staat is om alleen via een strategische en operationele herstructurering de onderneming te saneren). Mede op deze wijze worden de balansverhoudingen hersteld en ontstaat (weer) een gezondere solvabiliteit. Opvallend is dat veel geënquêteerden en geïnterviewden (adviseurs, credit managers en accountants) de rol van de bank bij ondernemingen in financiële moeilijkheden als negatief beschouwen. In het bijzonder het aspect van kredietopzegging en de weigering tot terbeschikkingstelling van additioneel krediet – in voorkomende gevallen – speelt hierbij een belangrijke rol. Banken stellen zich op het standpunt dat zij als verschaffers van risicomijdend kapitaal in principe geen extra risico's kunnen lopen in situaties van financiële moeilijkheden en daarom zeer zorgvuldig zijn in de afweging om door te financieren (krediet niet op te zeggen) of additioneel krediet ter beschikking te stellen. Veel belanghebbenden zien de bank echter juist als organisatie bij uitstek om in situaties van nood (extra) liquiditeit ter beschikking te houden c.q. te stellen. Daarnaast bestaat veelal de opvatting dat als gevolg van verstrekte zekerheden de banken altijd beter af zijn dan concurrente crediteuren. Hieruit volgt dan impliciet een morele plicht, althans dat lijkt de opvatting, om in geval van financiële moeilijkheden extra benodigde liquiditeit ter beschikking te stellen. Banken zien deze zekerheden echter als een noodzakelijk instrument om normale risico's in te dammen. Daarnaast wijzen zij op de lagere opbrengstwaarde van activa bij een mogelijke deconfiture (uit de casestudies blijkt dat banken, ondanks verstrekte zekerheden, regelmatig voorzieningen moeten treffen voor leningen die niet kunnen worden terugbetaald). Het argument vervolgens dat banken altijd meer informatie hebben ten opzichte van concurrente crediteuren, wordt gepareerd met de stelling dat een ieder zich kan vergewissen van de financiële situatie van een onderneming door zelf op onderzoek uit te gaan. De bovenstaande verschillen in opvatting leiden tot verschillen van mening en een gespannen relatie tussen de verschillende belanghebbenden. Informele reorganisaties blijken hierdoor in gevaar te kunnen komen. Het verschil tussen risicodragende financiering en risicomijdende financiering lijkt in de praktijk niet altijd te worden gezien. Meer informatie en bewustwording op dit vlak, door voorlichting van overheid, brancheorganisaties en/of banken, kan misverstanden en miscommunicatie voorkomen. Een zogenoemde 'Banks and Businesses Code' zou in navolging van het 'Statement of Principles' van de British Bankers' Association

moeten worden geïntroduceerd; in elk geval in Nederland.[1] Deze code zou, naar het Britse model, gericht moeten zijn op het verbeteren van de relatie bank – onderneming, door bij aanvang van de kredietrelatie over en weer duidelijk te maken wat van elkaar kan en mag worden verwacht, vooral in geval van (dreigende) financiële moeilijkheden. Naar verwachting zal het kredietverleningproces hiermee meer transparant en objectiever worden. Hierdoor kan voor beide partijen een win-win situatie ontstaan.

Uit alle deelonderzoeken komt naar voren dat het belangrijk is dat partijen over en weer vertrouwen hebben in elkaar en overeenstemming bereiken over de te nemen reorganisatiemaatregelen. Een belangrijke reden voor het mislukken van informele reorganisaties is terug te voeren op vertrouwen dat niet meer bestaat tussen de onderneming en haar belanghebbenden. Handels- en kostencrediteuren zijn vaak aan 'het lijntje' gehouden en op een bepaald moment bestaat geen bereidheid meer aan een workout mee te werken. Banken verliezen vertrouwen op het moment dat het management de ernst van de situatie onderschat en onvoldoende maatregelen treft. Dit wordt versterkt door onvoldoende inzicht (non-transparantie) bij crediteuren in de werkelijke financiële situatie van de onderneming. Dit is vaak het gevolg van (te) optimistische prognoses in combinatie met een gebrekkig management informatiesysteem. Mislukte informele reorganisaties hebben met elkaar gemeen, zo blijkt zowel uit de casestudies als de interviews, dat de volgende elementen in de uitvoering ervan aanwezig zijn.

- Het management en de aandeelhouders hebben een passieve houding ten aanzien van de informele reorganisatie.
- De onderneming verschaft aan belanghebbenden onvoldoende inzicht in de werkelijke financiële situatie.
- De onderneming is niet in staat, op tijd, risicodragend kapitaal aan te trekken (al dan niet in de vorm van een overname).

Succesvolle informele reorganisaties hebben echter met elkaar gemeen dat de volgende elementen in de uitvoering ervan aanwezig zijn.

- De bedrijfsactiviteiten worden door het management (veelal met hulp van derden) adequaat en snel gereorganiseerd.
- Belangrijke belanghebbenden (financiers) worden in het reorganisatieproces betrokken.
- Er is transparantie ten aanzien van de financiële situatie en de voorgenomen informele reorganisatie.

---

1 Na sluiting van de kopij is overigens een gedragscode ondertekend tussen de branchevereniging MKB-Nederland en het overlegorgaan van Nederlandse banken (NVB). Zie www.nvb.nl. Deze gedragscode is echter minder uitgebreid dan in dit onderzoek voorgesteld.

· Er wordt actief gezocht naar inbreng van risicodragend kapitaal (al dan niet in de vorm van een overname).

Op grond hiervan kan worden geconcludeerd dat de kans op succes van een informele reorganisatie in de praktijk toeneemt indien is voldaan aan de volgende voorwaarden.

· Actieve houding van management en aandeelhouders ten aanzien van de informele reorganisatie.
· Het betrekken van belangrijke belanghebbenden (financiers) in het reorganisatieproces.
· Adequate reorganisatie van de bedrijfsactiviteiten.
· Transparantie ten aanzien van de financiële situatie en de voorgenomen informele reorganisatie.
· Inbreng van risicodragend kapitaal (al dan niet in de vorm van een overname).

Het reorganiseren van ondernemingen in financiële moeilijkheden kan gepaard gaan met hoge kosten. Uit enkele casestudies, evenals de interviews en enquêtes blijkt dat in Nederland een belangrijk knelpunt ligt op het vlak van afvloeiingskosten en ontslagbescherming van personeel. Het blijkt moeilijk om in een informele reorganisatie op goedkope wijze personeel te laten afvloeien. Dit is een belangrijk nadeel ten opzichte van een formele reorganisatieprocedure als de activatransactie na faillissement (doorstart). Om meer informele reorganisaties te laten slagen dient het mogelijk te zijn op eenvoudiger en goedkoper wijze personeel te laten afvloeien. Wanneer de mogelijkheden hiertoe binnen een wettelijke reorganisatieprocedure als – voor Nederland – 'surseance van betaling' worden vergroot, dan dienen deze mogelijkheden in elk geval ook te worden gecreëerd in informele reorganisatieprocedures. Misbruik dient echter te allen tijde te worden voorkomen. Een speciaal orgaan in Nederland (bijvoorbeeld een afdeling van de Ondernemingskamer te Amsterdam) zou in het leven kunnen worden geroepen dat zich toelegt op vraagstukken bij informele reorganisaties en dat rekening houdt met zowel juridische als bedrijfseconomische belangen.

Een ander nadeel van informele reorganisaties is dat een onderhands akkoord (dat door een meerderheid van concurrente crediteuren is aangenomen) slechts onder bijzondere omstandigheden kan worden opgelegd aan weigerachtige crediteuren. Uit de casestudies en interviews blijkt dat hier in de praktijk veelal flexibel mee wordt omgegaan. Het argument dat rechters binnen de surseance van betaling-procedure een dergelijk akkoord wel kunnen opleggen en dat de opbrengst in een formele procedure lager zal zijn werkt regelmatig bespoedigend. Daarnaast blijkt een knelpunt te bestaan ten aanzien van akkoorden met kwijtschelding van de restantvordering. Crediteuren geven in enquêtes en interviews aan het als onrechtvaardig te ervaren dat zij het

verlies moeten nemen ten gunste van de eigenaren van de onderneming (de weigerachtige houding in de praktijk van veel crediteuren lijkt hier ook op terug te voeren). Crediteuren hebben dan ook de voorkeur voor het, zo mogelijk en indien noodzakelijk, uitstellen van aflossingen. Onderhandse akkoorden dienen verder op dezelfde wijze tot stand te kunnen komen als akkoorden binnen surseance van betaling. Als dit niet mogelijk is dan zullen (meer) ondernemingen onnodig surseance van betaling aanvragen. Een dergelijk wettelijk reorganisatiemiddel dient echter beschouwd te worden als een hulpmiddel om informele reorganisaties, indien noodzakelijk, te bekrachtigen ('pre-pack-procedure') en in principe niet als een zelfstandig middel om ondernemingen te reorganiseren. In de beslissingen over herziening van faillissementswetgeving dient – in elk geval in Nederland – hier aandacht aan te worden besteed.

Uit de enquêtes komt naar voren dat de fiscus en het UWV veelal een trage en starre houding hebben ten aanzien van onderhandse akkoorden. Hierdoor kunnen informele reorganisaties volgens respondenten in gevaar komen. Uit interviews met medewerkers van banken is verder naar voren gekomen dat het in Nederland geldende voorrecht van de fiscus ten opzichte van andere crediteuren er toe kan leiden dat informele reorganisaties mislukken. Bij de onderzochte ondernemingen in het casestudy onderzoek bleek hiervan echter vrijwel geen sprake.

Eerder is al aan de orde gekomen dat op een bepaald moment risicodragend dan wel risicomijdend vermogen moeten worden ingebracht (gezien de verslechterde balansverhoudingen zal risicodragend kapitaal veelal de voorkeur verdienen, in elk geval van banken). Als een aandeelhouder (of ondernemer in privé) niet bereid of in staat is geld te investeren zullen banken dit in principe ook niet doen. Op deze wijze ontstaat een impasse. Voor kleine zelfstandige ondernemers bestaat in Nederland de mogelijkheid een zogenoemd BBZ-krediet aan te vragen om daarmee de onderneming (financieel) te kunnen reorganiseren en een onderhands akkoord te financieren. Grotere ondernemingen zullen echter veelal op zoek moeten gaan naar overnamekandidaten/investeerders of een partij die de bestaande financieringsovereenkomsten wil overnemen.

Uit het casestudy onderzoek is gebleken dat potentiële investeerders (die risicodragend vermogen zouden kunnen inbrengen) vaak in een laat stadium afhaken. Redenen hiervoor zijn de hoge kosten en risico's die verbonden zijn aan reorganisaties. Deze kosten en risico's liggen op het vlak van personeel maar ook ten aanzien van het sluiten en/of reorganiseren van verliesgevende onderdelen. Daarnaast bestaat vaak onzekerheid over mogelijke 'lijken in de kast' in de vorm van latente (nog onbekende) verplichtingen. Het afhaken gaat vaak gepaard met een bijna 'opgedroogde liquiditeit'. Banken en andere belanghebbenden zien in het afhaken veelal het signaal dat er geen vertrouwen in de toekomst van de onderneming meer is. Hiermee is een surseance van betaling-procedure vaak een feit. De surseance van betaling eindigt vervolgens

veelal in faillissement. Regelmatig zijn het dezelfde of andere investeerders die na faillissement via een activatransactie een deel van de onderneming *going concern* kopen (doorstart). 'Met een schone lei' kunnen winstgevende activiteiten worden gecontinueerd. De vraag rijst of deze praktijk vermeden moet, dan wel kan worden. Enerzijds lijkt namelijk sprake van het gebruik van faillissement om verplichtingen 'te omzeilen', anderzijds blijft wel 'waarde' in stand omdat bedrijfsactiviteiten worden gecontinueerd. Uit de casestudies blijkt in elk geval dat activatransacties na faillissement in bepaalde gevallen vrijwel niet te voorkomen zijn (in dertien van de vijftien onderzochte dossiers van mislukte informele reorganisaties is sprake geweest van een geheel of gedeeltelijke doorstart in de vorm van een activatransactie na faillissement). Gebleken is daarnaast dat indien een informele reorganisatie heeft plaatsgevonden – op basis van een goed uitgewerkt plan – een doorstart sneller kan worden gerealiseerd. Op deze wijze wordt 'waardevernietiging' verder geminimaliseerd. In die zin kan bij een mislukte informele reorganisatie in maatschappelijk en economisch opzicht toch sprake zijn van succes.

In zowel de interviews als de enquêtes is aangegeven dat betere samenwerking tussen onderneming en schuldeisers kan bijdragen aan het succes van informele reorganisaties. Een gedragscode ('Multi-Creditor Protocol') kan, mits rekening wordt gehouden met de relatieve posities van crediteuren en onder de juiste randvoorwaarden, hieraan bijdragen. Om de rechten en verplichtingen in een informele reorganisatie over en weer beter duidelijk te maken, en daarmee een vertrouwensbasis te kweken, is de invoering van een gedragscode een adequaat middel. Kern van een dergelijke gedragscode is dat de onderneming en haar relevante crediteuren (veelal banken, grote handels- en kostencrediteuren en de fiscus/UWV) op vrijwillige basis enkele fundamentele spelregels in acht nemen. Het Statement of Principles van INSOL International kan als basis dienen voor veel landen – waaronder Nederland – voor een (specifiek) in te voeren 'Statement of Principles for Informal Reorganisations'. Het in acht nemen van regels heeft potentieel een stabiliserend effect op de ontstane situatie omdat duidelijkheid over en weer ontstaat. Een bepaalde mate van objectiviteit wordt in het proces ingebouwd. Van crediteuren wordt gevraagd tijdelijk niets te doen, de onderneming dient 'in ruil hiervoor' alles in het werk te stellen om de slechte situatie te boven te komen. Vrijwillige medewerking moet echter de basis zijn, het Statement dient dan ook maatschappelijk breed te worden gedragen. In de praktijk, zo blijkt zowel uit de casestudies als interviews, worden aspecten hiervan soms al toegepast, voornamelijk bij grotere ondernemingen. Niets lijkt de toepassing bij kleinere ondernemingen in de weg te staan. De noodzaak tot invoering van een gedragscode voor informele reorganisaties neemt toe als gevolg van internationale economische ontwikkelingen en initiatieven op het gebied van 'voluntary rescue frameworks' van onder meer de Europese Commissie, UNCITRAL en de World Bank. Nader onderzoek naar de toepassing van een dergelijk Statement in Nederland is gewenst; het Ministerie van Justitie zou daarbij het initiatief kunnen nemen,

temeer daar zij als beleid heeft dat juridische geschillen – waaronder zakelijke – in de toekomst meer en meer buiten de rechtszaal zullen moeten worden beslecht.

Het geheel overziend kan worden gesteld dat de focus binnen de praktijk van informele reorganisaties gericht dient te zijn op het bewerkstelligen van samenwerking en (herstel van) vertrouwen tussen relevante belanghebbenden, transparantie, tijdige en adequate reorganisatie van de bedrijfsactiviteiten en, indien nodig, het aantrekken van additionele risicodragende financiering. Het institutionaliseren van een Statement of Principles for Informal Reorganisations, een Banks and Businesses Code en principes van mediation gericht op saneringsoperaties zou een belangrijke bijdrage kunnen leveren aan het beter functioneren van de huidige praktijk; zowel in Nederland als hopelijk ver daarbuiten.

Bibliography

BOOKS AND JOURNALS

Adams, C., R.E. Litan, M. Pomerleano (editors), *Managing Financial and Corporate Distress: Lessons from Asia*, Washington D.C.: Brookings Institution Press, 2000.

Adriaanse, J.A.A., N.J.H. Huls, J.G. Kuijl, P. Vos, *Informele reorganisatie in het perspectief van surseance van betaling, WSNP en faillissement*, WODC, Den Haag: Boom Juridische uitgevers, 2004.

Adriaanse, J.A.A., J.G. Kuijl, The Good, the Bad and the Ugly, *Accounting*, 2004.

Adriaanse, J.A.A., J.G. Kuijl, Informele reorganisatie in Nederland, *Tijdschrift voor Insolventierecht* (TvI), 2004, 65.

Altman, E.I., *Bankruptcy & Distressed Restructurings, Analytical Issues and Investment Opportunities*, Washington D.C.: Beard Books, 1999.

Amsterdam, A.M. van, 'Een accountant, die een continuïteitsvraag heeft te beantwoorden, opereert altijd in een spanningsveld', *Tijdschrift voor Insolventierecht* (TvI), 2001/6. [Van Amsterdam 2001a]

Amsterdam, A.M. van, Herstructurering binnen de 'stille surséance', *Tijdschrift Onderneming & Financiering* (O&F), 2003/56.

Amsterdam, A.M., *Insolventie in economisch perspectief* (diss. Amsterdam VU), Schoordijk Instituut, Den Haag: Boom Juridische uitgevers, 2004.

Armour, J., The law and economics of corporate insolvency: a review, in: Vriesendorp, R.D., J.A. McCahery, F.M.J. Verstijlen (editors), *Comparative and international perspectives on bankruptcy law reform in the Netherlands*, Schoordijk Instituut, Den Haag: Boom Juridische uitgevers, 2001. [Armour 2001]

Asquith, P., R. Gertner, D. Scharfstein, Anatomy of Financial Distress: An Examination of Junk-Bond Issuers, *The Quarterly Journal of Economics*, Vol. 109, No. 3, 1994.

Barton, D., R. Newell, G. Wilson, *Dangerous Markets, Managing in Financial Crises*, New York: John Wiley & Sons, 2003.

Bebchuk, L.A., Using options to divide value in corporate bankruptcy, in: Vriesendorp, R.D., J.A. McCahery, F.M.J. Verstijlen (editors), *Comparative and international perspectives on bankruptcy law reform in the Netherlands,* Schoordijk Instituut, Den Haag: Boom Juridische uitgevers, 2001.

Benink, H.A., Issues inzake Basel II, *Maandblad voor Accountancy en Bedrijfseconomie* (MAB), 2005.

Bernstein, P.L., *Against The Gods, The Remarkable Story of Risk*, New York: John Wiley & Sons, 1996.

Bhandari, J.S., L.A. Weiss, *Corporate Bankruptcy, Economic and Legal Perspectives*, New York: Cambridge University Press, 1996.

Bird, C., "The London Approach", *Insolvency Law and Practice*, nr. 12, 1996.

Blom, R.J., *Faillissement, Surseance en Schuldsanering*, Amsterdam: Graydon Nederland BV, 2000. [Graydon]

Blomkwist, J.W.H., 'Recensie (boekbespreking van: N.W.M. van den Heuvel, Zekerheid en voorrang (diss. Tilburg), Den Haag: Boom 2004)', *Tijdschrift voor Insolventierecht* (TvI), 2004, 69.

Blommaert, A.M.M., J.M.J. Blommaert, *Bedrijfseconomische analyses, bedrijfseconomie vanuit management-perspectief*, Houten: Stenfert Kroese/Educatieve partners, 1997.

Bolton, P., D.S. Scharfstein, Optimal Debt Structure and the Number of Creditors, *The Journal of Political Economy*, Vol. 104, No. 1, 1996.

Boot, A.W.A., J.E. Ligterink, *De efficiëntie van de Nederlandse Faillissementswetgeving*, Amsterdam: Amsterdam Center for Corporate Finance, 2000.

Boot, A.W.A., Banks and the Bankruptcy Act, in: *Comparative and international perspectives on bankruptcy law reform in the Netherlands*, Schoordijk Instituut, Den Haag: Boom Juridische uitgevers, 2001.

Boot, A.W.A., A. Schmeits, Imperfecties in de vermogensmarkt en overheidsbeleid, in: *Preadviezen van de Koninklijke Vereniging voor de Staathuishoudkunde* (KVS), Amsterdam: KVS, 2004.

Brealey, R.A., S.C. Myers, *Principles of Corporate Finance*, fourth edition, New York: McGraw-Hill, 1991.

Brenninkmeijer, A.F.M. *et al.*, *Handboek Mediation*, Den Haag: Boom Juridische uitgevers, 2003.

Brierley, P., G. Vlieghe, Corporate workouts, The London Approach and financial stability, *Financial Stability Review*, November 1999.

Brown, H.J., A.L. Marriott, *ADR Principles and Practice*, London: Sweet & Maxwell, 2002.

Bulder, B., F. Leeuw, H. Flap, Networks and Evaluating Public-sector Reforms, *Evaluation*, Vol. 2(3), 1996.

Buskens, V., W. Raub, De sociale inbedding van het economisch verkeer: een theoretische schets en resultaten van empirisch onderzoek naar afnemers en leveranciers, *Recht der Werkelijkheid*, 2004.

Chatterji, S., P. Hedges, *Loan workouts and debt for equity swaps, A framework for successful corporate rescues*, New York: John Wiley & Sons, 2001.

Cools, K., Determinanten van de vermogensstructuur, *Maandblad voor Accountancy en Bedrijfseconomie* (MAB), 1990.

Copeland, T., T. Koller, J. Murrin, *Waardering, Het meten en managen van de waarde van ondernemingen*, Amsterdam: Uitgeverij Nieuwezijds, 2003.

Couwenberg, O., *Resolving Financial Distress in the Netherlands* (diss. Groningen), 1997.

Couwenberg, O, *Incomplete contracten: een rechtseconomische benadering* (oration Groningen), 2003.

Couwenberg, O., Overleven in faillissement: een vergelijking van de prestaties van insolventiesystemen, *Accounting*, 2005.

Datta, S, M.E. Iskandar-Datta, Reorganization and Financial Distress: An Empirical Investigation, *The Journal of Financial Research*, Vol. 43, No. 1, 1995.

D'Aveni, R., Top Management Prestige and Organizational Bankruptcy, *Organization Science* 1, 1990.

Davis, H.A., W.W. Sihler, *Financial Turnarounds: Preserving Enterprise Value*, Upper Saddle River: Prentice Hall PTR, 2002.

Delaney, Kevin J, Strategic Bankruptcy, *How corporations and creditors use chapter 11 to their advantage*, Berkeley: University of California Press, 1998.

Denis, D.J., D.K. Denis, Performance Changes Following Top Management Dismissals, *The Journal of Finance*, Vol. 50, No. 4, 1995.

Deutsch, M., P.T. Coleman, *The Handbook of Conflict Resolution*, San Francisco: Jossey-Bass, 2000.

DiNapoli, D., E. Fuhr, Trouble Spotting: Assessing the likelihood of a Turnaround in: *Workouts & Turnarounds II, Global Restructuring Strategies for the Next Century, Insights from the Leading Authorities in the Field*, edited by Dominic DiNapoli, New York: John Wiley & Sons, 1999.

Douma, S.W. *et al.*, *Basisboek Bedrijfskunde, Een inleiding in management en ondernemerschap*, Schoonhoven: Academic Service, 2002.

Druten, H.F., V.R. Vroom, T.W. Gitmans, Van vreemd naar eigen vermogen, *Onderneming & Financiering* (O&F), 2003/56.

Epe, P., W. Koetzier, *Jaarverslaggeving*, Groningen/Houten: Wolters-Noordhoff, 2002.

Eyck van Heslinga, H.C. van, *Crisismanagement, Tien crisisscenario's en de oplossingen*, Deventer: Kluwer, 2002.

Faulhaber, P., N. Landwehr, *Turnaround-management in de praktijk, de snelle terugkeer naar een positieve cashflow*, Boston: Addison Wesley Longman, 1998.

Favier, J., *In naam van God en des gewins, de wording van de zakenman* (original title: De l'or et des épices: naissance de l'homme d'affaires au Moyen Age), Amsterdam: Contact, 1990.

Flap, H., B. Bulder, B. Völker, Intra-organizational Networks and Performance: A Review, *Computational & Mathematical Organization Theory* 4:2, 1998.

Flood, J., The Vultures Fly East: the Creation and Globalisation of the Distressed Debt Market, in: Nelken, D., J. Feest, *Adapting Legal Cultures*, Oxford-Portland Oregon: Hart Publishing, 2001.

Franken, S., Onderzoek naar de effectiviteit van faillissementswetgeving, *Tijdschrift voor Insolventierecht* (TvI), 2000/6.

Franken, S., Verslag Nibe-Svv seminar d.d. 18 september 2002: Modernisering faillissementsrecht: wat wordt de positie van de bank?, *Tijdschrift voor Insolventierecht* (TvI), 2002/6.

Frederikslust, R.A.I. van, W.T.J. Leermakers, S.N. Soedito, J. van Dalen, Een empirische verklaring voor het herstructureren van Nederlandse ondernemingen, *Maandblad voor Accountancy en Bedrijfseconomie* (MAB), 2000.

Frederikslust, R.A.I. van, J.B. Huizink, H.J.C. Bakker, *Herstructurering van ondernemingen*, Amsterdam: Lexis Nexis, 2004.

Fuchs, H., S.J.M. van Vlimmeren, *Debet/Credit, Inleiding in de handmatige en de geautomatiseerde boekhouding*, Groningen: Wolters-Noordhoff, 1999.

Gertner, R., D. Scharfstein, A Theory of Workouts and the Effects of Reorganization Law, *The Journal of Finance*, Vol. 46, No. 4, 1991.

Gilson, S.C., K. John, L.H.P. Lang, Troubled Debt Restructurings: An Empirical Study of Private Reorganization of Firms in Default, *Journal of Financial Economics 27*, 1990.

Gilson, S.C., Managing default: Some evidence on how firms choose between workouts and chapter 11, in: Bhandari, J.S., L.A. Weiss, *Corporate Bankruptcy, Economic and Legal Perspectives*, New York: Cambridge University Press, 1996.

Gilson, S.C., *Creating Value through Corporate Restructuring*, New York: John Wiley & Sons, 2001.

Gorton, G., J. Kahn, The Design of Bank Loan Contracts, *The Review of Financial Studies*, Vol. 13, No. 2, 2000.

Harmsen, C.M., Het rapport "De Efficiency van de Nederlandse Faillissementswetgeving" getoetst: nieuw onderzoek gewenst!, *Tijdschrift voor Insolventierecht* (TvI), 2000/5.

Hart, O., *Different approaches to bankruptcy*, Cambridge: Harvard Institute of Economic Research, 2000.

Hart, O., J. Moore, Foundations of Incomplete Contracts, *The Review of Economic Studies*, Vol. 66, No. 1, 1999.

Haugen, R.A., L.W. Senbet, The Insignificance of Bankruptcy Costs to the Theory of Optimal Capital Structure, *The Journal of Finance*, Vol. 33, No. 2, 1978.

Heuvel, N.W.M. van den, *Zekerheid en voorrang* (diss. Tilburg), Schoordijk Instituut, Den Haag: Boom Juridische uitgevers, 2004.

Heijden, C.M. van der, Het akkoord buiten faillissement en surséance van betaling, *Nederlands Tijdschrift voor Burgerlijk Recht* (NTBR), 1994/7.

Huizink, J.B., Nogmaals schuldsanering natuurlijke personen, *Weekblad voor Privaatrecht, Registratie en Notariaat* (WPNR), 6294, vol. 128/1997.

Huls, N.J.H., *Een nieuwe kans voor particulieren en voor ondernemers*, Ministerie van Economische Zaken, afdeling Ondernemerschap en MKB en directie Voorlichting, 1999.

Jackson, T.H., Bankruptcy, nonbankruptcy entitlements, and the creditors' bargain, in: Bhandari, J.S., L.A. Weiss, *Corporate Bankruptcy, Economic and Legal Perspectives*, New York: Cambridge University Press, 1996.

Jacobs, A.T.J.M. *et al.*, *Werknemersrechten in faillissement, een rechtsvergelijkende beschouwing*, Den Haag: Boom Juridische uitgevers, 2000.

Jagtenberg, R.W., A.J. de Roo, Mediation in het bedrijfsleven, belang, effectiviteit en vooruitzichten, in: *Justitiële Verkenningen*, Mediation, jaargang 26, 2000.

James, C., When Do Banks Take Equity in Debt Restructurings?, *The Review of Financial Studies*, Vol. 8, No. 4, 1995.

Jensen, M.C., W.H. Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, *Journal of Financial Economics*, Vol. 3, 1976.

Joosen, E.P.M., *Overdracht van ondernemingen uit faillissement* (diss. Tilburg), Deventer: W.E.J. Tjeenk Willink, 1998.

Katz, E.I., L.H. Fenning, J.A. Esher, *ABI Guide to Bankruptcy Mediation*, Alexandria: American Bankruptcy Institute, 2005. [ABI Guide]

Kent, P., Corporate Workouts – a UK Perspective, *International Insolvency Review*, 1997.

Kilpi, J., *The Ethics of Bankruptcy*, London: Routledge, 1998.

Kleiboer, M.A., De onstuimige opmars der bemiddelaars, Mediation praktijken in Nederland, in: *Justitiële Verkenningen*, Mediation, jaargang 26, 2000.

Knegt, R. *Faillissementen en selectief ontslag: Een onderzoek naar oneigenlijk gebruik van de Faillissementswet*, Hugo Sinzheimer Instituut, Universiteit van Amsterdam, 1996.
Kortmann, S.C.J.J., Haastige spoed… Opmerkingen naar aanleiding van het voorstel tot wijziging van de Faillissementswet, *Tijdschrift voor Insolventierecht* (TvI), 2000/1. [Kortmann 2000]
Kortmann, S.C.J.J., R.D. Vriesendorp, Een wonderlijk onderzoek, *Tijdschrift voor Insolventierecht* (TvI), 2000/4.
Kovach, K.K., *Mediation, Principles and Practice*, St. Paul: Thomson West, 2004.
Kraakman, R.R., P. Davies, H. Hansmann, G. Hertig, K.J. Hopt, H. Kanda, E.B. Rock, *The Anatomy of Corporate Law, A Comparative and Functional Approach*, Oxford: Oxford University Press, 2004.
Krackhardt, D., J. Hanson, Informal Networks: The Company Behind the Chart, *Harvard Business Review*, 1993.

Lankhorst, G.H., Schuldsaneringsregeling per 1 december 1998 in werking, *Maandblad voor Ondernemingsrecht Vennootschap & Onderneming*, 1998, 7/8.
Leuftink, A.L., *Surséance van betaling*, Deventer: Kluwer, 1995.
Lutskes, D.E., *Business Recovery Management, Gids voor herstel van rendement, liquiditeit, procesbeheersing en klantentevredenheid om vervolgens te kunnen groeien*, Almere: EDP, 2003.
Levy, L.J., FAQ on Bankruptcy Mediation, *The American Bankruptcy Institute Journal* (Vol. XXII nr. 3), 2003, www.abiworld.org.

Macaulay, S., Non-Contractual Relations in Business: A Preliminary Study, *American Sociological Review*, Vol. 28, No. 1, 1963.
McConnell, J., H. Servaes, The economics of pre-packaged bankruptcy, in: Bhandari, J.S., L.A. Weiss, *Corporate Bankruptcy, Economic and Legal Perspectives*, New York: Cambridge University Press, 1996.
Miller Esq., H.R., Looming Financial or Business Failure: Fix or File- a Legal Perspective, in: *Workouts & Turnarounds II, Global Restructuring Strategies for the Next Century, Insights from the Leading Authorities in the Field*, edited by Dominic DiNapoli, New York: John Wiley & Sons, 1999.
Moore, C.W., *The Mediation Process, Practical Strategies for Resolving Conflict*, San Francisco: Jossey-Bass, 2003.
Myers, S.C., Determinants of Corporate Borrowing, *Journal of Financial Economics*, Vol. 5, 1977.
Myers, S.C., Capital Structure, *The Journal of Economic Perspectives*, Vol. 15, No. 2, 2001.

Oosthout, H.B., *De doorstart van een insolvente onderneming*, Deventer: Kluwer, 1998.

Pate, C., H. Platt, *The Phoenix Effect, 9 revitalizing strategies no business can do without*, New York: John Wiley & Sons, 2002.
Paulus, C.G., Some Thoughts on an Insolvency Procedure for Countries, *American Journal of Comparative Law*, Volume 50/3, 2002.
Pellicaan, H., *Reorganisaties, handleiding voor de praktijk*, Alphen aan den Rijn: Kluwer, 2003.
Polak, N.J., *Faillissementsrecht, bewerkt door C.E. Polak*, Deventer: Kluwer 2002.

Prein, H.C.M., *Trainingsboek Conflicthantering en Mediation*, Houten: Bohn Stafleu Van Loghum, 2001.
Prein, H.C.M., *Mediation in praktijk, beroepsvaardigheden en interventietechnieken*, Amsterdam: Boom, 2004.

Ranitz, S. de , Revision of the Dutch Bankruptcy Act: the 'Rescue rush', in: Vriesendorp, R.D., J.A. McCahery, F.M.J. Verstijlen (editors), *Comparative and international perspectives on bankruptcy law reform in the Netherlands*, Schoordijk Instituut, Den Haag: Boom Juridische uitgevers, 2001.
Roe, M.J., Bankruptcy and debt: A new model for corporate reorganization, in: Bhandari, J.S., L.A. Weiss, *Corporate Bankruptcy, Economic and Legal Perspectives*, New York: Cambridge University Press, 1996.

Schneider-Maessen, J., B. Weiss *et al.*, *Credit Management in a European Context*, Heidelberg: Verein für Credit Management e.V, 2003.
Slatter, S., D. Lovett, *Corporate Turnaround, managing companies in distress*, London: Penguin Books, 1999.
Sloma, R.S., *The Turnaround Manager's Handbook*, Washington D.C.: Beard Books, 2000.
Stutterheim, R.H., Het wetsontwerp schuldsanering: een 'moetje' dat noodzakelijk is, *Tijdschrift voor Insolventierecht* (TvI), 1997/5.

Tashjian, E., R.C. Lease, J.J. McConnell, Prepacks, An empirical analysis of prepackaged bankruptcies, *Journal of Financial Economics* 40, 1996.

Verdoes, T.L.M., *Naar een metaforische compositie van de (bedrijfs)economie; een zoektocht door de economische kosmos* (diss. Leiden), 2005.
Visser, H., De curator en de financier, *Tijdschrift voor Insolventierecht* (TvI), 1999/ 5.
Vos, P., *Kredietopvraging en insolventierisico, overlevingskansen van bedrijven in financiële moeilijkheden en de Faillissementswet* (diss. Leiden), Deventer: Kluwer, 2003.
Vos, P., *Bankkrediet: macht of onmacht*, Deventer: Kluwer, 2005.
Vriesendorp, R.D., Employees and insolvency in Phase II: undesirable consequence of Polder model?, in: Vriesendorp, R.D., J.A. McCahery, F.M.J. Verstijlen (editors), *Comparative and international perspectives on bankruptcy law reform in the Netherlands*, Schoordijk Instituut, Den Haag: Boom Juridische uitgevers, 2001. [Vriesendorp 2001]

Weiss, L.A., Bankruptcy costs and violation of claims priority, in: Altman, E.I., Bankruptcy & *Distressed Restructurings, Analytical Issues and Investment Opportunities*, Washington D.C.: Beard Books, 1999.
Wessels, B., Dwangdeelname aan een onderhands akkoord, *Ondernemingsrecht* 1999-14.
Wessels, B., *Schuldsaneringsregeling natuurlijke personen*, Deventer: Kluwer, 1999. [Polak-Wessels IX]
Wessels, B., *Het Akkoord*, Deventer: Kluwer, 1999. [Polak-Wessels VI]
Wessels, B., Meer marktwerking bij surseance, *Tijdschrift voor Insolventierecht* (TvI), 2000/1.
Wessels, B., *Surseance van betaling*, Deventer: Kluwer, 2000. [Polak-Wessels VIII]
Wessels, B., *Internationaal insolventierecht*, Deventer: Kluwer, 2003. [Polak-Wessels X]
Wessels, B., *Current Topics of International Insolvency Law*, Deventer: Kluwer, 2004.

Weston, J.F., J.A. Siu, B.A. Johnson, *Takeovers, Restructuring, and Corporate Governance*, Upper Saddle River: Prentice Hall, 2001.

White, M.J., The costs of corporate bankruptcy: A U.S.-European comparison, in: Bhandari, J.S., L.A. Weiss, *Corporate Bankruptcy, Economic and Legal Perspectives*, New York: Cambridge University Press, 1996.

Wolfe, T., *A Man in Full*, New York: Bantam Books, 1999.

Wruck, K.H., Financial Distress, Reorganization, and Organizational Efficiency, 1990 in: Altman, E.I., *Bankruptcy & Distressed Restructurings, Analytical Issues and Investment Opportunities*, Washington D.C.: Beard Books, 1999.

Reports, accounts, codes of conduct, papers, speeches and handbooks

A Review of Company Rescue and Business Reconstruction Mechanisms, Report by the Review Group, The Insolvency Service (UK), 2000, www.insolvency.gov.uk. [Review UK]

Amsterdam, A.M. van, *"Breder & Dieper"*, in: documentatiemap congres 'De Nieuwe Faillissementswet, De wijzigingen en gevolgen in beeld', 2001. [Van Amsterdam 2001b]

An introduction to Roland Berger Strategy Consultants, Experiences and references in Corporate Restructuring, 2004. [Roland Berger]

Armour, J., B.R. Cheffins, D.A. Skeel jr., *Corporate Ownership Structure and the Evolution of Bankruptcy Law: Lessons from the UK*, Cambridge: CBR Working paper nr. 226, 2002.

Armour, J., S. Deakin, *Norms in private insolvency procedures: the 'London Approach' to the resolution of financial distress*, Cambridge: ESRC Centre for Business Research Working paper nr. 173, 2000.

Armour, J., *Overview of The Treatment of Stakeholders in UK Corporate Insolvencies*, 2004, www.unigev.ch. [Armour 2004]

Avoiding Business Failure, A guide for SMEs, European Federation of Accountants (FEE), 2004. [FEE]

Banks and Businesses: working together when you borrow, a Statement of Principles, British Bankers' Association, 2001. [BBA-Statement]

Brunner, A., J.P. Krahnen, *Corporate Debt Restructuring: Evidence on Lending Coordination in Financial Distress*, 2001, www.cepr.org.

CBS, Centraal Bureau voor de Statistiek, *Faillissementsstatistiek 1997-1998, 1999*, Voorburg. [CBS Bankruptcy Statistics, 1997-1999]

Chen, N., *An Empirical Study of a Firm's Debt Restructuring Choices: Chapter 11 vs. Workouts*, 2003, www.defaultrisk.com.

Clementi, D., *Debt Workouts For Corporates, Banks and Countries: Some Common Themes*, speech INSOL International Sixth World Congress, 2001, www.bankofengland.co.uk.

Code of Conduct between credit institutions and SMEs, Commission Staff Working paper, Council of the European Union, 2004.

Commissie Mijnssen, *Rapport van de Commissie ter advisering omtrent eventuele herziening van de Faillissementswet*, 1989. [Mijnssen Committee 1989]

Cooper, N., *A Global Approach for Multi-creditor out-of-court restructurings – A major step forward for those involved in informal workouts*, www.insol.org.

Debtor – Creditor Agreement on Debt Restructuring Process, The Bank of Thailand/The Corporate Debt Restructuring Advisory Committee, 1999, www.insolvencyasia.com.
Discussiememorandum MDW-werkgroep Faillissementsrecht, *Nadere herziening van het Nederlandse insolventierecht, bijlage 3: Startnotitie-Modernisering Faillissementswetgeving*, 2001. [Memorandum of Discussion MDW-taskforce]

Ecorys-Nei, *Gedragseffecten ten gevolge van wijzigingen in het regime van de fiscale voorrechten, mogelijke veranderingen in het gedrag van fiscus, UWV, banken en overige crediteuren*, eindrapport, 2004. [Ecorys-Nei]
Eindrapport MDW-werkgroep Modernisering Faillissementsrecht Tweede Fase, 2001. [Final report MDW-taskforce]
Elsas, R., J.P. Krahnen, *Universal Banks and Relationships with Firms*, Frankfurt am Main: CFS Working paper, no. 2003/20.
European Commission, *Best Project on Restructuring, Bankruptcy and a Fresh Start*, Final Report of the Expert Group, 2003.

Fisher, M., S. Hagan, Ms. Weeks, *et al.*, *"Involving the Private Sector in the Resolution of Financial Crises-Corporate Workouts"*, prepared by the Policy Development and Review and Legal Departments, International Monetary Fund, 2001, www.worldbank.org.
Fitzsimmons, P., *Lessons For Healthy Companies From The Turnaround Trenches*, CapitalEyes, 2004, www.bofabusinesscapital.com.
Franks, J., O. Sussman, *The Cycle of Corporate Distress, Rescue and Dissolution: A Study of Small and Medium Size UK Companies*, 2000, www.insolvency.gov.uk.
Framework for corporate debt restructuring in Thailand, www.insolvencyasia.com.

Helping businesses overcome financial difficulties, a guide on good practices and principles on restructuring, bankruptcy and a fresh start, European commission, Enterprise publications, 2002. [Guide good practices]

Jaarboek Credit Management, Best Practices 2004, Amsterdam: CxO media, 2004. [Credit Management, Best Practices 2004]
Jaarverslag Nederlandse Vereniging van Banken, 2003. [Annual report of the Dutch Federation (consultative body) of Banks (NVB), 2003]
Janssen, M.A.J.G., A.S.K. Terng, J.M. van der Wulp, *Bankruptcy and a fresh start: stigma on failure and legal consequences of bankruptcy, the Dutch Report*, 2002, www.iiiglobal.org.
Johnson, G., *World Bank Principles and Guidelines for Effective Insolvency and Creditor Rights Systems*, paper presented at Seminar on Business Failure, Noordwijk, Netherlands, 10-11 May, 2001.

Kuijl, J.G., J.A.A. Adriaanse, P. Vos, *Rapport onderzoek WSNP voor ondernemers*, 2000.

Maas, P.C., J. van Schaik, T. Blokland, *De in haar continuïteit bedreigde onderneming, preadviezen van de vereeniging 'Handelsrecht'*, Zwolle: W.E.J. Tjeenk Willink, 1983. [Maas Committee 1983]
Mako, W.P., *Corporate and Financial Sector Restructuring: Links and Necessary Conditions*, 2002, www.worldbank.org.

Meier, I., *Mediation and negotiation in a reorganization procedure*, 2004, www.unige.ch.
Moses, M., *Basel II – Driving behaviour in distressed companies*, INSOL World, 2005.

Niemic, R.J., *Mediation in Bankruptcy, The Federal Judicial Center Survey of Mediation Participants*, Report to the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, 1998.

Onderzoekcentrum Onderneming & Recht [Business & Law Research Centre], *Rapportage inzake onderzoek naar de efficiëntie van de Faillissementswet*, 2001. [OO&R]

Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, Template World Bank (Draft 2-january 8th), 2003. [World Bank Principles Template]

Rescue Required, A survey into the insolvency legislation aiming at the renewal of the procedure of the suspension of payments in the Bankruptcy Act of the Netherlands, Rotterdam: Ernst & Young, 1996. [Rescue Required]

Startnotitie WODC-onderzoek Buitengerechtelijk traject faillissementsrecht (02.010), 2002. [Memorandum of Research WODC]
Slovak Republic: Financial System Stability Assessment, IMF Country Report no. 02/198, 2002. [IMF report Slovak Republic]
Statement of principles for a global approach to multi-creditor workouts, INSOL International, 2000. [Statement of Principles]
9th Survey of Business Recovery in the UK, R3, 2000. [Survey R3]

Taylor, S., *Support measures for businesses in financial difficulties – the accountant's perspective*, paper presented at Seminar on Business Failure, Noordwijk, Netherlands, 10-11 May, 2001.
The European Restructuring and Insolvency Guide 2002/2003 (incorporating central and eastern Europe and the CIS), Whitepage, 2002. [The European Restructuring and Insolvency Guide 2002]
The Ostrich's Guide to Business Survival, R3, 2002. [The Ostrich's Guide 2002]
The World Bank Principles and Guidelines for Effective Insolvency and Creditor Rights Systems, 2001. [World Bank Principles]

UEAPME, the European SME employers' organisation, (press release) *Code of conduct between banks and SMEs: UEAPME deplores failure of negotiations and looks for alternatives*, December 2003, www.ueapme.com. [UEAPME 2003]
United Nations Commission on International Trade Law, Working Group on Insolvency Law, *Possible Future Work on Insolvency Law*, 1999. [UNCITRAL Insolvency Law]
United Nations Commission on International Trade Law, *Model Law on Cross-Border Insolvency*, 1997. [UNCITRAL Model Law]
United Nations Commission on International Trade Law, Working Group on Insolvency Law, *Report of its twenty-fourth session*, 2001. [UNCITRAL Insolvency Law Report 2001]
United Nations Commission on International Trade Law, *Alternative approaches to out-of-court insolvency processes, Report of the Secretary-General*, 2001. [UNCITRAL Alternative approaches to out-of-court insolvency processes]

United States Bankruptcy Court for the Central District of California, *Adoption of mediation program for bankruptcy cases and adversary proceedings*, second amended general order nr. 95-01, 1999. [United States Bankruptcy Court/California, 1999]

Verougstraete, I., *Mediation and arbitration in insolvency situations in Belgian law*, 2004, www.unige.ch.

Wood, P.R., *Building Effective Insolvency Systems, The Legal Framework*, Washington/ London: Allen & Overy, 1999.

Case law

Netherlands Supreme Court (HR) 20 mei 1953, BNB 1953/190.
LJN: AE 9479, HR, 1359 (Council for the Judiciary Act: www.rechtspraak.nl)

Acts, parliamentary documents and international laws and regulations

[US] *Bankruptcy code, rules and official forms*, 2001 Law School Edition, Westgroup.
Brief Minister van Justitie aan Tweede Kamer, april 2004, 5280305. [Letter Minister of Justice, April 2004]
Brief Minister van Justitie aan Tweede Kamer, april 2005, 5335654. [Letter Minister of Justice, April 2005]
(proposal for a) *Directive of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters*, SEC (2004) 1314.
Eerste Kamer, *Handelingen I, vergaderjaar 1997/1998, nr. 31*, p. 1751-1757. [Proceedings I 1997/1998, nr. 31]
Leidraad Invordering, 1990. [Collection Directive 1990]
Tweede Kamer, *Kamerstukken II, vergaderjaar 1999/2000, 27 244, nr. 2*, Voorstel van wet Wijziging van de Faillissementswet in verband met het bevorderen van de effectiviteit van surséance van betaling en faillissement. [Parliamentary documents II 1999/ 2000, 27 244, nr. 2]
Tweede Kamer, *Kamerstukken II, vergaderjaar 1999/2000, 27 244, nr. 3*, Memorie van toelichting Wijziging van de Faillissementswet in verband met het bevorderen van de effectiviteit van surséance van betaling en faillissement. [Parliamentary documents II 1999/2000, 27 244, nr. 3]
Faillissementswet van 30 september 1893, Stb. 140, 6 september 1895, Stb. 155 en 20 januari 1896, Stb. 9. In werking getreden op 1 september 1896. [Bankruptcy Act of 1893]
Wetten van 25 juni 1998 (WSNP 1998), Stb. 445 en 447. [PFP 1998]

Dutch newspapers

NRC, 3 June 2003, *Banken hebben bedrijven in de greep*.
FD, 10 October 2003, *Bedrijven steeds vaker aan leiband bank*.
FD, 12 November 2003, *Bij Hagemeyer vechten dertig banken om een been*.
FD 19 November 2003, *Banken behouden positie bij surseance*.

FD 27 July 2004, *Crisismanagement om buurmans naam*.
FD 10 August 2004, *'Mediation is niet soft, maar echte business'*.
FD 20 January 2005, *Reddingsoperatie heeft stilte nodig*.

LIST OF RELEVANT AND CONSULTED WEBSITES

- ACB Conflict Management for Commerce and Industry (NL) — www.mediation-bedrijfsleven.nl
- American Arbitration Association — www.adr.org
- American Bankruptcy Institute — www.abiworld.org
- American Bar Association — www.abanet.org
- Asian Development Bank — www.adb.bdw.com
- Association of Business Recovery Professionals (R3) — www.r3.org.uk
- Association of Insolvency & Restructuring Advisors — www.airacira.org
- Bank of America Business Capital — www.bofabusinesscapital.com
- Bank of England — www.bankofengland.co.uk
- British Bankers' Association — www.bba.org.uk
- Bureau WSNP (NL) — www.wsnp.rvr.org
- Central Bureau for Statistics (NL) — www.cbs.nl
- Centre for Economic Policy Research — www.cepr.org
- Council for the Judiciary Act (NL) — www.rechtspraak.nl, www.mediationnaastrechtspraak.nl
- Defaultrisk.com — www.defaultrisk.com
- Dutch Federation (consultative body) of Banks — www.nvb.nl
- Dutch Federation of Independent Accounting Firms — www.sra.nl
- Dutch Foundation for the promotion of Mediation — www.nmi-mediation.nl
- Dutch Foundation for the provision of advice and support to SMEs — www.ondernemersklankbord.nl
- Dutch National Bank — www.dnb.nl
- Dutch trade organisation for credit management — www.vvcm.nl
- European SME employers' organisation — www.ueapme.com
- Federation of Dutch Insolvency Lawyers — www.insolad.nl
- Global Insolvency Law Database — www.worldbank.org/gild
- INSOL Europe — www.insol-europe.org
- INSOL International — www.insol.org
- International Insolvency Institute — www.iiiglobal.org
- International Monetary Fund — www.imf.org
- Ministry of Economic Affairs (NL) — www.minez.nl
- Ministry of Finance (NL) — www.minfin.nl
- Ministry of Justice (NL) — www.minjus.nl
- Project Global Insolvency — www.globalinsolvency.com
- Project Insolvency Asia — www.insolvencyasia.com
- Research institute of the Dutch Ministry of Justice — www.wodc.nl
- Tax Authority (NL) — www.belastingdienst.nl
- The Insolvency Service — www.insolvency.gov.uk
- The International Institute for Conflict Prevention and Resolution — www.cpradr.org

- Turnaround Management Association www.turnaround.org
- United Nations Commission on International Trade Law www.uncitral.org
- United States Bankruptcy Court Central District of California www.cacb.uscourts.gov
- Université de Genève www.unige.ch
- Universiteit Leiden [Leiden University] www.leidenuniv.nl
- World Bank Group www.worldbank.org
- World Internet Insolvency & Bankruptcy Resources www.insolvency.com

Definitions and translations of terms

Below, the definitions used are shown, as well as the relevant translation of specific Dutch organisations and (legal) terms.

DEFINITIONS AND TRANSLATION OF ORGANISATIONS

Alternative Dispute Resolution (ADR)	Form of dispute settlement, avoiding the public courts
Asset stripping	Selling excessive assets
Banks and Businesses Code	A formulated proposal (in this study) for countries – which do not have it as yet – to reach a code of conduct between banks and companies at the start of the credit relationship, explicitly stating what parties can expect from each other (particularly in the case of financial difficulties)
Big bath accounting	A strategy where the company adjusts its profit and loss account in the negative sense, so that poor results look even worse. In this way, future results are artificially increased, because certain costs have already been justified at an earlier stage
Bleeder	Part of a company which makes (heavy) losses
Bridging loan	Short-term ('emergency') loan in order to bridge a period of (imminent) liquidity shortage
Cash flow	A company's free cash flow
Cash sweep	Reorganisation method where all positive cash flows above a certain agreed minimum are handed over to (certain) creditors
Centre for Labour Affairs (CL)	Dutch organisation (also called: Centre for Work and Income), responsible for among other things: issuing dismissal permits for employees. The Dutch name of this organisation is 'Centrum voor Werk en Inkomen' (CWI)
Cherry picking	The selective purchase of useful assets/activities following liquidation
Common pool problem	Problem for creditors; when they all pursue their individual interests only, the individual returns will decrease as a result

Company in financial difficulty	A company where the current and/or future cash flow is insufficient to fulfil the current and/or future obligations
Core business	A company's main activities
Court approval of composition	Court approval of a composition (agreement) in a legal insolvency procedure
Court-Ordered-Mediation (or Court-Annexed ADR)	Mediation procedure which is started by order of the court
Debt equity swap	Converting debts into equity
Debt restructuring agreement (or Debt rescheduling arrangement)	Agreement/declaration of intent, describing an agreed debt rescheduling (restructuring) plan
Debt-write-off	See also: Workout agreement with remission or subordinated loan
Default	No longer meeting the conditions of a credit agreement
Dutch Approach	Proposal made in this study to introduce a so-called Banks and Businesses Code, a Statement of Principles for Informal Reorganisations and the institutionalisation of mediation in informal reorganisations in the Netherlands (see also: Institutionalised Informal Approach)
Dutch Bankruptcy Act (DBA)	Dutch insolvency legislation containing the following provisions: Moratorium (also called: Suspension [moratorium] of payments), a so-called Private person Fresh start Proceedings (PFP) and Liquidation (also called: Bankruptcy). The Dutch name is 'Faillissementswet' (Fw)
Dutch Fiscal Intelligence and Investigation Service	Intelligence service of the Dutch Tax Authority; the Dutch name is 'Fiscale Inlichtingen- en Opsporingsdienst' (FIOD)
Exit-scenario	A scenario in which a certain party (often a bank) tries to terminate a relation as favourably as possible
FAE-loan	A loan obtained via the so-called Financial Aid programme Entrepreneur-debtors scheme (FAE)
Financial Aid programme Entrepreneur-debtors (FAE)	A (governmental/municipal) scheme which among other things, under strict conditions, provides working capital (FAE-loan) to established self-employed (private) persons who temporarily do not have sufficient means and are unable to receive financing in another way; the Dutch name is 'Besluit Bijstandverlening Zelfstandigen' (BBZ)

Financial restructuring	A part of an informal reorganisation where (often) on the one hand relevant creditors of the company voluntary commit to reviewed conditions regarding the funding (credit) made available by them and on the other, if so required, new funding is made available by providers of risk-avoiding capital (debts) and/or risk-bearing capital (equity)
Formal reorganisation	A reorganisation route during which legal options are used; in the Netherlands they could involve moratorium, liquidation and Private person Fresh start Proceedings
Free-rider behaviour	The refusal by creditors to cooperate in a workout in order to put the company under pressure so that they will pay them in full, at the expense of creditors who *are* prepared to cooperate
Going concern value	Value of a company, assuming the continuation of activities
Goodwill	The profit-earning capacity, which is demonstrated by a certain surplus value which is owned by the composed parts of a company – the assets – together on top of the value of the composed parts separately
Gross working capital	The monetary value of the joint current assets
Haircut	See also: Workout agreement with remission or subordinated loan
Heads of Agreement	Agreement describing an agreed restructuring plan
Housebank	Bank which is the main provider of risk-avoiding capital to a company and which undertakes an information-intensive long-term relationship with the specific company (also referred to as: Hausbank)
Hybrid procedure	Informal procedure during which legal procedures are also used (see also: pre-pack procedure)
Industrial Insurance Board (IIB)	Organisation (also called: Employed Persons Insurance Administration) which is responsible for, among other things: paying unemployment benefits; the Dutch name is 'Uitvoeringsinstituut Werknemers Verzekeringen' (UWV)
Informal reorganisation	A reorganisation route which takes place outside the statutory framework, with the objective of restoring the health of a company in financial difficulties within the same legal entity
Informal risk-bearing capital	Contributed capital into a company by shareholders, without being interrelated with a share issue

Insolad	Trade organisation for Dutch lawyers who specialise in insolvency; the Dutch name is 'Vereniging Insolventie-recht Advocaten'
Insolvency process	The process where the company slips from healthy management into a situation where, without restructuring, a situation of insolvency will arise
Institute for Small and Medium-Sized Businesses	A(n) (originally non-profit) consultancy agency which focuses on SMEs; the Dutch name is 'Instituut voor Midden- en Kleinbedrijf' (IMK)
Institutionalised Informal Approach	General term used in this study for the institutionalisation in a certain country of a so-called Banks and Businesses Code, a Statement of Principles for Informal Reorganisations and mediation in informal reorganisations (see also: Dutch Approach)
Intensive Care Department	General name for a special department ('special administration') of a bank, guiding loans of companies in (imminent) financial difficulties
Junior debt (subordinated debt)	Debt (ordinary debt) over which senior debt takes priority. In the event of liquidation (bankruptcy), subordinated debt holders receive payment only after senior debt is paid off in full (see also: subordinated loan)
Just-In-Time	Logistic principle: goods will only be delivered when they are actually required
Lean and mean	Term within business economics to indicate a lean (mostly: downsized) and efficient organisation
Lease construction	In a lease construction, undisclosed pledged goods (mostly company equipment and stock) are brought under the possessory pledge. This is established by leasing the ground on which the goods are located to the pledgee. This way, the pledgee in the Netherlands can prevent missing out on the (proceeds of the) goods via the tax authorities' right to claim compound bounded assets. The Dutch name is 'verhuurconstructie'
Let-go construction	Transferring healthy companies to a new holding/ foundation within the framework of a split-up of a company into viable and non-viable units. The Dutch name is 'uitvliegconstructie'
Liquidation	Liquidation-procedure in Dutch Bankruptcy Act in which a trustee is appointed by court charged with the management and liquidation of the estate for the benefit of the creditors. The Dutch name is 'Faillissement'
Liquidity	The extent to which the company is able to fulfil its (financial) obligations in the short term

Loss-sharing provision	Mechanism whereby, in the event of an overall shortfall being registered during a standstill, such adjustments are made between its participants as are necessary to ensure that the collective loss (or gain) is shared between the participants pro rata to their relative exposures at the start of the standstill
Management Buy Out	Transfer of a company to the current management
Management information system	The whole of systematically collected, recorded and processed data, with the objective of providing information for the benefit of taking decisions, managing business operations and giving account
MDW-project	A project by the Dutch government, aimed at better 'Competition, Deregulation and Quality of Legislation'. The Dutch name is 'Marktwerking, Deregulering en Wetgevingskwaliteit' (MDW)
Mediation	Mediation is a form of conciliation in conflicts during which a neutral mediation expert, the mediator, guides the negotiations between both parties in order to reach a jointly supported result which in their true interest is best for each involved
MKB-Nederland	Dutch trade organisation for employers in small and medium-sized businesses (SMEs)
Moratorium	Reorganisation-procedure in Dutch Bankruptcy Act in which a company in financial difficulty is given 'breathing space' by freezing (postponing) all payments on *ordinary* debts. The period can be used to draw a moratorium-composition (formal workout agreement) with ordinary creditors. The Dutch name is 'Surseance van betaling'
Multi-Creditor Protocol (or Multi-Creditor Workout)	General name for a code of conduct where relevant creditors of a company in financial difficulties voluntarily 'stand still' to give the company time to work out a solution on the one hand and to actively contribute to the formulation and realisation of a possible solution on the other (see also: Statement of Principles for Informal Reorganisations)
Net working capital	The difference between gross working capital (current assets) and the total amount of short-term debts (current liabilities)
NIVRA	Institute for Dutch chartered accountants; the Dutch name is 'Koninklijk Nederlands Instituut van Register-accountants'
NMI	Dutch Foundation for the promotion of Mediation; the Dutch name is 'Nederlands Mediation Instituut'

NOvAA	Federation of Dutch accountants; the Dutch name is 'Nederlandse Orde van Accountants-Administratie-consulenten'
NVB	Dutch Federation (consultative body) of banks; the Dutch name is 'Nederlandse Vereniging van Banken'
NVI	Federation of Dutch debt collection companies; the Dutch name is 'Nederlandse Vereniging van Incasso-ondernemingen'
OKB	Dutch Foundation for the provision of advice and support to SMEs; the Dutch name is 'Stichting Ondernemersklankbord'
Ordinary creditors	Creditors who do not hold securities and who do not have preferential rights (also called: junior/senior creditors)
Ordinary debts	Junior/senior debts
Out-of-court settlement	Workout agreement
Preferential (preferred) creditor	A creditor whose claim takes legal preference over the claim of another (read: an ordinary creditor). For instance the Dutch Tax Authority
Pre-pack procedure	Informal procedure during which legal procedures are also used (see also: hybrid procedure)
Private person Fresh start Proceedings (PFP)	Procedure in Dutch Bankruptcy Act aiming a debt-relief – fresh start – for private (natural) persons within 3-5 years of entering the proceeding; the Dutch name is 'Wet Schuldsanering Natuurlijke Personen' (WSNP)
Race to collect	Simultaneous individual actions by different creditors in order to be paid by the company in financial difficulties, at the expense of the others
Recovery rate	Part of the debt which is repaid, divided by the nominal debt
Reorganisation-mediator	A mediator who is specialised in conflict mediation at companies in financial difficulties (as proposed in this study)
Restart	Continuation of (part of) the activities of a company following liquidation, in the form of a transfer of assets (sometimes also liabilities)
Restructuring (reorganisation/ rationalisation)	All (strategic, organisational and financial) measures which intend to recover a company's return (viability)
Restructuring the business operations	A comprehensive plan which pursues to reconstruct/ revitalise (the business operations of) a company in financial difficulties

Right to claim compound bounded assets	Exclusive right of the (Dutch) tax authorities to recover outstanding tax arrears from so-called compound bounded assets of the company (whether or not they are owned by third parties) by seizure/attachment of property found on the premises
Ringfence facility	Facility whereby financing is linked to specific 'protected' assets
Risk-avoiding capital (funding/financing)	Loan capital (loans/credit facilities/overdrafts etc.)
Risk-bearing capital (funding/financing)	Equity capital (sometimes including subordinated loans). Due to high risks, loan capital (credit) provided in an informal reorganisation is sometimes also regarded (referred to) as risk-bearing capital
Sale and Leaseback	Sale of an asset following which it is leased back
Savings rescheduling scheme	Repayment scheme for debts incurred, which is coupled to a term or to products to be sold in the future (a certain amount for each product sold)
Secured creditors	Creditors (pledgees and mortgage holders) who can exercise their rights outside a procedure of liquidation, PFP or moratorium
Secured debt	Debt which, in the event of default, has first claim on specified assets. Loans which are covered by pledge or mortgage rights
Senior debt	Debt (ordinary debt) which, in the event of liquidation (bankruptcy), must be repaid before junior debt (subordinated debt) receives any payment
Skeletons in the cupboard	As yet unknown debts, claims or problems (at a company in financial difficulties)
Snack	A benefit which is connected to agreeing to a certain proposal during an informal reorganisation
Solvency	The extent to which the company is able to fulfil its (financial) obligations in the long term. In this study, solvency ratio (leverage ratio) = equity divided by total assets
Split-up of a company into viable and nonviable units	Arrangement whereby healthy companies are transferred to a new holding/foundation, while loss-making companies remain in the existing holding. The Dutch name is 'Sterfhuisconstructie'
Spontaneous financing	Unilaterally stretching the (re)payment periods among existing financiers of a company
SRA	Dutch network organisation (federation) of independent accounting firms; the Dutch name is 'Stichting Samenwerkende Accountantskantoren'
Stakeholders	Those who have an interest in a company

Standstill (agreement)	Voluntarily 'marking time' by the creditors
State-guaranteed loan	A loan which is concluded between a bank and a company with the (Dutch) government standing surety for 90-100% of the repayment. The purpose of the scheme is to promote granting credit to small and medium-sized enterprises
Statement of Principles for Informal Reorganisations	Code of conduct as proposed in this study – like INSOL International's Statement of Principles – where relevant creditors of a company in financial difficulties voluntarily 'stand still' to give the company time to work out a solution on the one hand and to actively contribute to the formulation and realisation of a possible solution on the other (see also: Multi-Creditor Protocol)
Sub-district court-formula	Dutch method of calculating the amount of redundancy payment in the event of forced redundancies. The scheme is based on a combination of age and the number of years an employee has worked for the company
Subordinated loan	Loan with regard to which its provider, in the event of liquidation, will be repaid only after all other creditors have been paid (see also: junior debt)
Turnaround	A comprehensive plan in which it is pursued to reconstruct/revitalise a company in financial difficulties
Turnaround Finance Group Nederland	Trade organisation for turnaround specialists and financiers, with the objective of promoting turnaround management and turnaround financing in the Netherlands
Unsecured creditors	Preferential and ordinary (i.e. junior/senior) creditors
Unsecured debt	Preferential and ordinary debts
Unsecured part of a loan (unsecured credit)	That part of the outstanding (bank) loans with a company which need not be covered by guarantees
Upside potential	Potential appreciation of a company and/or shares
Value recovery process	Implementation of a reorganisation plan, aimed at restoring a company's profitability
Verification meeting	Meeting during which it is established which claims by creditors will be acknowledged, provisionally accepted or disputed
VNO-NCW	Trade organisation for Dutch employers; the Dutch name is 'Verbond van Nederlandse Ondernemingen-Nederlands Christelijk Werkgeversverbond'
Voluntary rescue framework	Framework of rules, to be used by those who have an interest in a company in financial difficulties, in order to be able to come to a solution without the need for legal procedures

VVCM	Dutch trade organisation for credit management; the Dutch name is 'Vereniging voor Credit Management'
Waiver	The creditor (bank) not exercising certain contractual rights in advance (for instance withdrawal of credit or termination of the entire legal relationship), as a result of which the credit is continued despite the debtor not fulfilling certain contractual agreements
Waterfall	Method where incoming cash flows are distributed among company and creditors according to a pre-established method
WODC	Independent research institute, affiliated with the Dutch Ministry of Justice; the Dutch name is 'Wetenschappelijk Onderzoek- en Documentatiecentrum'
Workout	The process (route) within an informal reorganisation to come to a workout agreement
Workout agreement	An agreement (arrangement/solution) concluded between the parties with an interest in a company in financial difficulties within an informal reorganisation with regard to the review of conditions pertaining to funding (credit) made available, without resorting to legal procedures to effectuate this
Workout agreement with remission or subordinated loan	Reduction of nominal debts (within a workout) through payment of a percentage in combination with remission (discharge/settlement) of the remaining debt or the conversion of the remaining debt into a subordinated loan (also called: debt-write-off or haircut)

Translation of specific English – Dutch (legal) terms

Administrator	Bewindvoerder
Attachment	Beslag
Compound bounded assets	Bodemzaken
Cooling-off period	Afkoelingsperiode
Court approval of composition	Homologatie
Debt	Vreemd vermogen/risicomijdend kapitaal
Disclosed pledge	Openbaar pandrecht
Dutch Civil Code	Burgerlijk Wetboek
Dutch National Bank	De Nederlandsche Bank (DNB)
Equity	Eigen vermogen/risicodragend kapitaal
Estate	Boedel
Enterprise Division of the Amsterdam Court of Appeal	Ondernemingskamer
Junior debt	Achtergestelde (concurrente) schuld
Liquidation	Faillissement

Liquidation-composition	Faillissements-akkoord
MDS	Directeur-Grootaandeelhouder (DGA)
Moratorium	Surseance van betaling
Moratorium-composition	Surseance-akkoord
Mortgage	Hypotheek
Netherlands Supreme court	Hoge Raad
Non-possessory pledge	Bezitloos pandrecht
Ordinary creditors	Concurrente crediteuren
Pledge	Pand
Possessory pledge	Vuistpand
Preferences	Voorrechten
Preferential creditors	Bevoorrechte crediteuren
Private person Fresh start Proceedings	Wet Schuldsanering Natuurlijke Personen (WSNP)
Project 'Better Civil Service for Citizens and Companies'	Project 'Beter Bestuur voor Burger en Bedrijf' (B4)
Restart	Doorstart na faillissement
Retention of ownership	Eigendomsvoorbehoud
Right to claim compound bounded assets	Bodemrecht
Secured claims	Zekerheidsrechten
SME	Midden- en Kleinbedrijf (MKB)
Secured creditors	Separatisten
Secured debt	Leningen gedekt met rechten van pand of hypotheek
Senior debt	Niet-achtergestelde (concurrente) schuld
State-guaranteed loan	Borgstellingskrediet (BSK)
Sub-district court-judge	Kantonrechter
Sub-district court-formula	Kantonrechtersformule
Supervising judge	Rechter-commissaris (RC)
Transfer of assets following liquidation	Activatransactie (doorstart) na faillissement
Trustee	Curator
Undisclosed pledge	Stil pandrecht
Unsecured part of a loan	Blanco franchise
Value Added Tax (VAT)	BTW
Verification meeting	Verificatievergadering
Workout	Procedure om te komen tot een onderhands akkoord
Workout agreement	Onderhands akkoord (minnelijke oplossing)

Appendices

I Supervisory committee and research team Research Project Dutch Ministry of Justice (WODC)

SUPERVISORY COMMITTEE

Chairman
B. Wessels (Vrije University Amsterdam/Holland van Gijzen Attorneys at Law and Civil Law Notaries, The Netherlands)

Members
F.W. Beijaard (Dutch Ministry of Justice/WODC)
J.S.H. de la Bursi (Dutch Ministry of Economic Affairs)
H.J. Damkot (Rabobank, The Netherlands)
F.R. Salomons (Dutch Ministry of Justice)
R.J. Verschoof (District-court Utrecht, The Netherlands)
C. Welmerink (Insolad)
J.J. Zuidweg (Zuidweg & Partners, The Netherlands)

RESEARCH TEAM

J.A.A. Adriaanse (Leiden University)
N.J.H. Huls (Leiden University/Erasmus University Rotterdam)
J.G. Kuijl (Leiden University)
S.J.M.P. Swinkels (Student assistant)
P. Vos (Leiden University)

II Sub-definitions of the problem definition and research questions

A. *In theory and practice, what is meant by informal reorganisations and workout agreements?*
A.1 What is meant by a workout agreement and/or informal reorganisation and which types can (theoretically) be distinguished?

B. *In what way do workout agreements and/or informal reorganisations distinguish themselves (in a legal and practical sense) from normal operational management on the one hand and moratorium, Private person Fresh start Proceedings or liquidation on the other?*
B1. How do informal reorganisations relate to formal reorganisations (moratorium, Private person Fresh start Proceedings or restart following liquidation)?
B.2 In what way do informal reorganisations/workout agreements distinguish themselves (in a legal and practical sense) from normal operational management on the one hand and (agreements within) moratorium, Private person Fresh start Proceedings or liquidation on the other?
B.3 How do informal reorganisations relate to so-called (hybrid) pre-pack procedures?
B.4 What are the pros and cons of workout agreements and/or informal reorganisations compared to formal procedures (expressed in criteria such as: employment, recovery rates, costs, residual debts, satisfaction of creditors, time and transparency)?
B.5 Will informal reorganisations and/or workout agreements lead to a successful and permanent continuation of the companies concerned?
B.6 If a (or an attempted) reorganisation and/or workout agreement nevertheless leads to legal proceedings, will the judge have sufficient insight into any preliminary stage and will this lead to the courts spending more or less time on this case?

C. *Which measures within the framework of informal reorganisation are discovered in practice, and is it possible to make an estimate of the number of (attempted) workout agreements/ informal reorganisations occurring in the Netherlands each year?*
C.1 In which situations or at which moments is an attempt made to realise an informal reorganisation and/or workout agreement?
C.2 How many informal reorganisations are realised in the Netherlands each year?
C.3 How many workout agreements are realised in the Netherlands each year?
C.4 Are the possibilities in respect of informal reorganisations and/or workout agreements studied sufficiently in practice?
C.5 Who takes the initiative for a workout agreement and why?
C.6 What agreements are made and how are suggested constructions/measures set up, financed and executed?

D. *Which external interested parties of companies in financial difficulties can be indicated?*
D.1 Who are the interested parties in the case of informal reorganisations and/or workout agreements and to what extent are their interests and preferences met?
D.2 Will the debtor himself continue to manage the company during an informal reorganisation, or will the creditors temporarily take over?

E. *What is the attitude of external interested parties with respect to companies in financial difficulties in general, and with respect to informal reorganisations and workout agreements in particular?*
E.1 What is the attitude of (external) parties involved with respect to companies in financial difficulties in general, and with regard to informal reorganisation and suggested workout agreements in particular?
E.2 Do creditors of companies in financial difficulties have a basis for rules of conduct with regard to the process of informal reorganisation in accordance with a so-called Multi-Creditor Protocol, within which the relevant creditors of a company in financial difficulties voluntarily agree to a standstill period to give the company time to work out a solution on the one hand and to actively contribute to the formulation and realization of a possible solution on the other?

F. *What are the practical bottlenecks with regard to informal reorganisations and workout agreements?*
F.1 Looking at Dutch practice, what are the bottlenecks with regard to workout agreements in relation to (agreements within) moratoriums, Private person Fresh start Proceedings and liquidation prior to the restart of companies?
F.2 What problems are observed in practice with regard to (informal) reorganisation?

G. *Is additional legislation or regulation necessary in order to have informal reorganisation routes and workout agreements function (better) as restructuring tools?*
G.1 Is there any existing legislation which stands in the way of informal reorganisations and workout agreements?
G.2 Are there any possibilities for the Dutch government and/or other authorities to promote informal reorganisation and/or workouts (by means of, for instance, rules of conduct, laws for granting credit facilities, continued financing, continued provision of products and services)? If so, what would such incentives look like and how would they work?

III INSOL International Statement of Principles for a Global Approach to multi-creditor workouts

First Principle
Where a debtor is found to be in financial difficulties, all relevant creditors should be prepared to co-operate with each other to give sufficient time ('stand still period') to the debtor for information about the debtor to be obtained and evaluated and for proposals for resolving the debtor's financial difficulties to be formulated and assessed, unless such a course is inappropriate in a particular case.

Second Principle
During the standstill period all relevant creditors should agree to refrain from taking any steps to enforce their claims against or reduce their exposure to the debtor but are entitled to expect that during the standstill period their position relative to other creditors and each other will not be prejudiced.

Third Principle
During the standstill period the debtor should not take any action which might adversely affect the prospective return to relevant creditors (either collectively or individually) as compared with the position at the standstill commencement date.

Fourth Principle
The interests of relevant creditors are best served by co-ordinating their response to a debtor in financial difficulty. Such co-ordination will be facilitated by the selection of one or more representative co-ordination committees and by the appointment of professional advisors to advise and assist such committees and, where appropriate, the relevant creditors participating in the process as a whole.

Fifth principles
During the standstill period the debtor should provide, and allow relevant creditors and/or their professional advisers reasonable and timely access to all relevant information relating to its assets, liabilities, business and prospects, in order to enable proper evaluation to be made of its financial position and any proposals to be made to relevant creditors.

Sixth principle
Proposals for resolving the financial difficulties of the debtor and, so far as practical, arrangements between relevant creditors relating to any standstill should reflect applicable law and the relative positions of relevant creditors at the standstill commencement date.

Seventh Principle
Information obtained for the process concerning the assets, liabilities and business of the debtor and any proposal for resolving its difficulties should be made available to all relevant creditors and should be treated as confidential.

Eighth principle
If additional funding is provided during the standstill period or under any rescue or restructuring proposals, the repayment of such additional funding should, so far as practical, be accorded priority status as compared to other indebtedness or claims of relevant creditors.

IV Descriptions of causes, measures and bottlenecks

Causes

Marketing

· Disappointing turnover which will lead to results falling behind [Disappointing turnover];[1]
· No clear strategy. This can manifest itself in a diversity of activities without any interrelation, but also in the over-dependency on one or more clients [No clear strategy];
· Unsatisfactory quality and service level of the company, as a result of which customers will buy products/services elsewhere, or additional costs must be incurred [Insufficient quality];
· Margins on sold products/services provided are too low. Sale prices are too low, as a result of which the gross margin is insufficient. The other costs are (relatively) too high, so that it is impossible to realize a net profit [Margins too low].

Management

· Poor management. This means that the company is systematically managed in an unsatisfactory manner and that there is an insufficient/poor reaction to negative and positive developments inside and outside the company [Poor management];
· Gross mistakes by management/mismanagement. Demonstrable mistakes have been made. It can also be a case of (suspected) fraudulent acts [Gross errors/mismanagement];
· Excessive withdrawals. The company has lost too much in the form of dividends/ private withdrawals, which has resulted in an eroded equity capital [Excessive withdrawals];
· Conflicts within management. As a result of conflicts within management, there has been insufficient attention to managing the company [Conflicts within management].

Information

· The management information system is inadequate, so that the correct financial information does not surface or surfaces too late for the correct management decisions to be made. Maybe the management information system is adequate, but the company is insufficiently managed on the basis of the information arising from that [MIS inadequate].

---

1 The titles in brackets correspond to the terms used in the tables in chapter 3.

Efficiency

- Unsatisfactory management of working capital. This relates to the late recovery of debts, as well as the delivery to (doubtful) accounts without prior investigation into reliability concerning payments/financial situation (credit management). This also includes liquidity problems as a result of seasonal debtors [Unsatisfactory management of working capital];
- Cost level too high. This could involve excessive variable and/or fixed costs. Financing costs are also included in this. Excessive costs can be attributed to a poor organisation of business activities [Excessive costs];
- Takeover price too high. This is understood to mean the expensive purchase of participating interests by companies, as well as the expensive purchase of a company in the form of a Management Buy Out [Takeover(s) too expensive];
- Excessive investments. This includes over-expensive investments in housing and other assets, as well as teething problems with regard to new investments [Excessive investments];
- Loss-making activities have not been halted (in time). Late intervention during loss-making industrial operations/activities [Loss-making activities not halted];
- Aged operational management as a result of under-investing. The company is not able to produce efficiently as a result of aged operating assets [Under-investment].

Economy

- Economic conditions. In addition to cyclical developments, this category also includes force majeure and changing market conditions [Economic conditions];
- Non-forthcoming spending by consumers/companies in the industry [Non-forthcoming spending];
- Fierce competition which causes pressure on margins [Fierce competition].

MEASURES WITHIN THE FRAMEWORK OF RESTRUCTURING BUSINESS OPERATIONS

Marketing

- Formulating a (future) strategy [Formulation of strategy];
- Adjusting the marketing strategy [Adjustment of marketing tactics];
- Rationalising the product assortment. This includes decisions relating to the products to be sold/services to be provided in the future [Rationalisation of product assortment];
- Improvement of margins on sold products [Improvement of margins].

Management

- Changing the management structure [Change in management structure];
- Appointing specialist advisors/interim managers [Appointment of third parties];
- Change of duties for certain employees. For instance: appointing new members in management (if necessary by dismissing/changing duties of current management members) [Changes in positions].

Information

- Improving the management information system as a result of which the financial situation becomes clearer for both management and financiers [Improvement of MIS].

Efficiency

- Dismissing superfluous personnel. This also includes requests for reduction in working hours, cutting costs for temporary workers and/or agency workers, as well as implementing wage cuts [Reduction in personnel];
- Cutting overhead costs. Implementing spending cuts with regard to the company's fixed costs [Cutting overhead costs];
- Reducing withdrawals. Fewer private withdrawals and/or payments of dividends. Since lower withdrawals lead to lower spending for the company, this measure has been placed in the category Efficiency [Reduction of withdrawals];
- Improving production and logistic processes. This also includes the improvement of the company's internal organisation [Improving production and logistic processes];
- Improving purchasing processes. Purchasing goods more efficiently [Improving procurement];
- Improving the working capital. This especially involves managing accounts receivable, accounts payable and stocks in the most efficient manner [Improving working capital];
- Improving liquidity management. This especially involves managing the cash resources in the most efficient manner [Improving liquidity management];
- Integration of business units to enable cheaper production. This also includes cooperation with other companies (alliances) [Integrating business units];
- Closing/selling loss-making business units. This includes putting a halt to loss-making projects [Closing loss-making business units];
- Capitalising (surplus) fixed assets (whether or not in the form of sale and leaseback) into cash [Selling excessive assets];
- Selling operations which are not part of the core activities (core-business) [Selling non-core activities].

MEASURES WITHIN THE FRAMEWORK OF FINANCIAL RESTRUCTURING

Repayments

- Reduction of nominal debts through payment of a percentage in combination with remission of the remaining amount (also called: 'haircut' or 'debt-write-off') [Workout agreement with remission];
- Reduction of nominal debts through payment of a percentage in combination with conversion of the (remaining) debt into a long-term subordinated loan [Workout agreement with subordinated loan];
- Extending the repayment period of debts both with financial creditors (bank/group of companies) and trade creditors. This includes the use of a postponed repayment obligation for the benefit of a reorganisation. A proposal of restructuring (rationalisation), the basic principle for which is full repayment of accounts payable, is also part of this category. The phased repayment of a debt also comes within this category as well as the continuation of a credit facility [Deferment of repayments];
- Converting short-term loans into long-term loans. The conversion of short and long-term loans into subordinated loans is also included in this [Conversion of loan(s)];
- Repayment scheme for debts incurred, which is coupled to a term (this is also called a 'savings rescheduling scheme') or to products to be sold in the future (a certain amount for each product sold). Also part of this is a repayment scheme with a supplier with regard to which future purchases are charged at (somewhat) higher

prices (which pays off the 'old' debt – this is also called 'snack') [Repayment scheme coupled to term or products to be sold];
· Use part of the available free cash flow for repayment in addition to regular or lower repayment obligations (if possible). This is also called a 'cash sweep' [Cash sweep];
· Converting debts into equity. This is also called a 'debt equity swap' [Debt equity swap];
· Discharging the parent company from joint liability for debts by subsidiary company (companies). Potential payment obligations for the parent company are reduced [Discharging parent company from liability].

Interest
· (Temporarily) ceasing interest obligations. This means that in a certain period interest does not have to be paid and that this will not be added to the principal sum of the debt either [(Temporary) Discontinuation of interest];
· Increasing interest in order to deliberately force a company into reorganisation [Increase of interest].

Increasing cash funds
· Issuing new funds by providers of risk-bearing capital. For instance in the form of share issues (to current shareholders or new shareholders who will have a partial interest in the company), informal capital or a subordinated loan [New risk-bearing funding];
· Issuing new funds by providers of risk-avoiding capital. In the form of for instance a new short or long-term loan. This also includes the issuing of these funds by an existing financier to a potential takeover candidate (in order to make the reorganisation successful) [New risk-avoiding funding];
· Increasing available credit for existing loan (overdraft facility) [Increasing available credit];
· Takeover of the entire company. The company will be sold as a whole [Takeover].

Other
· Transfer of loans to (existing) parties as a result of which the number of creditors involved in the informal reorganisation reduces. This category also includes repayments to a creditor while simultaneously taking out a loan with a new financier (for instance: FAE-loan, or starting a relation with another bank) [Transfer of finance agreement(s)];
· Creditors threatening with credit cancellation and/or attachment in order to enforce a reorganisation. This can be seen as an 'implicit workout solution'. This also includes halting payment transactions in order to enforce measures (solutions), as well as associating consequences to the failure to comply with certain agreements made. Standing by earlier made agreements about interest and repayment obligations is part of this as well; in this way the lender forces the company into reorganisation and/or finding additional (risk-bearing) capital [Threatening to cancel credit];
· Forcing creditors to take reorganisation measures by consciously lowering the credit ceiling, so that the company is forced to take cash-increasing measures and/or to seek alternative funding (risk-bearing). This also includes not allowing companies to come to attracting new risk-avoiding funding (as a result of which the solvency would deteriorate) [Lowering of credit ceiling];

- Additional securities when contributing and/or increasing credit. In the form of for instance a mortgage, pledge or collateral. By giving securities, additional finance possibilities are tapped thereby avoiding a formal procedure [Additional securities];
- Consultation among banks in order to come to a joint approach with regard to the company. One part of this consultation (often) is voluntarily marking time [Consultation with banks];
- Selling profitable/viable elements to a corporation/holding to be newly created, in order to protect their value against liquidation of the parent company. This set-up is also called the 'split-up of a company into viable and nonviable units'[2] with regard to which the transfer of the viable units is referred to as 'letting viable units go' [Let-go constructions];
- The creditor not invoking rights, as a result of which credit is continued despite the debtor's failure to comply with certain contractual agreements. This particularly involves agreed balance ratios as solvency and quick/current ratio in the credit agreement of banks [Waivers];
- Formally cancelling credit, but not (yet) selling it off [Credit cancellation without selling off];
- Effect an attachment, but not (yet) take measures of enforcement and/or postpone the date of attachment and/or execution [Postponement of execution of attachment];
- Petition for liquidation of a (group) company as part of a planned informal reorganisation [Petition for liquidation of group company];
- Application for a moratorium of a (group) company as part of a planned informal reorganisation [Application for a moratorium for group company];
- Judge deferring petition for liquidation in order to allow a workout agreement another chance [Deferment of liquidation petition];
- Financing the estate in order to reach a (possible) agreement as a result of which liquidation will be averted at last. This will be included as a measure within informal reorganisation, since the financing of the estate arises from an earlier attempt to come to a workout agreement. Financing of the estate can consist of the increase in credit, or maintaining existing credit agreements [Financing estate].

BOTTLENECK

Effectiveness

- Reorganisation was started too late. The fact that the reorganisation was started too late will lead to problems, as a result of which liquidation often follows. This does not have to be the case however. Despite the fact that a reorganisation was actually started too late, an informal reorganisation can be successful. The duration of the reorganisation however will often have a 'value-destruction' effect [Reorganisation too late];
- The reorganisation takes too long, as a result of which (one or more) parties file a petition for liquidation after all. A reorganisation that takes too long can also lead to (unnecessary) destruction of value. This also includes clients who no longer dare to place orders, which will result in lost turnover [Reorganisation too long];

2 See, for instance, Vos 2003, p. 351.

· The reorganisation measures (business restructuring) are not drastic enough, so a situation of loss will continue and the equity capital is eroded even more (for instance) [Reorganisation measures insufficient];
· Profit perspectives are uncertain as a result of which certain interested parties are hesitant and will remain so [Profit perspectives uncertain];
· The costs involved with dismissing personnel are so high that an intended reorganisation within the same legal entity is endangered [High costs of staff redundancies];
· Disappointing results from sale of surplus assets [Disappointing incidental results].

Creditors
· Cancellation of credit by bank. The company subsequently is unable to find a new financier in the short term, so as a result of the credit cancellation the informal reorganisation is unsuccessful or threatens to be unsuccessful [Cancellation of credit];
· Creditors refuse to wait any longer and threaten to file a petition for liquidation and/or stop providing [No more flexibility from creditors];
· There is no agreement among creditors, as a result of which the reorganisation is delayed [Internal conflicts among creditors];
· Petition for liquidation by creditor(s). This could be, for example, trade creditors or banks, but also employees (who have not received any salary for instance) [Petition for liquidation by creditors];
· Attachment of the property found on the premises (by the tax authorities), which means that continuity is at risk [Attachment of property found on the premises];
· (some) Creditors refuse to cooperate on an agreement. This means the planned workout agreement cannot be reached. This also includes the refusal by creditors to buy out/dissolve a contract (a lease for instance). Depending on the situation, it must be assessed if this refusal is justified [Creditors refuse agreement];
· Confidence in management and/or the viability of the company among interested parties has gone. This could for instance be caused by the systematic failure to comply with agreements and/or suspect behaviour. Confidence can also be lost as a result of a difference in opinion about the future of the company and the environment in which it operates [No more confidence];
· Management/shareholders take decisions against the will of the creditors. Subsequently, the creditors decide to cease their cooperation with regard to the informal reorganisation, or they take a back stand [Decisions against the will of creditors].

Investors
· Investors with whom the company is in discussion about partial or complete takeover and/or cash injection pull out, so that a moratorium or liquidation often is inevitable. This also includes not being able to find takeover candidates. The parties with whom unsuccessful discussions about the takeover of assets (immovable property for instance) are held also fall into this category [Investors pull out].

Management
· Interested parties are provided with insufficient financial information. The company provides insufficient information and/or the information is not supplied in time.

Company management therefore does not cooperate sufficiently in finding a solution [Insufficient information];

· Management is not able to execute a reorganisation. This also includes conflicts within management and conflicts between management and shareholders/banks, as a result of which the reorganisation fails or is in danger of failing [Incapable management];
· The prognoses set within the framework of the reorganisation structurally deviate (in the negative sense) from the actual results [Prognoses structurally deviate from reality];
· Failure to comply with the agreements made by company and creditors [Failure to comply with agreements];
· Proposed workout agreement is unsatisfactory. This means that the proposal made by management (for instance to come to an agreement) (grossly) affects the relative positions of the creditors. Creditors subsequently refuse to cooperate [Proposed solution unsatisfactory].

Shareholders

· Reticence among shareholders/owners with regard to contribution of new risk-bearing capital (in case of an unincorporated enterprise, it means that the entrepreneur(s) – i.e. the owner(s) – are reticent about contributing private risk-bearing capital). Owners are no longer willing to provide money (despite demonstrable presence thereof). One of the results of this is that providers of risk-avoiding capital often also refuse to provide money [Shareholders/owners are reticent with regard to contribution of risk-bearing capital];
· Shareholders are reticent with regard to contribution of risk-bearing capital by third parties as a result of which this not forthcoming. Investors for instance pull out, because no agreement is reached about the new distribution of the voting proportions (rights)/capital interests. There can also be disagreement about the value of the shares on (full or partial) transfer [Shareholders are reticent with regard to contribution of risk-bearing capital by third parties];
· Passive attitude of shareholders. Despite the possibilities, the shareholders decide to do little to hardly anything at all to make the reorganisation a success. This also includes making important decisions without consulting (and against the will of) for instance banks, thereby jeopardising the informal reorganisation [Passive attitude shareholders].

Other

· A claim for damages which is so big that a reorganisation within the same legal entity is jeopardised [Large claim (for damages)];
· The (imminent) departure of key persons within the company, causing the loss of essential knowledge/skills [Departure of key figures];
· Insufficient assistance from trustee/administrator, which jeopardises an imminent agreement (which is prepared in an informal reorganisation) [Trustee/administrator does not cooperate sufficiently];
· Legal disputes with for instance suppliers and/or clients which (can) result in high costs which cannot be bridged [Legal disputes];
· The market conditions are bad to such an extent that it is difficult for the company to make the company profitable again [Market conditions].

Overview of all established causes, measures and bottlenecks, arranged into categories

Causes	*Measures*	*Bottlenecks*
 Marketing · Disappointing turnover · No clear strategy · Insufficient quality · Margins too low *Management* · Poor management · Gross errors/mismanagement · Excessive withdrawals · Conflicts within management *Information* · MIS inadequate *Efficiency* · Unsatisfactory management of working capital · Excessive costs · Takeover(s) too expensive · Excessive investments · Loss-making activities not halted · Under-investment *Economy* · Economic conditions · Non-forthcoming spending · Fierce competition	BUSINESS RESTRUCTURING *Marketing* · Formulation of strategy · Adjustment of marketing tactics · Rationalisation of product assortment · Improvement of margins *Management* · Change in management structure · Appointment of third parties · Changes in positions *Information* · Improvement of MIS *Efficiency* · Reduction in personnel · Cutting overhead costs · Reduction of withdrawals · Improving production and logistic processes · Improving procurement · Improving working capital · Improving liquidity management · Integrating business units · Closing loss-making business units · Selling excessive assets · Selling non-core activities	*Effectiveness* · Reorganisation too late · Reorganisation too long · Reorganisation measures insufficient · Profit perspectives uncertain · High costs of staff redundancies · Disappointing incidental results *Creditors* · Cancellation of credit · No more flexibility from creditors · Internal conflicts among creditors · Petition for liquidation by creditors · Attachment of property found on the premises · Creditors refuse agreement · No more confidence · Decisions against the will of creditors

Causes	*Measures*	*Bottlenecks*
	FINANCIAL RESTRUCTURING *Repayments* · Workout agreement with remission · Workout agreement with subordinated loan · Deferment of repayments · Conversion of loan(s) · Repayment scheme coupled to term or products to be sold · Cash sweep · Debt equity swap · Discharging parent company from liability *Interest* · (Temporary) discontinuation of interest · Increase of interest *Increasing cash funds* · New risk-bearing funding · New risk-avoiding funding · Increasing available credit · Takeover *Other* · Transfer of finance agreement(s) · Threatening to cancel credit · Lowering of credit ceiling · Additional securities · Consultation with banks · Let-go constructions · Waivers · Credit cancellation without selling off · Postponement of execution of attachment · Petition for liquidation of group company · Application for a moratorium for group company · Deferment of liquidation petition · Financing estate	*Investors* · Investors pull out *Management* · Insufficient information · Incapable management · Prognoses structurally deviate from reality · Failure to comply with agreements · Proposed solution unsatisfactory *Shareholders* · Shareholders/owners are reticent with regard to contribution of risk-bearing capital · Shareholders are reticent with regard to contribution of risk-bearing capital by third parties · Passive attitude shareholders *Other* · Large claim (for damages) · Departure of key figures · Trustee/administrator does not cooperate sufficiently · Legal disputes · Market conditions

V Case studies

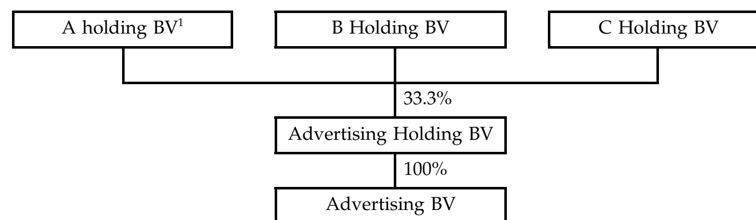
Due to the diversity (and sometimes lack) of information in the files as well as for the benefit of readability, the following documentation structure has been chosen: description of the company, cause of the problems and the course of informal reorganisation, analysis. The extent of detail in the documentation depends on the information found in the files.

Successful informal reorganisations

S1. Advertising

Description of the company
Advertising is a full-service advertising and consultancy agency, predominantly focusing on the retail trade, wholesale trade, business-to-business and non-profit organisations. Advertising works on many diverse projects for a range of clients. From simple advertisements for free local papers and daily papers to the development and implementation of entire marketing and communication plans. From the production of brochures, leaflets and direct mail campaigns to the development of new company logos and taking care of for instance exhibition stands. In 1996, the company employs ten persons on average.

Cause of the problems and the course of informal reorganisation
In March 1992, a Management Buy Out (MBO) takes place during which three members of staff take over the company from the Managing Director and major Shareholder (MDS) by means of so-called personal holdings. This results in the following company structure:



1 BV = Private limited company under Dutch law ('Besloten Vennootschap').

The takeover is financed as follows (amounts x € 1 million):

Total takeover price:		*financed by:*	
Goodwill	1.75	Bank A	0.60
Immovable property	0.90	Loan former MDS	0.75
Repayment of loan/overdraft facility	0.60	Shareholders	0.05
Loan distributable free reserves	0.35	Bank B	0.60
Other	0.30	Bank C	1.90
Total	3.90	Total	3.90

Part of the financing is accommodated in Advertising Holding BV, another part in Advertising BV. The arrangement of this is as follows:

Financing Advertising Holding BV:		*Financing Advertising BV:*	
Shareholders	0.05	Bank A	0.60
Subordinated loan	0.75	Bank B	0.60
Bank C	1.10	Bank C	0.80
Total	1.90	Total	2.00

Financing was based on the 1991 figures, when a net profit of €228/m was made and the favourable forecast for 1992 to May 1994. Based on this forecast, the agreed repayment obligations of € 285/m per year could be fulfilled.

Almost immediately after the takeover however, it emerged that the planned turnover was not feasible and liquidity tensions arose. Ultimately, losses of €0.591 million were suffered in 1992. In 1993, an external party issues a report which states that strengthening of management is deemed necessary, in addition it mentions a lower profit forecast than forecast by management. The result of 1993 ultimately amounts to € 323/m negative and at that moment there is no prospect of improvement. One of the shareholders (MDS) decides to leave the company. In the course of 1993, repayments at Bank C relating to a loan under the so-called State-guaranteed scheme[2] (amounting to € 295/m), are suspended with the approval of the Ministry of Economic Affairs. One of the banks tries to maximise its securities, but this does not happen due to objection from management. Furthermore, it is investigated whether it is possible to sell the company. This yields nothing.

In 1994 a loss is suffered of €353/m. The forecast for 1995 is good however. Nevertheless, one of the banks transfers the company to its Intensive Care Department. In July 1995, all repayments for at least bank C are suspended (by the company). Advertising occupies a building which is too large (capacity is 30-40 persons, while less than 10 people work there). In 1995 a part is therefore (temporarily) rented out to another company, thereby mitigating the losses on accommodation. Early 1996 it is clear that

2 A loan under the State-guaranteed scheme is a loan which is concluded between a bank and a company with the Dutch government standing surety for 90-100% of the repayment. The purpose of the scheme is to promote granting credit to small and medium-sized enterprises. See also: www.minez.nl.

the forecasts for 1995 were too positive: instead of a profit, a loss is suffered of €617/m. Bank C therefore decides to cancel the credit in January 1996. It is also decided, however, to voluntarily suspend the repayments and interest obligations. Also, the other facilities by this bank are continued and nothing is sold up. In October 1996 the limit in current account (overdraft) is even raised.

In August 1996 an attempt is made to come to a workout agreement with creditors in order to restructure the debts, which can be mostly attributed to an excessive takeover price, oversized accommodation and disappointing results as well as poor management (as concluded by Bank C). The proposal is as follows: (x € 1 million)

Proposal settlement	
Bank C	0.829
Creditors	0.329
Tax authorities	0.123
Loan former MDS	0.694
Total	1.975

Remainder of debts following restructuring	
Bank A	0.455
Bank C	0.696
New financier	0.225
Bank B	0.288
Creditors	0.465
Other	0.113
Total	2.242

Bank C opposes the restructuring and rejects the proposal in March 1997, the main reasons being:

- total debt remains high following restructuring;
- equity capital remains extremely negative following restructuring;
- profit perspectives remain uncertain.

The continuation of problems and the uncertain future contribute to the decision. It is also substantiated by the repeated negative business result of 1996 of € -/- 487/m. With a negative cash flow of € -/- 78/m in 1996 it is impossible to fulfil the interest and repayment obligations of € 177/m in 1996. From the restructuring proposal it emerges that a large part of the claim from Bank C is unsecured. The reason for this is that the other banks have a higher rank with regard to the mortgages granted, as well as the (unsecured) financing from Bank C with regard to the takeover of Advertising BV by Advertising Holding BV.

In April 1997 the tax authorities reject a request for deferment of payments and the immovable property and company equipment are seized. An auction procedure is started and Bank A, as the 1st mortgagee, takes over the procedure. Bank C indicates that creditors must be paid to avoid the company from being shut down and it decides to increase the overdraft facility again, which by now has risen from the original €

36/m to € 125/m. In the meantime a second MDS has left which only leaves MDS A. Although this MDS has a financial background, which gives rise to the expectation that the company will be better managed in that field, Bank C doubts his business qualities in the field of advertising.

In October 1997 postponement of the auction is obtained and an external advisor investigates the viability of the company. He concludes that the operating company books remarkable improvements with regard to its operation, also as a result of a different (market) approach. The following plans are made:

- petition for liquidation for Advertising Holding BV, which initiates a €1.4 million debt restructuring;
- sub-agreement with creditors Advertising BV, which initiates a €0.35 million debt restructuring ('haircut');
- the intent to sell the immovable property in order to lower the burden of debt by € 1.6 million.

On balance, the remaining debt of burden would be about € 300/m, all short-term, which can be regarded as operating capital financing. With a view to the size of the company, a cash flow of approximately € 100/m arising from this is regarded as sufficient.

At the end of 1997 a petition is filed for the liquidation of Advertising Holding BV. At the same time, Bank C, which has to write off €463/m as a result of the liquidation, decides to continue the credit to Advertising BV and to increase the overdraft facility by €350/m. This increase settles the obligation towards the tax authorities and it cancels the seizure. Furthermore, the creditors in the workout arrangement and some other creditors are paid. A loan chargeable to the current account is also repaid. With this, Bank C stipulates an additional registration of mortgage as well as a security deposit from a new (additional) financier who will also act as the MDS's advisor. It is also expressly recorded that the immovable property must have been sold before 1 September 1998 for more than €1.4 million (Bank A agrees to this). The losses in 1997 amount to € -/- 1.605 million.

It turns out to be impossible to sell the immovable property in 1998. Although an offer is made, it is too low for the parties involved. On 9 November 1998 Bank A decides to postpone the auction procedure again, this time until 1 April 1999. Subsequently, the attempt to sell the immovable property by that date is unsuccessful and it is decided to rent out that part of the building which is empty. Bank C decides to take over the financing from Bank A at an amount of €462/m, including the mortgage. As a result, the total amount for Bank C amounts to € 1.619 million, which is secured for € 1.578 million. The trend in results meanwhile continues (x € 1 million):

Results	*1999*	*1998*
Turnover	2.514	2.560
Gross margin	0.571	0.559
Business result	0.179	0.163
Result after taxes	0.017	0.018
Equity capital	-/-1.069	-/-1.087
Loan capital – long	1.339	0.841
Loan capital – short	1.101	1.649

Although the equity capital is still negative, the results are positive again. The short-term loan capital in particular has also decreased. On 6 December 1999 Bank C decides to consider returning the file to normal administration as from 1 July 2000.

Analysis
The problems at Advertising can be attributed to, among other things, an excessive takeover price, disappointing performance on the market, poor management and a cost level which was too high in relation to the turnover (oversized accommodation in particular). Taking into account the trend of results, it is a miracle the company still exists. As a result of the financing construction of the MBO, Bank C ran a high risk with regard to the issued credit facilities; the company had issued relatively few securities to Bank C. Bank C therefore had an obvious incentive to keep the company a *going concern*. This shows through Bank C's refusal to sell the immovable property below a certain price in order to reduce the debts, as well as the takeover and extension of a number of credit facilities. In the light of the somewhat more favourable results and positive cash flow of the restructured organisation, the negative equity capital is being put up with. The fact that the company still exists ensures that economic value is preserved, despite the liquidation of Advertising Holding BV. The bottlenecks in the informal reorganisation primarily lie in the company's inability to adjust the costs in accordance with turnover. In addition, the debt from the past (too much paid goodwill) could not be rescheduled. The lack of forceful management (and advisors) to reorganise and inadequate financial information are also (partly) responsible for this. The liquidation of Advertising Holding BV could possibly have been avoided when a realistic reorganisation plan had been drawn up and executed. Due to the fact that the company still exists in a restructured form, it can however be concluded that the informal reorganisation was a success.

S2. Aid

Description of the company
Aid Holding BV is a parent company with six subsidiaries in France, Spain, the United States and the Netherlands. As a result of an MBO in 1999, the company is in the hands of a Managing Director and major Shareholder (MDS; 51%) and an investment company (49%). The company's activities are the development and production of aids for the elderly and disabled. The company has a turnover of more than € 20 million.

Cause of the problems and the course of informal reorganisation
In March 2000, following a loss of approximately €950/m in 1999, the company gets into arrears in respect of interest and repayment obligations on a loan which was provided to the holding company by the housebank. In June 2000 the bank decides to hand over the file to the Intensive Care Department. At that time there is a need for additional credit of about € 2 million which is refused by the bank. The bank indicates that the agreed interest and repayment obligations on all provided loans must continue without interference and that a quick scan must be carried out by an independent advisor.

The company at that time has the following credit facilities with the bank.

In millions of €		
Loan Holding	7	0.4 repayment each quarter
Overdraft facility operating companies	3.2	0.4 repayment each year
Total	10.2	

Table 1: Aid

The holding loan was provided when the operating companies were taken over. This is virtually unsecured. The overdraft facility on the other hand is secured by pledges on the current assets of the operating companies as well as by a private security deposit from the MDS (at €400/m). In June 2000, the value of these securities is estimated to be approximately € 2 million, on liquidation however, it would be € 980/m.

The table below shows the causes of the problems, as well as the measures proposed by the advisor.

Causes	*Measures*
Too many different products/models	Rationalising product range
Inefficient production process	Standardising production process
Purchase costs too high due to too many suppliers	More efficient purchasing at fewer suppliers
Inefficient logistical organisation	Appoint logistics manager
Loss-making service department	Reorganising service department into profit centre
Production costs are too high	Outsourcing production to country with low labour costs, in the Netherlands 'final assembly' only
Branches abroad are making a loss	Close foreign branches and operate with foreign agencies
Insufficient management of working capital	Faster debt collection, proper arrangements with creditors

Table 2: Aid

Management agrees to the proposals and from then on the organisation is made 'lean and mean', i.e. the company only focuses on the core activities. Only necessary (non loss-making) activities are kept (research and development, service and sales in the Netherlands). The other activities are outsourced as much as possible. Surplus assets, partly the result of the reorganisation, are also sold. The costs of the reorganisation are estimated at € 640/m, € 408/m of which is for staff redundancies, € 100/m for advice and support costs and € 132/m for write-off of stocks and rationalisation of the product range.

In August 2000 the bank agrees to the following proposals:

- a waiver is granted for the financial ratios in the credit agreements;
- the aim will be the contribution of risk-bearing capital in 2000 at € 1.6 million in order to strengthen equity. To that end the search is on for a new shareholder who will contribute this money;
- the MDS privately borrows €400/m and takes out a second mortgage on his house for that. He pays this amount into the holding. The private security deposit is cancelled as a result of this;
- in September 2000 the MDS will contribute € 120/m at least and the investment company will contribute €600/m. This contribution concerns subordinated loans;
- the repayments on the loan to the holding company are slowed down. The condition is that money freed up by the sale of surplus assets will be used for making up the arrears on this loan. As from 1 October 2000 therefore, at least one foreign participating interest must have been sold which could yield between € 240/m and € 320/m, as well as some business premises which could yield € 400/m;
- 50% of the cash flow surplus must be used for additional repayments (*Cash sweep*);
- the repayments of the overdraft facility will continue as normal.

At the end of November 2000 the following is established:

- due to the subordinated loans from the shareholders, the arrears have been made up and repayments are now made as normal. The investment company has contributed € 1 million in 2000, the MDS € 400/m;
- the foreign participating interest and the business premises are sold. However, the proceeds are much lower than estimated;
- losses up to and including October 2000 amount to more than €1 million (including € 640/m of reorganisation costs);
- Dutch operations (60% of total turnover) are profitable;
- a positive turnover and result trend is expected for 2001 as a result of the reorganisation. It will be possible to fulfil the interest and repayment obligations;
- as a result of better management of working capital and the first (small) positive effects of the reorganisation, the liquidity position has improved reducing the necessity for a new shareholder.

The financial ratios (the solvency ratio in particular) however cannot be satisfied yet. The most important reason is that when the equity capital is adjusted for capitalised

goodwill[3] (during the MBO, € 11 million was paid for the operating companies) it causes the equity capital to remain negative. It is therefore decided to let the continuation of credit be decided by the liquidity trend in particular. Ultimately, losses of € 2 million are suffered in 2000.

In 2001 the reorganisation is in full force. In the first six months of 2001, a profit of €400/m is made despite two loss-making foreign subsidiaries (total loss of €376/m). In October 2001 management announces that these losses have stopped and finally, in 2001, a total profit of € 720/m is made. The housebank remains hesitant though, because the equity capital (solvency) is still only 27% (including subordinated loans: 34%). This in itself is not such a problem says the bank, but when adjusted for capitalised goodwill, equity is still negative. The interest and repayment obligations, however, will be fulfilled in accordance with the agreement.

In June 2002 the company presents a business plan which outlines the company's near future. The forecast is that the net turnover in a European growth market, which the company will focus on, will increase by 8% each year. Furthermore, an investment plan is presented in order to renew the product range and the software among other things. The additional need for credit in this case amounts to € 2.8 million. This also includes an extension of the overdraft facility at €800/m for the benefit of the expected increase of receivables as a result of growth, as well as a payment of dividend of € 800/m on cumulative preference shares of the investment company.

The bank cannot find itself in this scenario and states that, also with a view to the state of the equity capital, the investment amount of € 2.8 million must be made available from internal cash flows as well as the contribution of risk-bearing capital by the shareholders. The bank proposes the following:

- converting cumulative preference capital into a subordinated loan. This will immediately free up € 800/m;
- the reduction of the overdraft facility is abandoned for a year. This frees up € 400/m for investments each year;
- the Cash sweep is not necessary (anymore). This results in an additional cash flow of € 320/m.
- shareholders contribute an extra € 320/m;
- the remainder (€ 960/m) is financed from free cash flow.

The company can only partly find itself in this and indicates it wants 'to shop' at other banks. The housebank then states that the above is a final offer. If another bank is willing to take over the credit facilities, it is (in part) willing to say goodbye.

3 The idea behind adjusting the equity capital for goodwill is that the value of the goodwill will decrease following a bad performance or liquidation of operating companies (for which goodwill is paid). Depending on the seriousness of the situation, it could decrease to zero.

Analysis
The reorganisation can be deemed a success since management saw the rigid attitude of the bank as *the* moment to start reorganising. By drastically cutting into the organisation and reviewing the strategy, the company became profitable again within a year. The bank keeps an eye out though, because the company is still being financed heavily with loan capital as a result of the MBO; it is her ongoing ambition to have the equity capital strengthened and to have the financial ratios improved in addition to a positive return. The fact that the liquidity position develops positively makes that relatively little value is attached to the solvency ratio. It is important to remain careful though, so the bank does not really want anything to do with the extension of credit. Nevertheless, the fact that the company seems to have a rosy future and that it is a potential good client does not stop the bank from opening its doors to say goodbye to the client.

S3. Cable

Description of the company
Cable Holding BV has an operating company which is called Cable BV. The activities of the company consist of running a firm of contractors in the field of laying cables for the telecom industry in particular, as well as recycling, demolishing, and the processing and disposal of waste products. The holding is in the hands of an immigrant entrepreneur and the company employs about 120 people.

Cause of the problems and the course of informal reorganisation
In the course of 1999 the company's housebank calls in an interim manager. Due to private circumstances the entrepreneur is temporarily unable to manage the company and his brother, who deputizes for the time being, is still inexperienced. In addition, as a result of an investigation by the so-called FIOD,[4] a grossing up/additional tax assessment has been imposed with regard to non-payment of social security contributions and taxes. In the first instance this amounts to approximately €1.5 million (this will increase to about € 3 million). Within the community of the entrepreneur, € 1 million was raised to finance the company and personnel were for some time paid from this income without the contributions/taxes payable being paid, that is to say, the loan was not 'put into' the company. Since the financial flows between the companies within the group and outside intermingled, there was no overview as to the 'health' of the company (because the wages were paid outside the companies, the results of the company were flattered). The bank, which did have confidence in the business model of the company, wants to find out with the help of the interim manager if continuation of the credit is justified.

The interim manager immediately starts negotiating with the tax authorities, which has also effectuated attachment of the property found on the premises, in order to find a solution for the claim against the company (there is insufficient cash to settle the claim without endangering the continuity of the business). The interim manager tries to straighten out the administrative and financial organisation and to determine the

4 Dutch Fiscal Intelligence and Investigation Service.

company's health. He finds that the entrepreneur is a visionary, a true entrepreneur, but that the company was jeopardised by the fact that private and business spending intermingle (too much) and that the company is insufficiently managed on financial information – furthermore, many investments are made and only afterwards it is checked to see if money is available. This is all rather difficult for the bank, because there is no hold on any risk (they do not know for instance what the situation is as to the securities).

The financial overviews of the company at the end of 1998 and 1999 are summarised below.

In €	*1999*	*1998*
Tangible fixed assets	1,985,121	1,553,197
Financial fixed assets	62,596	70,096
Receivables and prepayments and accrued income	4,575,204	2,126,540
Liquid assets	135,050	240,011
Total	*6,757,971*	*3,989,844*
Issued capital	20,000	20,000
Reserves	503,342	503,342
Profit balance 2000	666,083	-
Provisions	84,624	79,824
Long-term liabilities	1,260,291	1,047,093
Short-term liabilities and accrued liabilities	4,223,631	2,339,585
Total	*6,757,971*	*3,989,844*

Net turnover	11,424,031	6,995,089
Gross margin	6,508,978	5,133,405
Business result	1,156,263	250,850
Net result	*666,083*	*73,071*

Table 1: Cable

On the face of it, 1999 has been a magnificent year. However, the tax claim has not yet been incorporated in the overview and in addition to that the labour costs relating to the afore-mentioned private spending have not been processed. The bank's position is good though. The loans have been granted under establishment of securities on immovable property and operating assets.

On 16 December 2000 the tax authorities make a compromise proposal with regard to the tax claim which has by now risen to € 3.2 million. The compromise proposal entails the following:

- the company pays the maximum amount it can obtain from external money lenders. This money is for the tax authorities and the Industrial Insurance Board;
- the external money lenders must be institutions that are under the supervision of the Dutch National Bank;
- to accept the compromise, the amount furnished by external money lenders must be at least €600/m;
- all loans of the entrepreneur and the company must be officially justified (read: the accounts must be fully updated);
- the costs for the undeclared wages paid out, as well as the payment for the additional tax assessments for labour tax/social security contributions in accordance with the compromise are not charged to the taxable profit of the company.

The company agrees to this and has until 30 September 2001 at the latest to fulfil the agreement. At that moment the market has deteriorated however. As a result the company finds it difficult to find new lenders, and the internal cash flow is not enough to pay the amount. The 2000 result turns out to be just about positive and the result of the first half year of 2001 is €-/- 169,933. On 30 June 2001, the working capital[5] is €-/- 500/m.

Within a recently established subsidiary (which has activities outside the telecom industry), the company is however able to find additional financing (overdraft facility of €440/m) at another bank. Finally, on 3 October 2001 the company is able to pay the amount thanks to this new funding and some internal financing. This is three days too late though and the tax authorities dismiss the compromise since it does not meet the conditions.

Shortly after that the interim manager announces that he wishes to cease his activities for the company. The main reason is the expected loss of €500/m in 2001 in combination with a continuous lack of discipline displayed by the entrepreneur to comply with the required administrative and financial management of the organisation. There is a breach of trust. Since the bank then decides not to sign a finance agreement concluded earlier with regard to an investment, on the basis of the interim manager ceasing his activities, the latter decides to remain assisting the company 'on call'.

Analysis
The company ran into difficulties because it was insufficiently managed on financial management information. Additionally, not separating business and private interests led to major tax problems. In the first instance, a compromise was reached with the tax authorities, but because the relevant arrangements were not met by the entrepreneur, this comes to an end. It is difficult to assess the correctness of the tax authorities' attitude in this matter. Despite the renewed claim by the tax authorities and the poor market conditions the company still exists. However, a structural solution has not (yet) been found for the worsened course of events and in addition the financial and admin-

5 In this case working capital means the result of current assets minus the short-term liabilities. The result gives an indication as to the company's liquidity: is the company able to fulfil its financial obligations in the short term?

istrative organisation is still not in order. The company's future still seems to hang in the balance.

S4. Candy

Description of the company

Candy is a specialist sweet shop. The company – a limited partnership – is run by two managing partners (a married couple) and there are two limited partners. The company sells sweets in the broadest sense of the word. They also run a cafeteria. The number of employees is not known.

Cause of the problems and the course of informal reorganisation

On 13 June 1998 the housebank of the company (the department of Intensive Care in particular) reports in a letter about a conversation which took place on that same day. During the meeting the bank has shown its concern with regard to the company's financial situation. There seems to be a structural shortage of liquidity which is predominantly caused by low margins and excessive private withdrawals. The following has been agreed during the meeting:

- as from 30 June 1998, an external accountant will draw up the accounts;
- a list of creditors is provided as soon as possible, including arrangements made (payment terms);
- the debit balance on the current account, which currently is €34,000, cannot rise any further – it needs to be lowered. As from 1 July 1998 the balance must be no more than €32,000, as from 1 August 1998 it must be no more than €30,000. In addition, business turnover must run via the current account;
- the half-yearly figures must be in the bank's possession no later than 1 August 1998, and a follow-up meeting must take place.

On 7 July 1998, a limited partner who also acts as the company's advisor notifies the bank by fax that the company will not be able to deliver the half-yearly figures on 1 August 1998. Since the turnover and margins develop above expectations, so the limited partner says, he proposes to move the meeting to early September 1998. The bank replies by proposing a new meeting, during which the state of affairs of the past period will be discussed and the reduction scheme of the current account determined again.

By means of a letter dated 9 November 1998 the bank voices its displeasure about the meeting with the advisor (who is the contact person with the bank on behalf of the company) not taking place (further to the meeting of 13 June 1998) because the half-yearly figures are not available yet. Under tightening of the limit on the current account (on 1 December 1998 no more than €29,000), the deadline for supplying the half-yearly figures is postponed until 1 December 1998 in accordance with the arrangement.

On 18 January 1999 the bank informs the company that, with a view to the fact that there has been no reply to a letter dated 21 December 1998 which reminded of the arrangement to supply the half-yearly figures on 1 December 1998 as well as proposing a date for an arrangement, it is being considered to terminate the credit facility unless contact is made within one week.

Through the advisor the company then announces that the figures have been produced too late but that the results are in line with the expectations and that there is a turnaround to a structural profit situation. Although the limited liquidity is still worrying, the company says the relation with the creditors is improving although it is not entirely stress free. It is also proposed to let the meeting take place on the basis of the annual figures of 1998. The bank agrees to this in a letter dated 21 February 1999.

Finally, on 7 March 1999 the meeting is held on the basis of the provisional 1998 figures. There has been a €50,000 profit and the parties conclude that this is a good result. It is noted though that private withdrawals were too high so that little could be added to the equity capital. It is therefore agreed that private withdrawals in 1999 can be no higher than €27,500. Profits of €70,000 are forecast for 1999. To improve the balance ratios it is also agreed that the overdraft facility must be lowered by €500 a month, starting on 1 May 1999. In addition to that the final figures for 1998 must be supplied as soon as possible.

On 1 November 1999 the bank announces that, following repeated requests for sending the 1998 annual report, it is no longer acceptable to wait for this. The debit interest surcharge is therefore increased from 2.5% to 5%. It is also noted that the company has exceeded the limit of the overdraft facility by more than €5,000 which is the result of not fulfilling its obligations with regard to the reduction scheme. This excess must be made up as from 15 November 1999 under penalty of termination of the credit facility. The same applies to the supply of the 1998 annual figures; if the bank does not have them by 1 December 1999, the credit facilities are terminated.

On 2 January 2000, the credit is cancelled. The bank gives the following reasons for this:

- the interest and repayment obligations arising from the concluded credit agreement are not being met;
- the reduction scheme of €500 a month is not being met;
- repeated requests to inspect the company's financial data are not honoured;
- the basis for trust which underlies the concluded credit agreement has gone.

The bank sets the overdraft to zero and indicates that the pledged goods – inventory, machines, car and (trading) stock – must be capitalised now that the claim is due and payable. It is also indicated that a guarantee of €12,500, issued by a supplier for the benefit of Candy, is claimed.

Since the amount of €32,346 due and €4,852 of (non-specified) costs have not been paid on 25 January 2000, the claim is handed over to a debt collection agency. Furthermore, in the course of January 2000 other creditors also start taking action to recover the debts.

In order to avert liquidation, a specialised consultancy agency is called in at the beginning of February 2000 with the instruction to come to a workout agreement. On 12 February 2000 the consultancy agency sends the ordinary and preferential creditors (the bank as a secured creditor is not bound to an agreement and is therefore excluded

from rescheduling) a letter explaining the company's situation and asking for validation of the creditor balance, as well as requesting a deferment of payment for a period of six weeks pending an investigation by the so-called Institute for Small and Medium-Sized Businesses (IMK) into the possibilities of a FAE-loan.

On 28 March 2000 the consultancy agency, on behalf of the company, requests deferment of payment for another period of six weeks, because there has been no definite answer about the amount of the FAE-loan as yet. On 24 June 2000 this request is repeated for a period of four weeks, because there is still no definite answer about the FAE-loan, despite positive reports. The creditors involved agree to this. On 24 August 2000 the creditors are told that the credit will be granted and that completion is near.

On 19 September 2000 the consultancy agency makes a formal request to the creditors to agree to an arrangement. Rescheduling applies to claims by the Industrial Insurance Board and ordinary creditors at €6,933 and (jointly) €190,383 respectively. The following is being considered:

- continuation of business is possible, provided that the debts are rescheduled. A FAE-loan of €70,000 (to reschedule the debts) is one of the possibilities, provided an agreement is reached;
- ordinary creditors must agree to 20% in full settlement ('haircut') of the remaining debt. The Industrial Insurance Board will receive double that percentage;
- during rescheduling, an amount of €12,848 must be taken into account which will be claimed by the tax authorities in relation to Value Added Tax (VAT) reclaimed by creditors;
- when it does not come to an agreement, the FAE-loan will not be made available and the entrepreneurs will be forced to appeal to the Private person Fresh start Proceedings (PFP). The result will be that creditors will receive less.

On 20 November 2000 the creditors are informed about the fact that the workout attempt has been successful. The agreed amount will be paid as soon as possible. The company has also sold its sweet shop and only the (profitable) cafeteria is still operational. The proceeds of the sweet shop have probably been used to pay the bank's claim (because there have been no measures of enforcement by the debt collection agency involved).

Analysis
The company basically ran into difficulties through a combination of excessive private withdrawals and margins that were too low. It also emerged that the company did not focus on financial parameters and the administrative organisation was poor. As a result of the fact that multiple agreements with the bank were not met for a long period of time, the confidential relation was damaged. This led to liquidity problems for the company after the credit was cancelled. The attempt to avert liquidation was successful, because a specialised consultancy agency was able to come to a workout agreement in a transparent manner, based on the provided FAE-loan. By shedding the loss-making confectionery activities, the company turned out to be viable again.

S5. Car

Description of the company
Car Holding BV is a parent company of five operating companies which focus mostly on the production of parts for the car and agriculture industry. The products are purchased by manufacturers, but production takes place mainly for the so-called replacement market. In this respect, wholesalers and garages are important clients. On a European level the company has a market share of 3%. About 90% of the turnover is realised abroad. The operating companies are autonomous and report directly to the supervisory board of the holding company. There is no executive board at holding level; however, funding and insurance are attracted and there is also an accounts department for compiling the group's consolidated figures. The company is for the greater part owned by a number of investment companies. 1997 saw refinancing of € 95 million (long-term loan and overdraft facility), involving four banks. In March 1999, the outstanding credit of the joint banks is approximately €77 million, €49 million of which relates to an overdraft facility and € 28 million to a long-term loan.

Cause of the problems and the course of informal reorganisation
In the spring of 1999, the file is passed to the Intensive Care Departments of at least three of the four banks. There are a number of reasons for this:

- in 1998, a net profit of €140/m was made with an increased turnover (total turnover of € 210 million). If the contingency gain of € 1.5 million is not taken into account, the company is left with a loss of nearly € 1.4 million;
- three financial ratios which underlie the financing were broken in 1998. The ratio debt/EBITDA[6] is larger than 3 instead of smaller than 3. The ratio EBITDA/interest[7] is 0.75 instead of 2.5. Furthermore, the solvency ratio is smaller than 35%, i.e. 32%;
- on the basis of the above, the banks expect liquidity problems in the short term;
- management does not make a good impression on the banks. There is also the impression that the company is not managed sufficiently due to the lack of hierarchic structure.

The cause of the deteriorated state of affairs lies in a combination of factors:

- the takeover of a company in 1998 which was too expensive (at the end of 1999, € 2 million of paid goodwill is written off against the takeover);

6 EBITDA stands for Earnings Before Interest, Tax, Depreciation and Amortisation. It is an indicator as to the profitability of the company, arising from normal business. The proportion Debt / EBITDA indicates to what extent the company is able to pay off the total amount of debts by means of its business results. The smaller the sum, the bigger the chance the company is able to fulfil its obligations.

7 The proportion EBITDA / Interest indicates to what extent the company is able to pay off its interest obligations by means of its normal business results. The larger the sum of this proportion, the bigger the chance the company is indeed able to fulfil its interest obligations.

- a steep drop of the gross margin. On the one hand this is caused by an increase of the prices of raw materials, on the other by the purchase of the above-mentioned company, achieving low margins;
- considerable write-offs of accounts receivable had to be made as a result of fraud and bankruptcies;
- the company operates on a difficult market;
- turnover partly depends on the seasons. In 1998, turnover considerably lagged behind in the main season.

Since the company no longer complies with the agreed financial ratios, a waiver has been requested until 31 May 1999. The banks agree to this with a view to the favourable forecast for 1999, but their condition is that actual[8] securities are issued for receivables and stocks, and that part of the buildings and grounds are sold and leased at the same time (sale-and-leaseback construction) with regard to the long-term loan. These proceeds, estimated at €3.2 million, can be used to lower the loan. Due to the nature of the activities (a lot of foreign turnover and the necessity to maintain high stocks), it is particularly important for the banks to keep the solvency ratio (equity/total assets) high. The banks however have their reservations about the future of the company in the long term.

In June 1999 the waiver is extended until 1 August 1999. The reasons given by the banks for this extension are on the one hand the opinion that without extension, the company will experience liquidity problems in the short term and on the other the potential loss for the banks with regard to the unsecured part of the outstanding loans.

In November 1999, it is established that the 1999 results are not in line with the forecast. Around about July 1999 the company issued a *profit* forecast, but at that time the loss over 1999 is estimated at €4.2 million (ultimately, the loss over 1999 will be €22.4 million). Again, the main cause is a disappointing sales season, something the company heavily relies on. Although the company is formally in default,[9] it is decided to issue another waiver. This is mainly because the 1999 repayment obligations are met and the expectation is that this will happen in 2000 as well. Furthermore, the problems with regard to the securities have been resolved and progress is made in respect of the sale of assets (immovable property and reduction of stock) for the benefit of lowering the loans. Part of the proceeds can even be used for the imminent reorganisation. However, the banks who regularly consult about the problems of the company and who have agreed to look for a solution together, state that there can be no additional funding when reaching the financing ceiling – this must be provided by the shareholders.

In December 1999 it is announced that losses will amount to €10.3 million. The loss is built up as follows.

---

8 At the beginning of 1999 these securities had not yet been issued. At that time a revised financing agreement is being discussed, which will elaborate on matters regarding the securities.

9 The company does not meet the conditions in the finance agreement, thereby in fact making it possible to cancel this agreement.

In millions of €	
Operational results	+ 2.2
Liquidation of loss-making operating company	-/- 2.6
Costs of reorganisation (incl. dismissal of 70 employees)	-/- 4.1
Write-off of goodwill	-/- 2.0
Other (incl. write-off of stock/halting production)	-/- 3.8
Total	*-/- 10.3*

Table 1: Car

As shown, the loss is partially created by a planned reorganisation during which employees were laid off and loss-making activities were halted. It is the intention to realise a turnover of €223 million in 2000 and a profit of €5.6 million. The company requests for €3.2 million of repayments to be moved to the end of the year in 2000. The banks agree.

1 January 2000 sees the employment of a managing director who will control the company from the holding company. The banks have confidence in the man, because he has successfully restructured companies on several occasions in the past. His main priorities are given below:

- review of management positions on operating company level (if necessary);
- structurally lower cost structure;
- improving management information system;
- stricter management of working capital, particularly the policy as to accounts receivable. The objective here is to turn the company into a 'cash-controlled' company;
- to develop a univocal strategy for the future.

In the short term, the following action is taken:

- (continued) reduction of stock;
- improvement of the margins by changing the strategy to a higher market sector;
- reduction of overhead costs;
- halting production of loss-making products;
- expanding the product range with stronger products;
- integration of business units to increase efficiency;
- enter into alliances with operating companies when this is deemed to be necessary.

However, in January 2000 it is announced that the 1999 loss will amount to € 22.4 million. This is partly caused by a defensive downward value adjustment of the assets by the new managing director. About € 10 million of the higher loss of € 12 million consists of additional provisions with regard to the valuation of accounts receivable, stock and goodwill. In this case the view, as stated by one of the banks, is that it is

better to face a huge loss in one go ('big bath accounting'[10]) and to start with a 'clean slate'.

In the first two months of 2000, results develop positively. Both the turnover and the result exceed the forecast. Furthermore, there was no need for additional credit: the credit ceiling of the overdraft facility was not reached. However, the conditions set out (financial ratios) are still not met (to this end a default interest of 1% has been imposed). The banks again decide to grant a waiver (until 1 October 2000) because the company predicts that at the end of 2000 the conditions will be met again. It is stated however, that there will be a test on 1 October 2000 on the basis of solvency (at the end of 1999: 28%, objective 35%) and the result versus the forecast. The company is told that if one of the two criteria shows negative development, the following action will be taken:

- an in-depth investigation by accountants from one of the banks;
- a valuation of the stock by an external consultancy agency.
- a study into the market, carried out by one of the banks on the basis of among other things the strategic plans of the new managing director.

In addition to the waiver, the company is granted deferment until 15 September 2000 in respect of the obligatory repayment in the period April to June. This is done due to a great need for credit during that period. Despite the improved results, the banks still doubt the company's independent right to exist.

In September 2000 it seems that profitability has persisted as a result of large cost savings, despite a lower turnover. The company has also started on a strategic plan for the future, together with a consultancy agency. The key points in this respect are:

- warding off the pressure on profit margins (as a result of increased competition) by adjusting the product range and placing it in a higher segment;
- focus on selling to independent organisations instead of chains, as this will yield higher margins;
- reduction of costs and improvement of efficiency in the production and sales processes;
- starting alliances.

In October, the expectation is that at the end of 2000 only the solvency will still be below the level agreed and that the financial results will therefore develop properly. Since management indicates that the company will not be able to survive by itself in the future, the banks remain cautious and they strive for further reduction of their credit.

---

10 Big bath accounting can be described as a strategy where the company adjusts its profit and loss account in the negative sense, so that poor results look even worse. In this way, future results are artificially increased, because certain costs have already been justified at an earlier stage.

In March 2001 it seems that the reorganisation has paid off. The results are above expectation. Net profit is over €9 million (instead of a forecast profit of €5.6 million) with a turnover of €212 million. The solvency ratio too meets the set requirement of >35%.

However, in that month the managing director is suspended following disagreement with the shareholders about the future policy. The banks see this as a signal to tread carefully, the more so since the shareholders and supervisory board (without consulting the banks) have also decided not to replace the managing director, but to restore the situation to its original state (direct reporting to the supervisory board by the operating companies). Furthermore, the banks are extremely sceptical about the company's future plans which were presented in February of 2001. It does not give a future outlook and the question whether or not independence can be maintained is not answered.

In April 2001, two out of the four banks decide to cancel the credit as from 1 August 2001 on the basis of the future plans in particular. The other banks subsequently discuss their positions and also decide to cancel the credit, unless the company will start to comply with a number of strict conditions. One of the conditions, in addition to a clear future outlook, is finding a strategic partner for the company, because the banks are of the opinion that there is no independent right to exist (due to the meagre profit margins, the company will never be able to increase its equity capital by itself).

Despite the favourable developments as a result of the reorganisation it is decided to keep the company in the Intensive Care Departments after all.

Analysis
In this case, the informal reorganisation was successful. Despite the stormy weather the company found itself in, it was possible to rationalise the company by means of a large reorganisation. The financial ratios were restored. As a result of the management's forceful actions and the leniency of the banks involved, the company was then able to operate independently within the set criteria of the credit agreement with the various banks. Still, things were not entirely successful. Although the company was profitable again, the banks still reviewed their positions. Two out of the four banks even cancelled the credit (with due observance of a term to come to refinancing). The main reasons were the lack of confidence in the company's future (neither flesh nor fowl) and the management and shareholders involved. It seems important for the company to find financiers who do have confidence in the company's future. They can either be providers of risk-avoiding capital or providers of risk-bearing capital (whether or not in the shape of a takeover). This case shows that a healthy development of the balance sheet and results is not a guarantee for all interested parties to gain confidence in the company. Both past events and future expectations determine the result of an informal reorganisation to a great extent.

S6. Food

Description of the company
Food Holding BV specialises in developing special, technologically high-quality machines for the food industry. The company has a number of (international) participa-

ting interests and subsidiaries which mostly function as sales offices. In addition there is a strategic cooperation with a number of distributors with the machines being sold under the distributor's brand name or otherwise. More than 100 persons have been employed by the company since the beginning of 2000. The company is owned by various investors/investment companies.

The company does not manufacture the machines by itself, but lets five suppliers manufacture the components and subsequently contracts out assembly to a company called Assembly BV which also is the (largest) distributor of Food Holding BV.

Cause of the problems and the course of informal reorganisation
Since the mid nineties the company has focused mostly on the development of a machine for a market segment in the food industry. Although the company has solvency of more than 49% and shows an upward trend with regard to profit development, problems do arise. The causes are given below:

- in order to market the product, the company has had to concede to favourable delivery and payment terms for the customers (the distributors and participating interests among others). A large part of the net receivables consists of outstanding debts which are nearly 200 days old. This puts the company's liquidity under pressure. Furthermore, the customers are often not very profitable, so payment of many debts is uncertain;
- many customers are hesitant about the machines, because the operations must be radically adjusted;
- the machines still show teething problems;
- the relevant market segment has not been flourishing since the start of 1998. Investments are postponed if possible.

In December 1998, the company is placed under intensive care by at least one of its two banks. This bank (called Y) has provided €12.5 million in credit, the other bank (called Z) has provided €5.5 million. The main reasons for bank Y are:

- the greater part of a private share issue has recently been used to pay trade creditors;
- the excessive amount of the balance of receivables in combination with a limited amount of (not very profitable) large debtors;
- the stock situation at the distributors and participating interests is high. These stocks will most probably only be paid once they are sold.

The bank therefore worries about whether the obligations can still be met in the short term now that cash flow lags behind deliveries to the customers. The bank and the company reach the following agreement in order to dispel the liquidity problems in the short term:

- no additional loan capital is raised without consulting the bank. In this way, the repayment capacity with regard to the current obligations is not jeopardised;

- loans and guarantees are no longer issued to the participating interests and customers in the distribution network. As a result the number of obligations of Food Holding BV will not increase;
- claims against trade debtors, participating interests and customers in the distribution network are no longer converted into risk-bearing capital. This prevents potential incoming cash flow, based on machines purchased, from disappearing;
- the debtor term of new claims is set to a maximum of 45 days. In this way, sales proceeds will reach Food Holding BV quicker;
- the total number of debts with one debtor can only be 10% of the total number of the company's debts. This will prevent the company from becoming too dependent on a limited number of debtors as a result of which it is too vulnerable to risks from these companies.

In order to solve the problems in the medium term, the company announces the following measures in the beginning of April 1999, pending a strategic reorientation in the long term:

- the costs and corresponding expenditures will be limited to a minimum;
- reduction of working hours will be requested for fifteen members of staff;
- negotiations about a workout agreement will be held with strategic suppliers;
- negotiations about a repayment arrangement for a €1.4 million debt will be held with the tax authorities;
- a stake in a participating interest which is not part of the core activities will be cut back. In addition a corresponding contract will be bought out;
- via a share issue, € 1.1 million will be raised with shareholders, suppliers and management;
- an increase of funding by both banks, with bank Y providing €0.55 million and bank Z €2.75 million.

By means of these measures it hopes to improve liquidity by € 8.3 million (not all measures will take place though; see further). In October 1999, the company has drawn up a strategic plan for the future. The basic principle is that a 35% market share in the relevant European, Japanese and American markets must be achieved within 3 years. In order to achieve this objective, the following measures must be taken:

- the only focus is on the afore-mentioned specific market segment;
- the internal organisation is streamlined;
- the company will carry out production, assembly and distribution by itself. This will happen by taking over the assets and activities (including other machines) from Assembly BV as well as by buying a number of distributors. The main advantages of this are that the sale of machines can be directly influenced, quality control can be fully monitored, a stable sale is realised through the sale of other machines and the attachment on working capital is reduced.

Despite the measures taken, a moratorium (which leads to liquidation in 2000) for one of the operating companies (accommodating most of all operational activities of Food Holding BV) is inevitable in the autumn of 1999 as a result of liquidity problems. Therefore it is important to quickly come to a structural solution which includes the

strategic reorientation. Major stakeholders consequently come to a standstill agreement ('voluntary marking time') in order to work in relative peace on a so-called Heads of Agreement which includes arrangements about total restructuring of the company.

In the spring of 2000 the following agreement is realised:

- a group of investors will contribute €13.8 million against issue of shares. As a result they will acquire 60% of the outstanding share capital. With that, they will issue a bridging loan in the short term as an advance on the investment;
- the assets and activities of Assembly BV are taken over (see above) for €5.5 million (€2.2 million on transaction and the remainder at a later time). In addition Assembly BV receives 13% of the (increased) share capital;
- the non-core activities are sold.

The following is agreed with the banks:

- bank Z receives 30% of its claim (of €5.5 million) in full settlement ('haircut') under release of securities provided;
- on transaction, bank Y receives 30% in cash of its claim (of € 12.7 million).
- bank Y receives 5% of the shares of the increased share capital, with the possibility of selling them, on certain conditions, to one of the other shareholders at a later time for an amount of at least € 1.1 million (the price will mainly depend on the trend of results);
- for each machine sold, bank Y receives a certain amount of money. This arrangement relates to the next 750 machines to be sold. This arrangement will yield € 4.4 million in total.

In addition, a foreign investor who has also acquired 10% of the increased issued share capital during the afore-mentioned contribution of equity capital will contribute a financing facility of € 3.3 million. Furthermore, the investors agree with the company to raise funds of no more than € 4.4 million. On signing the agreement, € 1.5 million is already provided for. A large supplier will convert his claim against the company into shares and as a result gains a 3.5% interest.

Finally, a workout agreement will be concluded with the other creditors of the company where they will receive a maximum of €2.8 million as well as 1.5% of the issued share capital.

Analysis
The company ran into difficulties through a combination of unsatisfactory management of the working capital, non-forthcoming spending by customers, and quality problems. By cutting costs on a large scale on the one hand and raising additional risk-bearing capital in combination with (tailor-made) workout agreements with the creditors on the other, the company's reorganisation was successful. The cooperation between the relevant creditors and the company contributed to that success.

S7. Garden

Description of the company

Garden is a company which specialises in the sale of plants and related products. It started as a greenhouse with some land and has grown into a garden centre where more than 10,000 products are on sale. In 1996 the turnover was approximately €10 million and at that moment the growth in turnover in the industry was 20 to 30% on an annual basis. A brother and sister took over the company from their father.

Cause of the problems and the course of informal reorganisation

The problems start when it is decided to move the company to a so-called 'top location' in the middle of a number of residential areas. The estimates and planning involved with the new building do not correspond and the construction costs are higher than expected. The final costs of the new building come to approximately €7 million. In addition, the results in the 'old' branch lag behind, which results in a large deficit.

The company's housebank advises company management to call in an external consultancy agency in order to chart the problems. The consultancy agency finds the following problems:

- higher building costs than forecast;
- sluggish results in the 'old' branch;
- poor administration/poor management information system ('no insight as to the margins on the different products');
- the bookkeeper turns out to be unfit for the job;
- the company's balance sheet is completely distorted. I.e., the equity capital is too low in relation to the total capital (solvency), in combination with investments (new building) which are largely financed with short-term loan capital.

Based on these findings, the consultancy agency produces a so-called cash planning (forecast cash flow overview for the next periods) and concludes that an injection of risk-bearing capital (equity capital) is necessary. On the one hand to improve the financial ratios, on the other to cancel the arisen deficit, so that payments are not jeopardised. The bank is subsequently willing to keep open the credit lines, provided that at least 50% of equity capital is injected. The consultancy agency finds a 'third party' who is interested in participation in the company. At that moment the entrepreneurs really have no choice, privately everything has been pledged (surety) and furthermore, no private means are available, but they do not think it is a problem: 'Better 50% of something than 100% of nothing'. It is stipulated however, that the private sureties must be cancelled when new capital is injected.

In addition to the injection of equity capital, the bookkeeper now has another job within the company, the management information system has improved and the entrepreneurs manage the company more on financial results. The consultancy agency has followed the company in the first three years following restructuring and the results are satisfactory. The new shareholder takes no interest in day-to-day management.

Analysis
The company ran into difficulties through a combination of circumstances. Due to the high costs of the new building and disappointing results which resulted in an imminent deficit, eroded balance sheet as well as the imminent cancellation of the credit, the company was heading for liquidation. This was averted though by means of the injection of new risk-bearing capital. Combined with improved management, the company now books positive results again.

S8. ICT

Description of the company
ICT Holding BV is a business service provider, active in the ICT sector. The company has a business unit structure with 6 subsidiaries and it is managed by a Managing Director and major Shareholder (MDS). At the end of the nineties, a number of large acquisitions take place. In two years' time the company grows from 140 to 800 members of staff and turnover rises from €18 million in 1997 to approximately €40 million in 1999.

Cause of the problems and the course of informal reorganisation
The expansion of the company is prompted by the fact that clients like to cooperate with sizeable parties. However, problems arise partly due to this expansion. They have been listed below:

- the qualities of the MDS and the rest of management predominantly lie in the commercial field. They are not sufficiently able to manage the operational processes which arise from the expansive growth;
- the management information system is inadequate;
- problems in management lead to the departure of the commercial manager;
- the takeovers involved the continuous employment of the original MDSs, who in addition will receive a profit-related bonus upon their departure. These arrangements involve high costs;
- due to the fact that the activities are not integrated, an 'island structure' is created. Each business unit operates for itself and no synergy is achieved;
- the market conditions worsen.

In 1998 a turnover and profit growth of 50% is forecast for 1999. The results ultimately lag behind due to the above problems and a loss is suffered. Below are the figures for 1998 and 1999.

In million €	*1998*	*1999*
Turnover	33	39
Net profit	1.92	-/- 1.44
Cash flow operational activities	-/- 0.64	-/- 0.48

Table 1: ICT

The cash flow figure demonstrates that as early as 1998 the business results were showing a worsening course of events. At the end of October 1999, problems with

regard to liquidity arise. Furthermore, the company no longer meets the agreed 25% solvency requirement in the credit agreement. The solvency's development is shown below.

	1997	*June 1998*	*1998*	*June 1999*	*September 1999*
Solvency	68.4%	49.7%	20.2%	23.8%	12.4%

Table 2: ICT

The company subsequently considers its future and, in consultation with the housebank, draws up the following 'plan of attack' for the next six months:

- the company will be given (more) structure so that synergetic advantages will be achieved;
- a specialised consultancy agency is called in;
- commercial strength will be improved;
- employees will be deployed more efficiently, so that the capacity utilization per employee is increased;
- overhead costs will be reduced. On a holding level, €0.4 to 0.5 million will be saved on this immediately;
- loss-making projects/activities are halted as soon as possible;
- one of the subsidiaries, which can be seen as the biggest 'bleeder', is entirely restructured, particularly by closing down branches and dismissing personnel. In the short term this will yield a saving of more than € 1.2 million.

The intended measures are expected to yield a saving of approximately € 2 million in the short term. On the other hand though, there are more than € 1 million in reorganisation costs (for redundancy procedures, advice costs and buying off rental and lease contracts). A subsidiary will also be sold. This sale is expected to yield € 1.8 million in liquidities.

The housebank is asked to temporarily increase the overdraft by an amount of more than € 720/m. The overdraft will then be € 5.4 million. Although the bank has confidence in the appointed interim manager and can find itself in the reorganisation plans (for the time being), it does not agree with the requested increase of the overdraft. It will however permit the overdraft to be temporarily exceeded during the reorganisation and a temporary waiver is granted for the solvency ratio. All this is based on the following conditions:

- with regard to the period until 31 December 2000, the company must submit an informed forecast of the intended results and need for liquidity as soon as possible;
- they must find out if money can be made available from other sources (shareholders). This concerns an amount of more than € 0.88 million.
- the bank must be kept informed about the developments;
- lists of receivables (for the issued pledges) must be submitted as soon as possible and after that on a weekly basis.

At the start of January 2000 the bank is informed about a need for liquidity which deviates considerably from earlier discussions. The cause is a lower contribution from shareholders, lower sales results for the subsidiary, incorrect calculations in respect of holiday allowance to be paid out in 2000, as well as the losses incurred in 1999. A conflict arises between management and the specialised consultancy agency. For that reason, the latter is replaced by an interim manager.

The bank's reaction to the deviating figures is to withdraw the promise for the overdraft to be temporarily exceeded. The expectation is that, with a view to the recent sale of the subsidiary, there will be a need for additional liquidity no sooner than late January – early February 2000. The company must provide for this need by itself, whether or not by selling another subsidiary.

On 22 January 2000 it is decided that independent survival of the company is no longer an option. Therefore talks are underway with four parties about a merger or takeover. When asked the bank says that, pending the talks, it cannot promise to provide in the need for liquidity if necessary, but it does indicate to do its utmost in order to help the company in getting the best result possible.

In the middle of February 2000 the only desired merger candidate left, pulls out. Another group of investors shows an interest in providing the company with a capital injection and it starts a study into the possibilities. Liquidity has nearly dried up and there is an acute need for € 0.88 million to bridge the period until 30 March 2000. At that moment the expectation is that in 2000, turnover will be approximately €42 million and that the net result will be € 254/m, with a loss of € 616/m in the first half year being compensated by a profit of € 870/m in the second part of the year. According to expectations, once the effects of the reorganisation have made themselves felt, a business result between € 2.2 and 3.3 million will be possible in time. The bank is therefore willing to guarantee the required additional liquidity, provided that the MDS is willing to issue a private bank guarantee of € 181/m.

On 21 March 2000 it is announced that the afore-mentioned group of investors has pulled out. The housebank is willing to temporarily extend the bridging loan now that the financial trend is on course and because of the expectation that a factoring company will soon offer its services causing the borrowing requirement to drop by €1.12 million (€ 560/m will be used to reduce credit, as agreed).

It takes until 16 May 2000 for the agreement with the factoring company to be concluded. In the meantime, the takeover talks continue. After another takeover candidate also pulls out, a takeover bid is made by TCI BV at the end of July 2000, which leads to a merger of the two companies in September 2000. The new owner contributes risk-bearing capital, reducing the financing by the bank into ICT Holding BV to € 1.15 million and increasing the solvency to 25%.

In October 2001 it is concluded that the integration of both companies is progressing slowly due to both internal and external circumstances (the deteriorating market in particular). Only in October 2001, the results for ICT Holding BV are slightly positive. However, in November and December of 2001, the results fall back to such an extent

that ultimately 2001 sees a loss of more than €3.7 million.

In March 2002, the company again undershoots the solvency ratio of 25%. The parent company TCI BV however promises to guarantee the credit facilities granted. The bank therefore decides to maintain the credit, albeit still under intensive care.

Analysis
The company ran into difficulties through a combination of unclear strategy, poor management, a poorly functioning management information system and economic circumstances. The reorganisation process progresses slowly and as a result, a takeover is inevitable. In the end a healthy takeover party is found. As a result of the takeover, the company survives despite continuing poor results.

S9. Lamps

Description of the company
Lamps, a one-man business (proprietorship) established in 1994, specialises in lamps and fittings. The company acts as a link between manufacturers and retail businesses and focuses on the commercial market. In addition to the trade in lighting, the entrepreneur trades in special solariums and he is active in the field of ICT. There are no personnel.

In the Netherlands, 1500 companies are active in the field of electric durables. In 2000, a total of €300 million was spent on lighting, €107 million of which on lamps. The industry expects a slight increase in consumer spending. However, that development does not translate into better prospects for the wholesale trade. The reason is the increasing concentration of purchase combinations and branches, which cause pressure on the margins. Partly as a result of this, manufacturers are increasingly forced to supply directly to retailers, cutting out the wholesale trade. Only by delivering added value, so it is assumed, can wholesalers maintain their positions in the distribution chain.

Cause of the problems and the course of informal reorganisation
In 1996, the entrepreneur is ordered to pay a fine for violating a competition clause which he signed whilst with his former employer. The fine amounts to €65,798. Partly as a result of this conflict, the suppliers pull out and on the side of the buyers a lot of goodwill is lost. In 1997 the entrepreneur decides to apply for a FAE-loan and on request he receives management support from a specialised consultancy agency. The total FAE-loan is €90,756 and is granted in the course of 1998 because the consultancy agency has concluded that the company is viable, despite the circumstances. On 22 October 1999 the company asks for a €31,765 increase of the FAE-loan, this request is denied however, because at that moment the advisor involved concludes that the company is no longer viable.

At the beginning of 2001 the entrepreneur turns to a specialised consultancy agency to support him in an informal reorganisation to prevent liquidation. Although a €35,000 profit is made in 2000 following a number of years of losses, the company's equity capital in 2001 is €-/- 126,000. The entrepreneur may have equity of €119,000 by reason

of private property (equity in a privately owned house among other things), but this is not enough to pay off all debts. The amount of ordinary creditors at the beginning of 2001 is about € 73,000 in addition to the FAE-loan granted earlier, which at that moment is € 82,000, and a subordinated loan of € 14,000.

The consultancy agency advises the entrepreneur to make another application for a FAE-loan and also sends letters to the creditors, requesting temporary deferment of payment pending the decision with regard to the FAE credit. The idea is for all 22 creditors to be paid by means of the credit and that only one creditor, the municipality granting the FAE-loan, remains. This way, activities can be continued.

Since the decision with regard to the FAE-loan takes a couple of months (an independent advisor must test the company for its viability before the request can be granted), the consultancy agency, in consultation with the entrepreneur, decides to start repaying an amount each month. The repayment capacity is set to € 500 per month.

At the beginning of July 2001, some of the creditors file a petition for liquidation. Because the court defers the petition for liquidation and because the consultancy agency intervenes, the petition is temporarily withdrawn pending the result of the investigation.

On 1 November 2001 the independent advisor advises that the company is no longer viable and that extension of the FAE-loan is not desirable. The reasons are given below.

- That year's turnover will never be sufficient to fulfil the repayment obligations.
- On the basis of the turnover, no more than €30,000 can be additionally borrowed in order to fulfil the repayment obligations. With this, only 30% of the debts can be paid in full settlement.

Nevertheless, the advisor states that the entrepreneur can submit another application and indicates that this application must at least contain well substantiated forecasts and figures from the past, drawn up by an accountant.

At the beginning of 2002, some of the creditors again file a petition for liquidation. Again, the petition is successfully deferred. The reason this time is that the municipality is still considering the FAE-application, despite the negative advice.

In April 2002 the consultancy agency makes a proposal to the ordinary creditors on behalf of the entrepreneur, since the municipality has finally granted €21,000 as FAE-loan on the condition that the debts are rescheduled. The contents are as follows:

- agree with 24.17% in full settlement of the remainder of the debt;
- an amount of € 4,107 must be reserved on the basis of article 29, paragraph 2 of the Dutch Value Added Tax Act;
- two-thirds of the creditors who have an outstanding claim amounting to three-quarters of the total amount of ordinary debts must agree;
- If the required majority does not agree, the entrepreneur will be advised to appeal to the PFP, as a result of which on the one hand business must be halted and on the other a lower benefit can be expected.

On 19 June 2002 the consultancy agency announces that the majority has been achieved and that is has therefore been decided to pay the percentage offered. At that moment, eighteen of the (remaining) nineteen creditors have agreed, as a result of which the rescheduling can be implemented.

Analysis
The company operates in an awkward industry and ran into difficulties through a combination of poor management, mistakes and margins that were too low. The advisor who was called in stabilised the situation by following a transparent procedure. A workout agreement was subsequently proposed and carried out on the basis of a FAE-loan, using the so-called 'two-thirds/three-quarters criterion'. The basic principle here was that when a legal procedure is followed (moratorium for instance), a judge will bind all ordinary creditors when two-thirds of the creditors representing three-quarters of claims have agreed. Combined with the imminent new financing (FAE), the creditors agreed. It has been made clear to the creditors that the proposed workout agreement is the most favourable route, given the circumstances.

S10. Lease

Description of the company
Lease Holding BV is part of an international company that leases trucks and private cars and is also active in short leasing. Lease Holding BV comprises several operating companies at home and abroad. The company employs more than 500 people and has more than 20,000 cars in its fleet.

Cause of the problems and the course of informal reorganisation
On 16 November 1999 the banks of Lease Holding BV are invited for a meeting (at that moment, financing of working capital at the main subsidiary called Lease Work BV totals € 360 million, other loans from banks at Lease Work BV amount to € 55 million). The reason for that is that the reported pre-tax profit until September 1999 of €8 million really turns out to be a loss of €5.4 million. In addition, faults have been found in the annual accounts of 1998. The result of €3 million must be downgraded by € 8 million. The causes of the losses and negative corrections are stated below:

- large bonuses (€ 3 million) have been wrongfully issued;
- a contingency gain relating to three years has been received in 1998 and has been wrongfully booked as a result in 1998. A negative correction of €1.6 million must be made;
- in 1998, in anticipation of book profit ('paper gain') to be realised in 1999, a €2.8 million book profit is made. This book profit was realised neither in 1998 nor in 1999;
- the 1999 loss is the result of the basic principles used in the cost price calculation deviating from reality (as a result of a 'formula error' in a spreadsheet, it emerges later). Since they failed to periodically check the real costs against the results of the cost price calculation, the prices charged were too low, resulting in a loss.

In order to remove the causes, management draws up the following plans:

- discussions will be held with the main clients about possible price increases. The other clients will be notified about the price increases;
- spending cuts will be implemented (with regard to labour costs in particular).

Since the business structure is there and operates properly, there is market demand and the forecast for hiring and leasing days are consistent with reality, management expects that, in view of the measures to be taken, a profit will be made again in January 2000.

The banks agree to discuss the company's situation on 1 December 1999. In the mean time an accountancy firm is called in to investigate the procedures within the company. In addition the company must report on the basis of actual costs and turnover each month and the shareholders are asked to provide additional equity capital so that solvency returns to a minimum of 5% (currently this is 3.9%). The shareholders propose to sell 350 cars in order to improve solvency. The banks however prefer an actual settlement in money.

In December 1999 it emerges that the afore-mentioned loss of €5.4 million only concerns Lease Work BV. On top of that, the foreign branches have made a loss of €6.3 million as a result of which total losses of 1999, including a loss of the holding of €11.4 million, amount to more than € 23 million. A specialised consultancy agency concludes that the company is viable, with a view to the market share and achieving the estimated turnovers. Furthermore, at that moment the following measures have been taken/plans have been drawn up:

- the main relations have been visited and they agree to the price increases. Other relations (approximately 5,000) have been informed that prices will increase, to which few negative replies were received. A result increase of € 7.8 million is forecast on the basis of these price increases;
- 130 members of staff will be made redundant. This will yield an annual saving of € 3.3 million;
- extra savings will be realised through improved loss recovery, higher excess premiums and savings on car repairs. The total amount of savings is expected to be € 3.9 million.

So in the short term they expect a result increase of €15 million. Although the banks are shocked by the company's situation, action will not yet be taken in the company pending the final report from the consultancy agency. It is concluded that there should be no panic among the banks and that action must be taken jointly and in a controlled manner. Banks are of the opinion that the shareholders must take measures with regard to management (the financial manager in particular) and that the shareholders must be put under pressure to raise €35 million in order to repay part of the debts (originally planned on 31 December 1999), and to raise an amount of € 15 million to further strengthen the equity capital. Furthermore, default interest will be charged in order to put healthy pressure on the relation.

On 20 December 1999 the (adjusted) actual results for 1997-1999 are announced. They have been listed below.

In € million	*Net profit*
1997	9.4
1998	-/- 6.1
1999	-/- 36.4

Table 1: Lease

The total loss turns out to be even higher than stated on 1 December 1999. Solvency, at 0.1%, is virtually zero. It is concluded that there is enough cash to fulfil the current obligations until the end of April 2000. This does not take into account a scheduled repayment of € 35 million on 31 December 2000 which will not go ahead and with regard to which the banks have given their (implicit) permission. It is (again) announced by the banks that the shareholders must contribute at least € 12.5 million in order to reduce the pressure on liquidity.

The result for 2000 is estimated to be € -/- 5.7 million. This forecast is based on an expected profit in the Netherlands of € 7.5 million, continuing losses abroad, as well as a loss of €14.4 million in the holding (predominantly based on write-off of goodwill). It is also expected that the management information system will have been improved so that the figures will be more reliable.

Although formally the banks have sufficient reason to cancel the credit agreements, this is not done. The reason is that liquidation of the company will negatively affect the proceeds of the assets. In addition, there is a problem with the securities (pledges) on the assets established at the banks. The contracts which were concluded in this respect are not foolproof, so that the proceeds will be substantially lower in the event of liquidation. The banks attempt to solve this problem as soon as possible.

In January 2000 the shareholders announce they will make a decision about the strategy of Lease Holding BV in the short term. Some of the possibilities are to continue restructuring the foreign subsidiaries as well as strengthening the balance sheet by injecting risk-bearing capital. Trust is put in the company and it is announced that it will appoint a new financial manager soon. The banks conclude that the company's management and the shareholders constructively work together on a solution. They also realise that a joint approach from the banks is desired and that a standstill agreement must soon be signed by the banks in order to achieve this (the expectation is that management and the shareholders will not formally commit themselves until the banks act as one party). It is agreed that an agreement will be signed no later than 31 March 2000 (in this way, there is also sufficient time to solve the legal problems with regard to the pledges).

Mid February 2000 it is clear that the process to come to a standstill agreement passes off with difficulty. A number of banks are not cooperating. The other banks are worried, since this reduces the negotiating power towards the company as a result of which, in the eyes of the bank, required restructuring measures will possibly not be taken

(the injection of necessary capital by the shareholders in particular). Furthermore, there could be (increased) discord among the banks and the cooperation from the company could be jeopardised, so that the company's liquidation draws nearer.

On 21 February 2000, a profit forecast of € 9-10 million is announced for the Dutch subsidiary with a turnover of €200-250 million. This is an increase compared to earlier expectations. The sale of the company to a financially healthy party is at that moment viewed by the banks as a good possibility in case the current shareholders cannot or will not contribute sufficient capital.

At the end of March 2000, no standstill agreement has been signed yet. There is also friction among the banks and the shareholders of Lease Holding BV about the co-operation in finding a solution. The main reason for this is the banks' lack of confidence in the company, considering the developments of the past six months. In the middle of April 2000 the general manager of Lease Holding BV is replaced by the shareholders and at the same time they deposit € 10 million in the company as an unsecured loan, with the interest obligations being added to the principal sum of the loan. They also make a proposal mid May 2000 to lend another € 27.5 million to Lease Holding BV on the same conditions.

At the same time some of the banks are trying to find out if it is possible to buy out a number of banks with a 15-20% discount, in order to act more decisively now that there (still) is no standstill agreement.

In the meantime the following measures have been taken:

- the strategy must be focused on increasing turnover by itself, in combination with large cutbacks;
- the entire business mix (product range) will be evaluated and reassessed;
- the branches outside the Benelux-countries[11] will be sold off.

The profit that has been forecast for 2000 does not seem to be feasible however. A loss of € 8.5 million is expected, but on the other hand there is an expected profit of € 30 million in 2001, although the ranges applied are €4 million and €10 million respectively. Also based on the afore-mentioned, the banks announce they want to appoint a certain person in the supervisory board, because he can be valuable in the restructuring process.

In June 2000 the shareholders of Lease Holding BV make a proposal in order to effectuate financial restructuring at Lease Work BV so that the equity capital, which is now negative (solvency is -/- 9.5%), returns to 5% again. The proposal is outlined as follows:

11 Benelux = Belgium, the Netherlands and Luxembourg.

Working capital financing

- The amount of €35 million of additional working capital which should have been repaid at the end of 1999, will be paid off in accordance with a repayment scheme from 2001.
- Refinancing the remaining working capital (€ 360 million) which is planned for November 2002 is postponed until 2005.
- Default interest is no longer charged.
- A waiver is granted for all other non-fulfilled contractual obligations.

Other loans

- Refinancing scheduled for 2003 is postponed until 2006, while repayment will be subject to liquidity, and *Cash sweeps* will take place.
- Repayments scheduled for 2000 are postponed until 2003.
- Default interest is no longer charged.
- A waiver is granted for all other non-fulfilled contractual obligations.

In addition, the shareholders will contribute at least €27.5 million. Since a going concern sale at that moment is no longer an issue (no interest) and a liquidation scenario will probably have low proceeds (a maximum of 55% of the total in outstanding debts), some banks are open to negotiations with regard to the proposal, provided that an amount of at least € 35 million is injected.

At the end of June 2000 it is announced that a €27.5 million loss is expected for 2000 despite earlier announcements and that a liquidity shortage is imminent. The reason is a delay in the reorganisation to be carried out (in respect of price increases and cutbacks among other things). At that time, one of the banks threatens to cancel the credit (it later emerges that this was done to give off a signal to the company to hurry up). The shareholders are subsequently willing to deposit €10 million in the short term and to contribute the remaining €25 million in September/October 2000. All this on the condition that it is truly needed and that a standstill agreement will be signed.

Early August 2000, and the banks conclude that the time has come for a 'Go or No Go' in respect of the question whether financing should be continued. Although the banks are not happy with the constantly changing information given by the company, they are content about Lease Holding BV's new management and they notice a slight result improvement due to the reorganisation. They therefore decide to pursue a standstill agreement in the short term. Nevertheless, sale scenarios are drawn up as well as a liquidation scenario. These scenarios must have been drawn up no later than September/October. The 120-day standstill agreement is subsequently signed in the middle of August 2000.

In October 2000 four scenarios have been drawn up:

1. a going concern option if the company proves viable, with shareholders and banks agreeing to an additional 180-day 'stand still' or refinancing. The starting point

here is that the shareholders contribute another €30 million and the banks will transfer security rights of €45 million to the shareholders;
2. selling Lease Holding BV if viability is not sufficiently proven. A buyer must be found soon;
3. a Debt equity swap (conversion of debts into shares) with or without the cooperation from the shareholders;
4. a moratorium or liquidation with restart, with the company being sold in a 'controlled' manner. Banks must be willing to provide a bridging loan however.

On 31 October 2000 it is announced that the expected loss for 2000 will rise to €39 million, and that a €10 million loss for 2001 is forecast, followed by a slight profit in 2002. Although the provision of information has improved, the banks are at that moment disappointed with the progress of the reorganisation. The company will provide €10 million of tax refunds as additional security. As a result of the sale of surplus assets, sufficient incoming cash flows are expected so that additional deposits seem unnecessary.

Based on recent developments, the banks conclude that a going concern situation seems to be the best one. A study is held into the possibilities of a Debt equity swap. It is also scrutinised what the role of the current shareholders would be in that case.

In January 2001 a total of €25 million is paid back to the providers of the (additional) working capital.

On 4 July 2001, a Restructuring agreement is finally signed. This is outlined as follows:

1. all operating companies of Lease Holding BV are to be accommodated in a shell subsidiary, called Lease II BV;
2. the shares in Lease II BV are transferred to a consortium of banks which has financed the original working capital of Lease Work BV, as well as to a number of board members;
3. Lease Holding BV will be liquidated in an undisclosed manner. All claims against this BV will be cancelled by the banks and the shareholders of Lease Holding BV;
4. Lease Holding BV and its shareholders will cancel all claims against Lease II BV and its subsidiaries;
5. the banks which in the past provided Lease Work BV with additional working capital will waiver an amount of € 32.5 million. The entire debt is written off ('haircut');
6. the providers who in the past provided Lease Work BV with working capital will waiver an amount of €97.5 million. A €240 million claim against Lease Work BV remains;
7. the €55 million loan in Lease Work BV is cancelled in full.

The contents of the financial restructuring reflect the relative positions of the financiers involved. The providers of the original working capital have pledges on most assets of Lease Work BV (the main partner in the group) and will receive part of their claim on liquidation. The other financiers (banks and shareholders) have no or subordinated security rights and will (most probably) receive nothing from their claims on liquidation.

As a result of this restructuring of the company, the foundation is laid for selling the company in a going concern situation.

In May 2002 it emerges that the company incurred operational losses of nearly €9 million in 2001, despite forecasts of a break even result. However, as a result of the debt reduction, the net profit is positive and the equity capital is strengthened (solvency is higher than 5%). The expectation is that a slightly negative or break even result will be achieved in 2002. The reorganisation takes place without delay. Meetings are held with three parties active in the same industry. The talks pass off with difficulty and management has the impression that the takeover candidates prefer to buy the company following liquidation. The working capital which has been made available again on the transfer of shares should be refinanced in November 2002 according to the agreement. Taking into account the negative results and the troubled takeover talks, this refinancing is postponed until July 2003 in order to prevent liquidation.

Although the situation is critical, a better future is forecast and the parties are carefully optimistic about a good result.

Analysis
The company ran into difficulties as a result of inadequate management of the working capital and gross mistakes. A restructuring was effectuated through close cooperation between the company and the banks. The bottlenecks here were structurally deviating figures in relation to the forecast, conflicts between the creditors, and insufficient efficiency of the reorganisation measures. Because parties realised that liquidation would lead to (unnecessary) destruction of value, financial restructuring was implemented through remission of debts and the contribution of risk-bearing capital among other things, while the relative positions of the parties were respected.

S11. Office

Description of the company
Office BV is a Dutch subsidiary of a French company called Espace SA. The company rents office buildings and then rents out office space to companies and institutions. In the Netherlands, Office BV rents 25 buildings from about as many owners. The credit (at the end of 2001: bank facility of €3.4 million, €2.6 million of which are securities for lessors) has been provided by a Dutch branch of a foreign bank.

Cause of the problems and the course of informal reorganisation
Since the start of 1999, Office BV has been suffering from a lack of demand for office space as a result of the economy slowing down. The cumulative capacity utilization for 2001 is 41.5%, a drop compared to the 43% of 2000. A further drop is expected for the year 2002. Some relevant financial data for the end of 2000 and 2001 is given below.

x € million	2000	2001
Turnover	29	27
Net profit	-/- 0.5	-/- 1.5
Cash position	3	1

In %		
Solvency	23%	19%

Table 1: Office

Due to the above developments, Office BV has run into difficulties and it no longer complies with the agreed solvency percentage in the credit agreement. The bank therefore has decided to cancel the credit (also due to the fact that it wishes to pull out of the Netherlands). The fact that the parent company is granted a moratorium ('Redressement judiciaire') at that moment further complicates matters. At the beginning of 2002 Office BV starts looking for a new financier and in addition management tries to implement a reorganisation in order to halt the negative trend of results.

A specialised consultancy agency is asked to assist them in this. The specific instruction is:

- assistance when negotiating with the foreign bank (in order to create enough time to find a new financier);
- assistance in the search for new financiers. There seem to be some possibilities with two Dutch banks;
- assisting during the negotiations with lessors with regard to the adjustment of rental agreements (read: reducing monthly costs);
- preparing emergency scenarios in case the above negotiations fail. When an agreement is not reached with (some of) the lessors, a moratorium can be considered;
- advice in case a formal procedure (moratorium) becomes inevitable.

Because the bank account is temporarily blocked at the end of March 2002 ('frozen credit'), a critical payment problem is imminent. Therefore negotiations with lessors are started immediately (these are the largest cost items for the company). Furthermore, a start is made on charting the incoming and outgoing cash flows in order to chart the short and long-term financial need, and at the same time it is investigated how cash can be generated by cutbacks, selling assets and balance sheet flexibility.[12] It must also demonstrate whether a moratorium is a solution for averting the problems.

The reorganisation plan as drawn up by the company's financial director, with the aim of saving more than € 4 million a year, runs as follows:

12 Balance flexibility in this case means the possibility to extend the payment term of invoices and to collect debts at an earlier stage. In this manner the financial need of the company with a bank can be reduced for instance.

- all ordinary creditors, not including the lessors, will be paid in full;
- there are a number of 'problem buildings' (7). For these buildings, rent reductions will be negotiated, ranging from 35% (1), 40% (1), 50% (3) to 60% (2);
- for six creditors the rent of April will be paid in June. In the case of one, only the service charges;
- for the other creditors, rent will no longer be paid as from April. Office BV is willing to take the risk, because it knows the lessor is vulnerable when Office has been granted a moratorium (rental agreements can be dissolved on the grounds of art. 238 of the Dutch Bankruptcy Act).

On 10 April 2002 a checklist for any moratorium is ready (since only two contracts are finalized, this is taken into account). The checklist consists of:

- a substantiated cash flow overview;
- business plans for the various buildings;
- a prepared press release;
- letters for ordinary creditors, confirming that payments will be made on time and will continue to be paid on time.

On 27 April 2002 the bank confirms that a deferment of payment is granted for a month. The plan to apply for a moratorium is therefore postponed, especially now that nearly all lessors have reached an agreement or are about to reach an agreement with Office. The contents of the agreements deviate from the original plan however; ultimately, three categories of lessors are formulated, based on the creditor's risk (based on the economic situation) and his relative negotiation position. Category:

1. lessors with whom negotiations will not be held. There is no intention of adjusting the rental agreement with one lessor since its building's cash flow is positive;
2. lessors with whom negotiations are held to lower the monthly rent. The buildings of these lessors show a negative cash flow. They have been proposed to agree to a 50% rent reduction, as well as receipt of 50% of the positive cash flow from the proceeds of their buildings;
3. lessors with whom negotiations are held to dissolve the agreement. The lessors of buildings that stand empty have been proposed to dissolve the agreement. Ultimately, more than €2 million in buyout payments have been made in respect of this.

Furthermore, the French parent company has provided more than €2.4 million in May 2002 to provide for the financial need that has arisen (eventually this will rise to €4.6 million). A repayment scheme is then arranged with the foreign bank in order to reduce the credit to zero.

Analysis

In this case it is clearly evident that (threatening with) a moratorium can be an effective tool in informal reorganisations. Lessors know that contracts can be dissolved in a formal procedure and therefore they agree relatively quickly to an amended rental agreement. This amended rental agreement, in combination with the injection of 'new

money' as well a repayment scheme from the bank, has led to a successful workout solution.

S12. Products

Description of the company

Products Group consists of a number of companies which produce and sell products. The company consists of a holding (Products Holding NV[13]) with a 100% interest in Products BV. Products BV accommodates various (international) private limited companies.

In 1992 the company was separated from a large international group of companies by means of an MBO. During this MBO, 75% of the shares passed into the hands of a venture capital company and 25% into the hands of management. At that time, the company has branches in the Netherlands, France, Italy, England and Malaysia. In 1994 the company builds a new factory in Poland, this factory focuses on the production for the East European market. Then, in 1995, an ailing competitor in Germany is taken over (called: Germany NV). This company has sales offices in Germany, the United States and Asia.

As a result of the takeover the company becomes one of the largest of its kind in the world. The global market share is nearly 20% and in Europe the market shares are 60 – 80%.

Cause of the problems and the course of informal reorganisation

In 1998, the Dutch housebank of Products Group takes over all claims (of €4.8 million) against Germany NV from a German bank. Later it emerges that the German bank had already cancelled the credit and that the ground near the German branch is extensively polluted.

As a result of the death of the financial director of Products Group in 1999, a new director is appointed. He concludes that the company's assets have been overvalued, that overhead costs are too high and there is also over-capacity in production. The shareholders and management subsequently decide to implement a restructuring. The costs of this restructuring are estimated at €6.8 million. Part of the costs is financed by the sale of property in various countries. The other part however must be raised within the company, in the form of risk-bearing or risk-avoiding capital. The shareholders are not willing to inject risk-bearing capital and the parties approached for a full or partial takeover only want to invest in a restart following liquidation, with the bank financing the restart and then immediately cancelling part of the claim. The bank does not agree to this, because it will mean that the risk will be theirs while the profit (the increase of equity capital on restored profitability) will go to the (potential) shareholders in full. The problem is however that a large part of the bank's claim is unsecured. Therefore a workout solution is sought. The bank and the company's

13 NV = Public limited company under Dutch law ('Naamloze Vennootschap')

management agree that a specialised consultancy agency will reassess the restructuring plan.

The consultants conclude that liquidation in the Netherlands is not necessary (the problems lie mostly abroad) and that restructuring is possible with a limited extension of the overdraft facility. However, the stakeholders must take into account a time span of five to six years before the company will have shareholder value again. The bank agrees to the restructuring plans.

The restructuring is carried out under the guidance of the consultancy agency. The problem is that the services cannot be paid, due to the financial situation of the company (in 1999, partly due to reorganisation costs, a loss of €9.5 million was suffered with a turnover between €23 and 27 million). A solution is found: the transfer of all shares of the venture capital company to the consultancy agency for the amount of €1. The agency's efforts are thus awarded by way of a value increase of the shares in Products Holding BV. The problem however is that Products Holding NV only holds a participating interest in Products BV (its value is virtually zero due to the poor results), as well two subordinated loans (at an amount of €1.3 million), provided by the venture capital company and the previous owner of the company. In this manner, the agency can only be paid once these subordinated loans have been repaid, as the providers of the subordinated loans do not have the intention to cancel their claims. This is in part solved, because the housebank transfers a €900/m claim against the German subsidiary to the consultancy agency for €1, following which the latter converts the claim into shares in Products BV (this is possible because with this transfer, the bank discharges Products BV from its obligations on the basis of joint and several liability of more than €900/m granted earlier for this subsidiary). In this way, an appreciation of Products BV, as a result of the reorganisation, will directly affect the shareholding of the consultancy agency. The final loss incurred by the bank in respect of the German limited company will also be converted into a loan to a limited partnership, of which the consultancy agency is a managing partner (10% interest), with repayment taking place from 25% of payments of dividends and/or 25% from the proceeds of the sale of shares in Products BV. In other words, the limited partnership takes over the claim (amounting to the bank's loss) against a loan of equal value, after which the claim is provided to the German limited company as risk-bearing capital. In this way, the balance sheet of Products BV is restructured, the consultancy agency receives shares in Products BV (profit potential) and the bank creates the opportunity to still have most of its claims settled (from the proceeds of the shares in Products BV, currently held by the consultancy agency).

In 1999/2000, the restructuring of the group of companies leads to the following measures (given for each separate partnership).

Products BV

- A new managing director is appointed at Products BV.
- Branches in the Netherlands are merged.
- The production capacity in the Netherlands is expanded, improving efficiency.
- The housebank increases the limit in the current account of Products BV.

German limited company
A petition for liquidation has been filed for the company. All assets, with the exception of the receivables and immovable property, have been purchased by Products BV.

French limited company
In the case of the French limited company, a moratorium has been applied for. In December 2000, the court approves an arrangement with creditors and the ordinary creditors will have three options:

1. 30% within 24 months;
2. 50% within 60 months;
3. 100% within 120 months.

The preferential creditors (in this case: the employees) receive 100% within fifteen months. In addition, Products BV takes over a claim against this company (with regard to a short-term loan) from the bank, in order to subsequently convert this into shares. The claim is settled on the basis of a long-term loan, provided by the same bank.

Italian limited company
The activities of this limited company are not part of the core business and an attempt is made to sell the company. The aim is a €1 takeover, adopting all (banking) debts. If this is unsuccessful, the company will be wound up.

Malaysian and English limited companies
These are functioning well and are not included in the reorganisation.

American limited company
This company is wound up amicably. Products BV has issued a guarantee of €360/m to a local bank. It has been agreed with the bank that this will not be claimed before 2007.

Asian limited company
This branch is owned by Products BV for 53%. This company is of strategic interest, because it has been decided from a cost point of view to move part of the production to Asia.

Polish limited company
This partnership has always made a loss and therefore it is wound up. The company was started by means of a state-guaranteed loan (90%), issued by the housebank and another bank. These two banks discharge Products BV from joint and several liabilities with regard to the deficit on the remaining 10%.

As a result of the reorganisation the company's results recover and in the first nine months of 2000 a net profit of €1 million is made at a turnover of €19 million. At the end of 2002 the bank concludes that the company is a *going concern* again.

The bank's loss will in the end depend on the value of the immovable property of the German company (which has a mortgage established on it) which has not been sold

yet, as well as the final proceeds of the shares in Products BV which are still held by the consultancy agency.

Analysis
The housebank did not have an interest in liquidation, because a large part of the issued credit was unsecured. Furthermore, the going concern value during a restart following liquidation would be considerably lower. The shareholders and potential investors were not willing to provide new capital. So this had to come from the company, on the one hand by restructuring business operations and on the other by implementing financial restructuring, with the bank and hired consultancy agency playing the lead. By converting claims into shares and subsequently placing these with the consultancy agency who introduced the claims as risk-bearing capital, the balance sheet of Products BV was restructured. The bank received a new claim (amounting to the loss in Germany) which created the possibility to minimise the German loss in time. This took place by separating the repayment of the loan from the results of Products BV. If this solution had not been chosen, the only option left would have probably been liquidation and the loss would have been phenomenal. A combination of financial restructuring (also for the other subsidiaries) and restructuring the business operations ensured that a moratorium and liquidation for the entire group was prevented.

S13. Raw

Description of the company
Raw Holding BV specialises in the production and sale of a special type of raw material. In addition to this activity, the company is active in the field of processing the raw materials into semi-finished products for third parties.

In 1993 the founder’s children take over the shares in Raw Holding BV. A payment of dividend of €16 million to the founder is part of the takeover.

Cause of the problems and the course of informal reorganisation
The trend of results is fine in the first years following the takeover, but at the end of the nineties profitability deteriorates. In 1999 and at the start of 2000 the industry is hit by a(n) (economic) setback. The result is that prices for semi-finished products hit an all-time low, causing the results of Raw Holding BV to come under pressure even more (sale prices are far below the cost price). Combined with the large payment of dividend in 1993, the financial situation at the beginning of 2000 is critical. It forces the company to introduce a strategic reorientation. The table below shows the results for the years 1996-1999.

x €million	*1996*	*1997*	*1998*	*1999*
Turnover	194	218	212	214
Net profit	16	5	11*	-/- 22**

Table 1: Raw
* includes a release (provision) of €15
** includes provision increase of €28

In February 2000 the housebank decides to place the company under intensive care. In March 2000, a provisional moratorium is granted (until 15 August 2000) to one of the subsidiaries.

After an unsuccessful study by management into the possibilities of a merger or takeover, a stand-alone strategy is formulated with the help of the specialised consultancy agency which has been called in. The strategy consists of three parts:

1. Transferring the funding of semi-finished products to the customers. By having the customers finance the semi-finished products, the pressure on the working capital decreases. The company and the bank calculate it is possible to lower the overdraft facility by €39 million at the end of 2003. However, the expectation is that 25% of customers will not accept this change and will leave the company. Nevertheless, a viable company is possible;
2. In order to reduce its dependence on a certain region, the company will expand its market share in Europe at the expense of production in the Netherlands. Furthermore, investments in the Netherlands are temporarily reviewed and postponed if necessary. The search for a merger or takeover candidate or joint venture is continued, because this gives purchase advantages as well as an improvement of operational efficiency;
3. Further developing and commercialising software programme. Together with an ICT company, Raw Holding BV has developed a software programme which can be used to optimise production processes. There seems to be a lot of interest from the industry. The ICT company wants to market the programme and Raw Holding BV will receive and annual fee. The forecast is that, within 5 years, this will yield an additional turnover of €1 million in year 1 up to nearly €10 million in year 5.

In August of 2000, the moratorium is ended as a result of a contribution to equity capital by the shareholders of nearly €10 million. In addition to that, the housebank is willing to provide the necessary credit (on top of the existing facilities). Although the reorganisation has been started and is already partly paying off, an operating pre-tax profit of €-/- 15 million and a net profit of €-/- 9.5 million are ultimately achieved in 2000. In that year the solvency ratio drops to 18.6%: nearly 11% below the ratio agreed to in the credit agreement. Nevertheless, the bank grants a waiver for this.

In 2001 the reorganisation is in full force and the first contracts with the customers are reviewed (in May 2002, 43% of contracts is reviewed, achieving a reduction of the overdraft facility of €18 million). Exploratory talks about a merger or takeover are held with two (international) companies in the same line of business. Cooperation with the ICT company, however, has been halted and legal proceedings have been started in that respect. The market of raw materials picks up, increasing the margins. Although the above positive developments result in financial improvement, losses of €4.6 million are incurred nonetheless (though this is lower than the forecast loss of €5.9 million). Solvency drops to 15.09%, despite the reduction of loan capital caused by the review of the contracts with the customers. Again, the bank grants a waiver for this.

At the start of 2002, purchase prices for the ingredients of raw materials go up. The company therefore must adjust the forecast profit for 2002 from €3.5 million to €1.5 million. However, the forecast is that the purchase prices will positively recover in the third and fourth quarters. The housebank is again willing to grant a waiver as well as postponement of repayment obligations for a period of six months. With a view to the (unpredictable) fluctuation of the purchase and sale prices and the impact on the company's trend of results, the housebank decides to urge the shareholders to come to an additional (equity) capital increase or to make subordinated loans available. In this way, the company's resistance is increased. However, the bank does hold a provision of €9 million (as from 30 June 2002, the total amount of credit granted is €39 million; there are securities from mortgage and pledges of €29 million).

Analysis
(Part of) The company has successfully gone through a moratorium partly with the help of the bank and injection of risk-bearing capital and on top of that is has effectuated a major reorganisation. The most important factor was the financial restructuring of the company by transferring funding to the customers. Although the company is profitable again and the cash flow is neutral, the future seems uncertain. The fluctuating purchase and sale prices of (ingredients of) raw materials can cause the margins to come under pressure (within a short period of time) which can result in another situation of loss. There must be a further reduction in costs through a more efficient purchasing and production process in order to keep the margins up. In that respect, a merger or takeover seems the best solution.

S14. Renting out

Description of the company
Renting out BV is the operating company of Renting out Holding BV. The company is active in the field of renting out and leasing special capital-intensive machines for periods of 3 to 5 years. The shares in Renting out Holding BV are held by Treasure Holding BV, which in its turn is owned by two foreign shareholders.

Cause of the problems and the course of informal reorganisation
At the end of 2000 it is clear that the company can no longer meet its repayment obligations. The main cause is an overcapacity in machinery, which is the result of a deterioration of the market conditions of its customers. Furthermore, the rates have come under increased pressure as a result of fierce competition. The shareholders of Treasure Holding BV decide not to inject money into Renting out Holding BV any longer, nor to issue securities to the creditors, causing the company to find alternative financing. The figures below give an impression of the financial situation at the end of 1999 and 2000 at Renting out Holding BV.

In € million	*2000*	*1999*
Turnover	28	34
Net profit	-/- 1.7	-/- 3.5
Fixed assets	150	165

In € million	*2000*	*1999*
Liquid assets	7	23
Equity capital	14	15
Provisions	11	11
Subordinated loan Treasure Holding BV	23	23
Long-term debts (banks)	82	100
Other long-term debts	4	3
Short-term debts	20	31
Correction for rounding off differences	3	5

Table 1: Renting out

A specialised consultancy agency is called in to support management in the search for a solution. The consultancy agency is given three specific orders.

1. *To prepare the company for a possible moratorium or liquidation.* The advice comprises finding the right type and substance of a formal procedure, as well as testing the corresponding financial and legal consequences. Furthermore, a request is made to support the company in the event of a formal procedure.
2. *To assist management during negotiations with the banks.* On the basis of future cash flows, management is planning financial restructuring where the repayments will be brought in line with these cash flows.
3. *To develop emergency scenarios in case the negotiations with the existing financiers fail.* Management wants other possibilities for financing studied as well. This study must run parallel to the negotiations with the banks. Meetings with possible investors/financiers must be started.

At the end of December 2000, the four banks involved, management of Renting out Holding BV, Treasure Holding BV and its shareholders agree to voluntary 'stand still' (standstill agreement), in order to be able to implement restructuring. The contents of the agreement are outlined as follows:

- The banks agree that none of them will enforce the right to end the credit agreement during the term of the agreement.
- During this period the company does not have to make any repayments, but it must pay interest.
- During the term of the agreement the company will not make any payments other than payments arising from normal business, nor will assets be sold or (additional) securities be issued. Furthermore, the company will not start a formal insolvency procedure.
- The company will exercise full openness with regard to the company's financial situation.
- The shareholders will not sell their shares in Renting out Holding BV during the term of the agreement.
- The management of Treasure Holding BV will examine whether the subordinated loan to Renting out Holding BV can be remitted.

- Although not obliged to do so, the banks will examine the possibilities of rescheduling the credit facilities.
- The shareholders of Treasure Holding BV will have to pay €28 million to two banks in accordance with a guarantee issued earlier.
- When the conditions are not met by (one of) the parties, the agreement can be dissolved immediately.

On 23 March 2003, a Debt Restructuring Agreement (DRA) is signed, realising financial restructuring. The contents of the restructuring are stated below:

- The shares in Renting out Holding BV are transferred to a holding to be established, called Renting out Again Holding BV. The shares will be held by the management of Renting out BV. The banks make this a requirement, because they prefer representative shareholders (in their opinion the former shareholders are not representative due to the fact that no additional capital has been provided).
- The subordinated debt (€ 23 million) of Renting out Holding BV to Treasure Holding BV is remitted.
- The shareholders of Treasure Holding BV pay €28 million to two banks. However, this creates a subordinated loan with Renting out Holding BV which is just as big.
- Virtually all assets of the new holding, as well as the operating companies are pledged to the banks.

In this manner a new ownership structure is realised, and the balance sheet is directly reorganised by €23 million, indirectly another €28 million is reorganised because an existing 'normal' loan has been given a subordinated status (comparable to equity capital).

Since the loans from the four banks are related to the machines, they are linked to each other. The idea is for the cash flows arising from the renting out/leasing of a machine to go directly to the bank that has provided the loan for this machine (this is called a *Ringfence facility*). Thus, the repayment of a loan is in actual fact linked to the cash flows created by a certain machine (linked to the loan). In effect, this means the following.

- There are four banks, therefore four facilities.
- The repayment term is extended and the repayment amounts are lowered.
- Interest must be paid in the normal way on a monthly basis.
- Renting out Again Holding BV manages Renting out Holding BV (and thus the four facilities) and receives a management fee for that (provided that the cash flows in Renting out BV allow for this). The fee is based on management and marketing efforts.
- All incoming cash flows in a facility are used in a fixed sequence (this is called a *Waterfall*). The basic principle here is that an amount is transferred into a joint 'emergency account' first, then the necessary costs for, for instance, maintenance are incurred, after which the management fee is paid, overdue interest is paid and finally overdue repayments are made.
- When in a period all payments are made, the remainder will then be paid to the banks – in accordance with a certain allocation formula – in the form of an addi-

tional repayment (this is called a *Cash sweep*). Following consultation, management can deviate from this when liquidity in the next period is jeopardised as a result of an extra need for liquidity.

Although Renting out BV is the legal owner of the machines, it has been voluntarily agreed that the banks will 'actually own' the machines (and thus the income and expenditure related to them). By opting for this construction, the loans will be gradually reduced in accordance with the cash flows from the machines for which the loans have been granted. This has created time and space for the company to adjust to the new market conditions in the form of a cost reduction programme to be implemented later.

Analysis
The company ran into financial difficulties through a combination of economic circumstances and increased competition. During an informal reorganisation, the company and its creditors worked together closely to find a solution. The bottleneck was the shareholders' refusal to provide additional risk-bearing capital. By transferring the shares to management, combined with the remission of (inter-company) claims, the foundation was laid for a successful reorganisation. In addition, a repayment arrangement has been drawn up (*Waterfall*) which does justice to the relative positions of the different creditors.

S15. Sales

Description of the company
Sales Management BV is 100% shareholder in Sales BV. A Managing Director and major Shareholder (MDS) holds 100% of the shares in Sales Management BV. Since 1991, the company has been established in location I[14] and since September 1998 it also has a branch in location II. Approximately 40 members of staff are predominantly active in training and advising companies in the field of sales support. Furthermore, the company trades in sales supporting products. In 1997 and 1998, turnovers of € 2.2 million and €3 million respectively were realised with €127/m and €9/m net profits.

Cause of the problems and the course of informal reorganisation
For the opening of the branch in location II, the housebank provides additional credit at € 1.3 million in total in the middle of 1998. Since € 800/m relates to a loan under the so-called State-guaranteed scheme which has a term of twelve years for financing immovable property, the total annual repayment obligations rise to €205/m (with that, the total interest of the bank comes to € 2.5 million).

In May 1999 the company requests an additional credit of €200/m due to an imminent liquidity shortage (a bridging loan until 1 December 1999). The causes are thought to be the seasonal pattern of receivables and teething problems in the new branch. At the beginning of September 1999, following approval from the bank, additional financing at € 300/m is requested in order to pay creditors (in the first eight months, a loss of € 500/m is suffered). The loss, so it is stated, is due to a reorganisation in location

14 Due to far-reaching, necessary anonymity, the term 'location' is used.

I, as well as continuous teething problems in location II. The company and its accountant forecast that the last four months of 1999 will yield a profit of €550/m, so that the result will ultimately amount to €50/m.

Halfway through September 1999 the bank decides to transfer the file to the Intensive Care Department because it has doubts about the state of affairs. The €500/m loss came as a total surprise to the bank.

At the end of September 1999, following an investigation by the bank, the following (temporary) conclusions are drawn:

- the forecasts for 1999 are questionable, a loss seems more obvious. On the basis of the developments, turnover will be more than €1 million lower than announced. The expected loss for 1999 seems to be more in the line of €650/m.
- the company is not subject to seasonal variations. The €200/m increase therefore has been provided on the basis of incorrect assumptions and vague information;
- the administrative, staffing and sales organisations must be improved, so that the necessary (financial) management and control instruments become available;
- management acknowledged the problems too late and only deals with the administration and part of the sales, there is still a surplus of staff. The new branch is still making a loss;
- there are doubts about the feasibility of repaying the bridging loan in December 1999;
- the €300/m credit increase causes enormous under-funding. That is, the issued securities (pledges on current assets, mortgages on immovable properties and security deposit by the MDS) are insufficient to fulfil all obligations towards the bank on liquidation;
- an investigation into the business, organisation and (potential) profitability must lead to an integral solution of all problems. This must be carried out by an external consultancy agency.

Company management confirms the above conclusion and agrees to the support from an external consultancy agency. On 11 October 1999 the advisor involved reports the following:

- the training and advice operations are of high added value and are historically sufficiently profitable. The market is still growing;
- management information and management, as well as the administrative organisation have lagged behind during the growth of the company so that temporary management support and appointing a sounding board are necessary;
- the 1998 profit must be adjusted to a loss of €287/m due to an incorrectly booked turnover in 1998;
- the equity capital at the end of 1999 is expected to be €-/- 425/m;
- there is insufficient balance between figures realised and forecasts.

The advisor proposes the following reorganisation plan:

- converting the company from *sales driven* to *profit driven*. In other words, do not aim for turnover, but profit/yield;
- halt activities of low to negative added value (trade, maintenance and monitoring) before the end of 1999. Gradually make the 20 members of staff who are active in these fields redundant. These activities will contribute approximately €550/m to losses in 1999;
- following staff redundancies and restructuring the activities, continue with training and advice and expand this activity. This way, it is possible to achieve results of €258/m and €444/m in 2000 and 2001 respectively, as a result of which there will be positive equity capital again at the end of 2001.

Since the entrepreneur fully agrees with the proposed measures, the bank decides to assist the company during the reorganisation. On the condition that the advisor remains involved with the reorganisation until the annual figures of 2000 have been adopted, the bank decides to provide the following facility:

- the overdraft facility limit is raised by €500/m to €875/m, and will be lowered to €525/m on 1 July 2000. Nevertheless, all securities will be tightened/increased and additional interest will be charged on amounts exceeding €375/m.

On 21 May 2000 it is announced that the reorganisation is complete. Management is able to manage the organisation again and the branch in location II breaks even. A profit forecast of €208/m is issued. In addition, the reorganisation has been virtually cost-neutral (initially, an additional cost item of € 150/m was expected). The staff redundancies 'only' cost €58/m (partly as a result of the favourable job market situation at the time), the consultancy costs were €41/m, but this is outbalanced by proceeds from sold assets at €90/m (these were released due to the shedding of loss-making activities). The bank concludes that progress must be revised again as from 1 December 2000 and then it must be decided whether the file can be passed on to the bank's local branch.

At the beginning of September 2000, the initial profit forecast of €208/m is lowered to €100/m as a result of insufficient turnover at the branch in location II. Therefore a decision will be made on 1 November 2000 about the possible closure of the branch.

In January 2001 it is found that the ultimate profit of 2000 will amount to approximately €145/m (at the end of 2000, solvency is 10% compared to a -/- 5% solvency at the end of 1999). The bank nevertheless concludes that future forecasts must be even more well-defined and provide more insight in order to obtain credit on the basis of normal administration ('care'). The company is appreciative of the confidence shown by the bank during the past period. It is also announced that a large company is looking into the possibilities of a takeover of Sales, willing to pay about €2.5 million for the shares in Sales BV. In the course of 2001 the bank hands over the file to the local branch.

The takeover takes place around July 2002. The interested party buys the company for more than €2.5 million (shares in Sales BV as well as the repayment of a debt from

Sales BV to Sales Management BV). The buyer also submits a request for financing to the bank.

Analysis
Sales hit bad weather through a combination of initial losses at a branch, the organisation's lack of focus on financial parameters and the overdue acknowledgement of problems. After the appointment of an advisor on the bank's instigation, and the start of a thorough reorganisation, the company was successfully restructured in a relatively short period of time. The good understanding between the bank and the entrepreneur seems to have contributed to this considerably, despite the lack of adequate information from the company at certain times during the reorganisation progress. The takeover by a large party will probably ensure that the company remains profitable and generates sufficient cash flows, provided that the new management operates adequately.

S16. Soil drilling

Description of the company
Soil Drilling Consultancy is a one-man business, established at the end of 1998, which gives advice in respect of soil drilling and drilling techniques for the oil and gas industry. The entrepreneur is hired for projects in Eastern Europe in particular and he is paid on the basis of daily allowances. In the industry the entrepreneur is known as a specialist thanks to his years of experience. Since November 2000, the entrepreneur has been paying his ex-wife maintenance at € 4/m a month.

Cause of the problems and the course of informal reorganisation
On 25 February 2001 the entrepreneur calls in a specialised advisor in order to come to debt rescheduling. Despite a reasonable annual income he has ran into difficulties. His debts have run up to € 85/m due to large private withdrawals, big financial obligations as a result of the purchase of a house, and the awarded maintenance order. Due to a temporary slump in activities, caused by among other things the events of 11 September 2001, the entrepreneur is no longer able to fulfil his obligations. The tax authorities have seized the goods of the entrepreneur, but at that moment no date has been set for a public sale or vacation. The tax authorities have advised him to request a FAE-loan from the so-called Municipal money-lending Institution in order to reverse the seizure and to call in specialised help.

The consultancy agency proposes the following:

- an application for a FAE-loan;
- start an investigation into the possibilities of lowering maintenance;
- ask the creditors for deferment of payment for a period of (in the first instance) six weeks, as well as a statement of their claim to validate the creditor balance. The period is used to break the financial deadlock;
- if credit is given, make a proposal for rescheduling to the creditors with 100% financing of the debts being the basic principle;
- if it is not possible to obtain credit, opt for a so-called 'Savings rescheduling scheme'. This means that for a period of 36 months a maximum repayment capacity is 'saved up' in full settlement of the remainder of the debt (this can be compared

to a PFP procedure, however, this solution takes place on the basis of voluntary cooperation from the creditors; full cooperation from all creditors is required for this). With this option, payment of the saved amount will take place every three months in proportion to the amount of the claim;

- comply strictly with existing obligations. In this way, the existing debt is 'frozen' and it can serve as a starting point for rescheduling.

On 18 April 2001 a debt-collection agency announces on behalf of the entrepreneur's housebank that the business (overdraft facility) and private loans, which at € 22/m and €15/m respectively run until 31 January 2001, are immediately due and payable, because, for reasons of its own, the state of deficit can no longer be tolerated. Measures of enforcement however are not forthcoming for the moment.

On 14 May 2001 the consultancy agency sends all creditors (including the ex-wife) a letter, requesting a deferment of payment for a period of six weeks pending the application for a FAE-loan. All creditors agree to this. The bank however makes it a condition that the equity in the private house, which by now has been sold, is used to repay the loan to the bank (this has been stipulated in the credit agreement). This involves an amount of € 20/m which will be paid after the transaction (in August 2001). The measures of enforcement which have started in respect of the repayment of the loans to the bank are stopped.

On 25 June 2001 there is another request for deferment of payment, pending the results of the investigation into the possibilities for FAE-credit.

On 25 August 2001 the independent advisor, who has been called in to look at the possibilities to have FAE-credit, reports the municipality on the following:

- based on the entrepreneur's experience and specialism, as well as the positive turnover trend of the past years, an annual turnover of approximately €60/m can be estimated for the next years;
- the entrepreneur's debt has risen to approximately € 120/m by now;
- based on the existing maintenance obligations and the mounting debt, the company is not viable;
- only by reducing the annual maintenance obligation to less than €13/m and debt rescheduling at an amount of € 65/m in full settlement, it is possible to come to an annual repayment obligation with the company still being viable;
- the municipality could provide an amount of 65/m as a loan (term of six years, at 6% interest), provided that the rescheduling of the debts is successful and the maintenance obligation can be reduced.

On 5 November 2001 the ordinary and preferential creditors (including the ex-wife) are advised of the following:

- a FAE-loan of € 65/m will be provided, on the condition that the ordinary and preferential creditors agree to debt rescheduling in respect of the total debt of € 73/m and € 16/m respectively;

- in addition, the maintenance obligation must be reduced to €13/m at the most. The client is working on this;
- the ordinary creditors are asked to agree to a settlement of the claim at 65.30% of the principal sum in full settlement. The preferential creditors will receive double the percentage in accordance with the Collection Directive 1990. In this case it means that 100% of the claim is settled;
- creditors can reclaim the surplus of Dutch VAT paid, this must be reclaimed from the company however. Part of the FAE-loan will be used for this purpose;
- If no agreement is reached, an appeal will be made to the PFP and business must be halted. Reduced payment will probably be the result.

On 6 February 2002 the specialised advisor announces that the qualified majority of the creditors have agreed to the extrajudicial rescheduling proposal and that it will be carried out. The creditors who have not (yet) agreed are also advised that the agreement will be carried out. However, since the dispute in respect of maintenance is still going, the creditors are asked to be patient.

The parties involved in the maintenance issue are ultimately not able to reach an agreement about reducing maintenance. On 10 June 2002 the judge therefore decides that maintenance must be reduced to €950 gross per month, which equates to an annual allowance of €12,600. That same day, the entrepreneur advises the creditors (through the advisor) that, now that the last condition has been met, payment under the rescheduling agreement will take place in two to three weeks time.

Analysis
The entrepreneur ran into difficulties as a result of an excessive spending pattern, combined with excessive maintenance obligations. Since the prospects for the company were good, it was possible to go ahead with rescheduling. To this end however additional credit must become available and the maintenance obligation must be reduced. The rescheduling credit was made available on those conditions. The rescheduling of debts proved to be possible as a result of the forceful actions of the specialised consultancy agency. Nevertheless, a 100% agreement from the creditors was not reached. The agency however stated that, in the case of a qualified majority (two-thirds of the creditors who hold three-quarters of the claims), a judge will always impose the agreement on the creditors who refused, and it decided not to wait for that. It seems those who refused did nothing about this. However, a judge did have to make a decision about the maintenance issue. As a result the whole procedure took more than seven months longer. During that period, the creditors sat back and waited.

S17. Sound

Description of the company
Professional Sound BV is a company which focuses on the trade and assembly of (professional) sound, video and audio equipment. It is a subsidiary of Sound Holding BV and management is led by a Managing Director and major Shareholder (MDS). The company installs, among other things, systems in houses, luxurious ships and crematoriums and has a very good reputation. In addition to the installation of systems, the company has four branches in the Netherlands which rent out sound systems (for

concerts for instance), these activities are not part of the core business. In 2001, the company employed 35 persons on average. The company was created from a restart following liquidation in 1992.

Cause of the problems and the course of informal reorganisation
Following the restart in 1992, the company has never really been profitable. The cause of this can mainly be attributed to excessive service/production costs which are not passed on to the clients, partly as a result of poor administration and poor management of the company with regard to financial information.

At the end of the nineties the housebank decides to place the company under intensive care. The basic principle is that the relation is continued, provided that the company presents sound financial information and starts a reorganisation (on the basis of a strategic plan), aimed at creating profitability. However, despite a lot of correspondence and pressure none of the conditions are met and on 12 June 2001 the credit is cancelled because of lost confidence in the company and the MDS. The bank gives the company until 30 October 2001 to find a new lender and to repay in full, provided that figures relating to 2000 are presented, the stock is valued and lists of receivables are issued every two weeks (the loan was granted on the basis of pledges on stocks and receivables).

After the company is reminded on 16 October 2001 of the deadline of 30 October 2001, it presents the figures relating to 2000 on 31 October 2001 (these figures were already known to the company's external accountant on 16 August 2001). These figures are listed below.

x € million	2000
Turnover	4.1
Gross profit	1.8
Net profit	-/- 0.127
Assets	2.157
Equity	-/- 0.205
Subordinated loan	0.678
Provisions	0.034
Loan capital – long	-
Loan capital – short (bank)	0.407
Payables	0.691
Taxes/social insurance contributions	0.408
Other short-term obligations	0.144

Table 1: Sound

These figures show more losses and a negative equity, it also proves that relatively high debts to creditors and taxes/social insurance (IIB) contributions can be found on

the balance sheet. This means that, with a view to the composition of personnel and the turnover, payments to them also show backlogs (it later emerged that the tax authorities had at that moment already effectuated a seizure). In other words, the suppliers and the tax authorities grant a deferment of payment. Following the seizure, the tax authorities have not yet taken measures of enforcement.

Shortly after the deadline, the bank decides to stop all payment instructions going via that bank, because full repayment in the short term is out of the question, the figures have been submitted too late and there are no signs of actual restructuring of the company. It is decided however, to give the company another deadline for full repayment. It is set for 1 April 2002. In the meantime, the bank no longer authorises any payments and the 10 largest debtors (together representing 60% of the debt balance) are told that payment can only take place via that bank. In this way, the company is forced to actually find a new lender as well as to effectuate restructuring of the business. The bank by the way is aware of the financial flows going on without its consultation. A blind eye is turned to this, because the bank knows that it will not be in their interest to close down the company (the forced-sale value of the stock in particular is a problem due to its specific nature).

At the beginning of 2002 the MDS brings interlocutory proceedings to dispute the credit cancellation and imminent selling up of the credit. The sub-district court judge agrees with the bank however, because the entrepreneur never really did anything to resolve the situation and has demonstrably failed to meet the agreements with the bank on a number of occasions. Furthermore, the company has had ample time to come to full repayment.

Eventually, the bank is paid in full on 1 July 2002. This repayment is partly financed by the sale of two of the four hire companies. The company has also made arrangements with suppliers about payment terms and a number of debtors have been asked to pay earlier.

Analysis

The company ran into difficulties because its cost structure was not sound and its management with regard to financial information was poor. The bank announced to cancel its credit on a number of occasions and the entrepreneur did not adequately respond to that. The bank finally managed to be paid back in full and it looks like the company will be reorganised. Although the company incurred a lower loss in 2001 (€-/- 31/m), the question is whether the reorganisation was truly effective since this lower loss was mainly created due to extraordinary results (particularly from the sale of the hire companies) of €221/m. It is obvious though that the cash flow from business operations is positive and that it has risen sharply compared with the year 2000. If the company is able to make the return positive, the situation appears to have improved. The financial ratios have at least improved thanks to the sale of the hire companies and the corresponding repayment.

S18. Training

Description of the company
Training is a one-man business, established on 1 October 1995. The activities can be described as follows: to render services in the field of business advice, project development, business support and expertise improvement, as well as implementing interim management and giving training (social skills for instance) in the non-profit sector. The company employs no personnel.

Cause of the problems and the course of informal reorganisation
On 15 November 2000 the first contact is laid between the entrepreneur and a specialised consultancy agency for SME issues. The entrepreneur, who apart from the enterprise (approximately 33%), is also employed (33%) and partially occupationally disabled (33%), has been confronted with a threat of attachment by the tax authorities. At that moment, the latter has a claim of €13,000 and the entrepreneur is unable to pay this money.

When the company was founded, the entrepreneur mistakenly thought that a person starting his own business does not have to charge any VAT during the first year. The accounts audit carried out by the tax authorities on 30 August 1998 demonstrates this. At the end of 1998, an assessment is imposed for the years 1996-1998, €13,000 of which is still outstanding at the end of 2000.

In the year of the tax assessment, the entrepreneur is unable to fulfil the tax obligation due to a combination of reduced turnover and excessive private withdrawals, causing the equity capital of the company to be negative, and this also results in little cash. The overview below gives a picture of the company's financial results.

Amounts in €	*1998*	*1997*	*1996*
Turnover	2,741	16,967	52,461
Net profit	-/- 6,192	-/- 78	37,642
Equity capital	-/- 11,170	-/- 9,534	-/- 438
Private withdrawals	4,556	32,600	51,108
Total VAT payable	14,338	8,835	8,583

Table 1: Training

The accommodation, telephone and transport costs are the main cost components in the calculation of the result. In addition there are relatively high private withdrawals as is demonstrated by table 1.

Following the assessment the entrepreneur has tried to come to a solution by applying at the tax authorities for a deferment of payment as well as arranging a payment arrangement. This attempt is only partly successful because collection has been deferred a number of times (nearly two years) due to attempts to reschedule the debts. It has

never come to a payment arrangement, however, because the necessary financial means have not been found.

The consultancy agency tries to come to a workout agreement on behalf of the entrepreneur. First an attempt is made to suspend the imminent seizure. This fails; on 5 December 2000 seizure is effectuated and it is decided to sell the goods on 25 March 2001. In the meantime, two possibilities are examined:

- a nonrecurring payment by means of a FAE-loan;
- a savings rescheduling scheme where the full amount is repaid in 33 instalments.

The nonrecurring payment by means of a FAE-credit turns out to be impossible because the conditions for application are not met. Therefore an attempt is made to come to the above savings rescheduling scheme based on a calculated maximum repayment capacity of approximately €400 each month, which can commence on 1 March 2001. To this end a proposal is made to the tax authorities in a letter dated 10 February 2001, emphasising that, if rejected, an appeal must be made to the PFP. The consultancy agency states that this appeal would lead to three undesirable consequences:

- a termination of business;
- a lower repayment capacity as a result of the entrepreneur falling back on a benefit, and administration costs;
- belated payment of the debt (at least three years).

On 17 February 2001, the tax authorities reject the payment arrangement. The reason is that the Collection Directive 1990 prescribes that a payment arrangement can only cover twelve months *after* the date of the tax assessment (in this case the arrangement could have been valid until the end of 1999). The forced sale can therefore only be halted if the full amount is paid before 25 March 2001.

On 20 March 2000, the consultancy agency makes a second proposal for a workout agreement in answer to the rejection. The entrepreneur has been able to raise €4,400 from external financiers (family) on the condition that a payment arrangement can be reached. The consultancy agency therefore proposes to agree to a nonrecurring repayment of €4,400, as well as a shorter repayment arrangement of 22 months, thereby holding out the prospect of full payment. A request to postpone the forced sale is also made.

On 21 March 2001 the request is denied. On 24 March 2001, without consulting the consultancy agency, the entrepreneur informs the tax authorities that he is able to pay the full amount within two days. The money is provided to him by family members. The tax authorities subsequently decide to cancel the seizure. On 14 May 2001 however, it emerges that the entrepreneur still has a debt of €7,629. A repayment arrangement, based on the afore-mentioned monthly amount, proposed by the consultancy agency to repay this remaining amount is rejected. Although termination of business and an appeal to the PFP seem the only things left, the agency advises the entrepreneur to start making monthly repayments.

Some time later a new seizure is announced which will take place on 2 October 2001. Although the entrepreneur again tries to find money to pay the debt, he is unsuccessful. Ultimately, on 25 November 2001, the seizure which had been announced is effectuated. When the consultancy agency tries to come to a solution once more, the tax authorities announce that the entrepreneur has met his tax obligations, thereby settling the debt in full. He was able to make the payment by borrowing from his family and selling goods.

Analysis
The entrepreneur ran into difficulties through an accumulation of causes. The entrepreneur seems to have waited too long (two years) to actually find a solution. When the consultancy agency was called in, the situation was in fact untenable. By finding new financing (from the family) he finally succeeded in avoiding a forced sale and a petition for liquidation.

The tax authorities actually contributed to the workout by on the one hand granting (informal) deferment of payment for about two years and on the other by increasing the pressure on the entrepreneur ('implicit workout'). Due to the increased pressure, the entrepreneur finally started looking for 'new money' in order to settle the debt. The question remains however if the tax authorities should have agreed to the proposed savings rescheduling scheme earlier. In this case, one debt has been converted into another. However, if the entrepreneur applies the proposed savings rescheduling scheme to himself he must be able to repay the new debt in the near future. This case shows that a workout agreement is in principle cheaper than the PFP. In that sense this arrangement clearly acts as a 'safety net', a place the parties prefer to avoid.

S19. Tree nursery

Description of the company
Tree Nursery is a general partnership consisting of a father (20% contribution) and two sons (40% contribution each). The company grows trees. In addition to the entrepreneurs, 3 other persons are employed by the company.

Cause of the problems and the course of informal reorganisation
In the split financial year of 1997/1998 the company's turnover is approximately € 275/m with a net profit of € 45/m. However, in the shortened financial year (6 months) of 1997 the net profit was € 115/m with a turnover of € 192/m. At the end of 1998, the company's balance sheet shows a (negative) equity of € -/- 278/m (as a result of excessive withdrawals, equity has decreased in relation to the previous year). The working capital (current assets -/- short-term debts) is also negative: €-/- 338/m.

Due to a number of contingencies the company ran into difficulties. Poor management, unsatisfactory management of working capital, excessive private withdrawals and cost levels that are too high can be seen as the main causes. Nevertheless, the company expects positive developments in 1998/1999.

Although the entrepreneurs' policy is aimed at continuation of the company, the housebank in 1998 indicates to want to terminate the credit facility. Nonetheless, the

bank is prepared not to cancel the credit as yet in anticipation of a new lender (negotiations are underway with two banks). Prior to 1 April 1999 a lender must be found however who is willing to provide €1.35 million. The policy of the entrepreneurs is focussed on the fact that all creditors will be paid in full. It has been agreed with the main creditors that they will receive part of the claims as soon as the overdraft allows for this; however, this overdraft is restricted by €25/m as from 31 December 1998, so that the total loan with the bank is now €975/m. In addition, debtors who do not pay within the set term of fourteen days are sent reminders.

At the end of January 1999 the file is handed over to the Intensive Care Department. The reason for this is that confidence in the viability of the company has gone and furthermore, it has been established that against all agreements, payments arrive via another bank. Credit is cancelled and the company is summoned to pay an amount of €1 million (in January of 1999 the overdraft has exceeded the agreed limit in the current account again) within one month, under penalty of security enforcement on movable and immovable property. The company is given permission to pay the wages so as not to jeopardise the delivery of trees. In addition all intended sales transactions must be submitted to the bank, which will test the costs and proceeds as well as the payment ethics of the customers.

On 19 March 1999 the company announces that it is unable to fully repay the funding provided. The company asks the bank to cooperate in a *phasing out scenario*, postponing the repayment deadline. The bank agrees, on the explicit condition that the risk cannot increase. The aim is to pay all debts from the sale of all movable and immovable property (including two privately owned houses).

In order to keep the company going €75/m is required. The bank agrees to this under increase of securities at an amount of €200/m, also because the turnover is sharply lagging behind in relation to earlier forecasts. The €75/m is freed up, because the company is allowed to use 50% of the proceeds for payments. The other 50% must be used for repayments. In addition, interest payments can be suspended until July 1999. The conditions however, are that on 1 July 1999 one house must have been sold and there must also be more clarity as to an offer by the Directorate-General for Public Works and Water Management (a claim is being prepared within the framework of an expropriation project). Furthermore some idea must be given as to the position of creditors, the stocks, debts and the so-called plant stand.

In June 1999 the bank agrees to an extension of the notice period until 1 October 1999, since the sale of the immovable property has not yet been finalised. The company must continue the selling process however and banking must take place within the set limits. In September 1999 the Directorate-General for Public Works and Water Management makes an offer, the bank subsequently announces to expect that repayment will probably take place in October 1999.

Mid October 1999, and it is decided to auction the movable and immovable property, since the entrepreneurs have not yet sold the immovable property despite the agreements. But the auction is postponed as an offer has been made on one of the houses.

In mid December of 1999 the company, through their accountant, tries to come to a workout agreement with the bank. The essence of the proposed agreement is that when part of the claim is remitted, a lender will be willing to take over the remainder of the debt. To this end the bank must agree to a lump sum payment of € 675/m in full settlement (the total debt at that moment is more than € 1 million).

At the beginning of January 2000, the bank announces not to take up the offer, because the amount available is in no proportion to the securities provided and the offer is even far below the forced-sale value of the movable and immovable property. On 25 January 2000 the bank proposes that an offer can be made which lies between the forced-sale value and the open market value of the movable and immovable property. However, this must be made within one week otherwise the execution sale will go ahead unabatedly. On 1 February 2000 the company requests for the period to be extended with one week, the bank agrees.

On 13 February 2000, an offer of €815/m is made. This is on the condition that another bank funds €375/m in order to keep one house and a machine shed, that some immovable property (for which there is an interest) is sold and that the other creditors also agree to debt rescheduling. The bank's reaction to this is negative, since both the amount and the term at which it can be realised are completely uncertain.

The company's lawyer then threatens with interlocutory proceedings in order to stop the measures of enforcement and accuses the bank of letting the company plod along. The bank's reaction is that the company has been given enough time to come to a solution and that measures of enforcement must be taken now that agreements are again not kept.

At the start of March 2000 the company's lawyer announces to the bank that the other bank is not willing to refinance under the current conditions after all. However, when the current bank agrees to an amount of €765/m as well as pledging a debt (of €50/m) on a potential buyer of part of the immovable property, refinancing will be reconsidered. If this cannot go ahead, the proposal is to wind up the company while bypassing liquidation and a restart ('silent liquidation'). If this is not possible, the associates will file a petition for liquidation and appeal to the PFP. The bank refuses to accept the offer, since there are still too many uncertainties.

On March 2000 the bank establishes there is a potential buyer for all buildings and that an offer of € 875/m in full settlement is acceptable in view of the guarantees it has been given. Nevertheless, the auction is scheduled for 18 April 2000. In the course of April 2000, the parties agree to a settlement of € 875/m.

On 8 May 2000 the company announces that it cannot honour the agreement. On 14 May 2000 the bank therefore proposes to change the restructuring proposal to an € 875/m restructuring, with € 810/m being paid immediately and € 65/m remaining as the balance of the debt, after which amounts of more than € 875/m are recorded in a deed of non-collection. On 20 May 2000, the company's lawyer announces that the associates do not agree to this and that they prefer liquidation/PFP. On 28 May

2000 the bank announces that the reply of 20 May 2000 has undermined the agreement. The measures of enforcement will be started.

On 29 May 2000 the entrepreneurs come with a new proposal. €810/m will be paid immediately, after which €65/m remains as debt; the bank undertakes not to start execution in the next four years, counting from the date of the amicable sale of the securities (read: movable and immovable property). Furthermore, the amount will not bear any interest. On 30 May 2000 the bank agrees to this, provided the €810/m is paid before 13 June 2000.

On 27 June 2000 the bank tells the company that, although the bank appreciates a somewhat longer term of completion, progress must be endeavoured. On 8 July 2000 there seem to be new complications, since a potential buyer of the company's machine shed has pulled out and there are problems with the tax authorities. On 5 August 2000, the company's machine shed is still sold. The full amount of €810/m has still not been paid by then.

On 16 August 2000, the deed of non-collection in respect of the €65/m is finally signed. Resolutive conditions are that liquidation/PFP will be filed for within five years, or a capital of more than €5/m is secured through donation, inheritance or lottery. The associates undertake to pay €810/m before 1 October 2000. At the end of August 2000 this term is extended to 31 October 2000, and early September 2000 this term is extended a bit more.

After the bank urges the company's lawyer to finalise the case in December 2000 – after all, the bank incurs loss of interest – the case is completely finalised in December 2000.
For reasons unknown, two of the three associates (the sons) are subject to the PFP at the beginning of April 2002. With that, the resolutive condition of the deed of non-collection is met.

Analysis
The company ran into difficulties due to a combination of poor management, insufficient focus on the management of working capital, costs that were too high as well as excessive private withdrawals. After the bank lost confidence in the company, the entrepreneurs first tried to find a new lender. The basic principle here was that business goes on. The housebank supported the search by initially not cancelling the credit despite contractual opportunities to do so. Since the search fails, an attempt was subsequently made to wind up the company while bypassing liquidation. This was possible due to the existence of valuable immovable property. However, the selling process was complicated and took quite some time. During this period the confidential relation between the bank and the company was tested, especially since the agreements made were not always honoured. The parties did seem to realise though that a forced sale of the immovable property would lead to proceedings which were insufficient. The bank ultimately agreed to a workout agreement during which part of the claim was remitted on a lump sum payment (the bank's estimation was that this is the maximum achievable agreement in view of the circumstances). Although completion (transfer of the immovable property) took some time, the attempt was successful.

S20. Wood

Description of the company
Wooden Panel BV is a subsidiary (operating company) of Wood Holding BV. The company specialises in the mass production of processed wooden panels for the building industry (contractors, wholesale) using the principle of value for money. That is to say, the highest price-quality ratio is pursued. In the past the turnover lay between €5.5 and €7 million with an average profit of 12%. The company has always been profitable. Sales take place in the Benelux, Germany and Scandinavia. On average, nearly 250,000 wooden panels are produced on a (Dutch) market of approximately 1.5 million wooden panels. The average number of employees in 1999 is 50-55. The shares of Wood Holding BV are held by a family who has little to do with the company. There is an 'advisory board' consisting of three persons (one of whom is a family member) which (like a supervisory board) supervises the procedures within the company. The building that houses Wooden Panel BV is rented from the parent company; in addition there is an inter-company claim (long-term loan capital) from the parent company against the operating company.

Cause of the problems and the course of informal reorganisation
The managing director of the operating company was appointed in the seventies and stayed until 1993. During this period, in addition to mass production, a new strategy was formulated for the production and sale of small amounts of wooden panels in many types, with the panels already being made 'to measure' at the factory for the customers and placed on location. Since this approach involved high logistic costs which could not be passed on to the customers in full, the decision was made in the early nineties to fully focus on the mass production of the wooden panels.

In 1993 a new managing director is appointed and the former managing director becomes a member of the advisory board. With the approval of the shareholders, the new managing director develops a strategic plan for the company with the emphasis on investment in new machines (it emerges that for years no investments have been made in that respect) and product differentiation in order to meet market demand. After some time, a conflict arises between the former and the present managing director with regard to the company's future, resulting in a long spell of illness of the latter. The former managing director is reappointed, but at that moment profitability decreases because the market has changed and in the end it is not taken advantage of.

The table below shows the financial situation for the years 1995-1998, as well as the forecast for the year 1999. It clearly shows that the company's equity is meagre. This is due to the past, when all profits went to the parent company. We can also see that turnover is under pressure and so are the profit margins.

x € 1,000 (rounded off)	1995	1996	1997	1998	1999 (forecast)
Turnover	6,900	6,600	6,690	6,100	5,250
Trading result	1,046	549	472	259	275
Net profit	648	329	262	103	114
Assets	2,187	2,207	2,165	2,776	
Equity	24	24	24	24	
Provisions	398	348	357	507	
Loan capital – long	849	886	754	1,445	
Loan capital – short (other loans)	-	-	153	199	
Payables	446	510	434	312	
Other short-term obligations	470	439	443	289	
Total Liabilities	2,187	2,207	2,165	2,776	

Table 1: Wood

In February 1999 an interim manager is appointed. His job is to restore the company's profitability (if possible), because the present management is not able to do so, and to 'look after the shop'. By then, the family has already decided to put the company up for sale and the search is on for a buyer (the deadline for this is set for 30 June 1999). The interim manager is appointed against a background of an expected 10% drop in turnover in 1999. The drop in turnover is due to a mixture of circumstances. Deliveries to the building sector have dropped, because the company cannot meet the market demand for (small) Just-In-Time deliveries. Furthermore, the switch to wholesale (mass production) is not as profitable as expected, particularly as a result of mergers, purchase concentrations and strategic alliances on the part of the buyer.

With the approval of the advisory board the interim manager decides to exclude the former managing director from day to day business and to appoint a management team consisting of a couple of competent persons within the company. Also, a start is made on the improvement of the management information system in order to manage the company (better) with the use of financial figures. Additionally, a works council is set up in order to dispose of a medium when it comes to a redundancy package. He also decides to fully disclose the state of affairs to personnel in order to prevent the (imminent) departure of key persons.

In the middle of June 1999, the expected drop in turnover is negatively adjusted to 25%, with the expectation that substantial losses will be suffered in the first half year. At that time no buyer has yet been found for the company and the family decides to look into the possibilities of closing down the company in the short term (early July 1999). They explicitly opt for a workout version, in that sense that they want to prevent liquidation at all times. The costs for a redundancy package when closing down the company, with the *sub-district court-formula* being a starting point, are estimated at €

1.492 million. In addition a study is made into possible liability for the parent company (*corporate liability*) if it does come to liquidation of the subsidiary.

As a result of the losses in the first half year, equity has dropped to €-/- 321,311 by 30 June 1999 (therefore, losses of nearly €300,000 were suffered in the first half year). The interim manager (together with the advisory board) decides to reschedule the balance sheet in order to make the company 'sellable' (at that moment there is a prospective buyer). The starting point here is to considerably increase the equity of Wooden Panel BV in order to create room for the buyer to make the company healthy again. In this case, the balance sheet is rescheduled by setting all claims from the parent company against the subsidiary (€1.383 million) to zero. This rescheduling is shown below (table 2: Wood). The starting point is the (corrected) balance sheet of the end of 1998, although the situation shown is that of 30 June 1999.[15]

In €	*End of 1998*	*Movements*	*Takeover (30 June 1999)*
Tangible fixed assets	681,200	-/- 464,290	216,910
Long-term investments	37,907		37,907
Stocks	1,257,323		1,257,323
Debtors	720,503		720,503
Liquid assets	17,762		17,762
Total assets	2,714,695		2,250,405
Equity	23,719	918,824	942,543
Provisions	506,904		506,904
Loan Wood Holding BV	1,383,114	-/- 464,290 -/- 918,824	
Other loans	9,577		9,577
Bank	198,913		198,913
Short-term debts	592,468		592,468
Total liabilities	2,714,695		2,250,405

Table 2: Wood

A number of important advantages for the parent company and subsidiary are attached to the above rescheduling of the balance sheet:

- although a loss is suffered (this is estimated at no more than € 942,543 for the parent company on ultimate sale), the lease of the building will continue in the short term;
- current operations are continued;

15 The (expected) losses of the previous six months, as well as additional corrections to the valuation of assets are processed in the debit entry on the balance sheet.

- no liquid assets need to be contributed for operations to continue (high interest charges for subsidiary have gone);
- the existing interested parties are also interested in buying the building.

In the light of a 'silent liquidation', the balance sheet rescheduling seems even more attractive (in combination with a sale). The losses in respect of the silent liquidation are calculated as follows:

- costs of redundancy package approximately €1.5 million, as well as a debit entry for stock and losses (€1 million) in addition to other operational losses in the run-up to the liquidation;
- an injection of liquid assets is required (only the parent company could and would contribute this);
- no more rental income at the parent company (in the short term);
- social unrest and publicity.

There are a number of advantages for the buyer as well, namely:

- the company is easier to finance;
- a financial buffer is in place for reorganisation measures;
- there is a bigger chance of positive results due to the lack of interest charges.

Mid July 1999, the interested party (working in the same field), who accidentally came into contact with the interim manager, takes over the company with the adjusted balance sheet and this averts the imminent liquidation of the company.

Analysis
The company ran into difficulties as a result of wrong strategies combined with aged management, as well as conflicts within management. Because the family behind the company did not want liquidation, it is clear to see what the costs are of a reorganisation and/or silent liquidation. At one point they had to make a choice: either write off a claim of €1.35 million (due to the negative equity the participating interest in the subsidiary was valued at zero) on liquidation, or suffer an additional loss of €1 million as well as a liquidity contribution of €1.5 million (a total loss of €3.85 million) in order to make people redundant in a controlled manner and to sell the assets. Particularly in situations where the parent company is financially not strong or refuses to furnish the necessary funds, liquidation seems inevitable. Since in this case the balance sheet was rescheduled prior to the sale, the company could be sold as a going concern. As a result of rescheduling the balance sheet, the parent company was even able to limit the losses to €900/m due to the renewed going concern value.

Failed informal reorganisations

F1. Agrarian

Description of the company
Agrarian Holding BV is the parent company of ten (international) subsidiaries which are specialised in developing, producing and selling innovative, technologically high-

quality machinery for the agricultural sector and also trade in agricultural products. The subsidiaries are divided into four divisions:

- vegetables division;
- raw materials division;
- distribution division;
- trade division;

In 1998 more than 1200 persons are employed by the company of which more than 800 abroad. The turnover in 1998 amounts to €255 million, 80% of which is generated abroad. Loans have been taken out with a consortium of banks totalling nearly €80 million. The company is owned by a number of investment companies.

Cause of the problems and the course of informal reorganisation
Commissioned by the banks, a specialised consultancy agency carries out an investigation into the problems with the company in the beginning of 2000. The direct cause is acute limited liquidity within the group as a result of poor results in the past, in combination with a lack of trust in the consultancy agency hired by management for advice with regard to a reorganisation. Management and the consultancy agency hired by them were given the opportunity until August 1999 to 'set things right', but the results were insufficient in the opinion of the banks.

The development in results during the period 1994 – 1998 is set out below.

In € million	*1994*	*1995*	*1996*	*1997*	*1998*
Turnover	61	112	183	210	255
Net profits	0.63	3.9	4.3	-/- 6.8	0.09

Table 1: Agrarian

Unofficial figures from 1999 which were to be announced in 2000 show that the company made a loss of €4.14 million in that year (later this figure would be revised).

The main causes of the problems can be summarised as follows:

- in a declining market the company was aiming for expansion (expensive takeovers) without pursuing consistency and synergy. This resulted in an incoherent organisation dominated by a 'culture of islands';
- business decisions were insufficiently tested for business-economic consequences;
- the group has been insufficiently managed by the holding on a divisional level. In addition, there were many changes on a managerial level which caused a vacuum in knowledge. Managers on a divisional level have been mainly operationally orientated rather than strategically;
- the management information system was completely insufficient. Partly as a result of this the losses were uncontrollable.

Early 2000 the banks conclude that the survival of the company is seriously jeopardised. The burden of debt cannot be maintained by the group and the reorganisation initiated

by management (faster integration of companies and, where necessary, disinvest among other things) is not rigorous enough. The consultancy agency which is called in does suggest a more radical scenario. The core of all this is that the group is amicably dismantled. The contents are as follows:

- part liquidation of the vegetables division;
- selling the raw materials division;
- liquidation of the trade division;
- liquidation or sale (whichever proceeds are higher) of the distribution division;
- sale of a recently purchased subsidiary (named Denmark), which is not yet classed under a division, to the current management;
- liquidation or sale of a recently purchased subsidiary (named Norway) not yet classed under a division;
- ultimate liquidation of Agrarian Holding BV.

The proceeds for the banks (recovery rate) are expected to be reasonable with a view to the circumstances and the securities given (right of pledge and mortgage). Forecasts in this respect are set out below: (in € million)

Proceeds	
Holding (premises)	0.9
Continuation and sale of raw materials division	46.0
Continuation and sale of Denmark	9.0
Part liquidation of the vegetables division	7.2
Liquidation of the distribution division	5.4
Total recovery	68.5
Distribution of recovery	
Continuation of loans	19.8
Proceeds from sales	35.2
Liquidation proceeds	13.5
Total recovery	68.5
Recovery percentage	
Exposure banks	79.2
Recovery	86%

During this process the following complications are taken into account:

- lower proceeds of sales;
- liquidation costs;
- legal and tax complications;
- required additional liquidity during the liquidation and selling processes (in order to retain value).

After the figures have been thoroughly examined the consultancy agency, in its report, revises the losses of 1999 by €9 million to €13.14 million. In addition, a liquidity of €7.2 to 13.5 million is estimated to be required in the short term. In February 2000

it becomes clear that the shareholders do not want to provide this liquidity need. As a result, the banks decide not to make additional amounts available. In April 2000 Agrarian Holding BV files a petition for liquidation.

The banks – having taken liquidation into account also – come up with an emergency scenario. The core of all this is that the healthy firms of the business are brought together in a corporation from where these partners are sold in a going concern construction. This way these healthy firms are not drawn into the liquidation and the going concern value remains intact. Immediately following the petition for liquidation, an offer of approximately € 40.5 million is received for all healthy firms. The banks do not approve of this and ultimately manage to convince the trustees that the construction with the corporation will generate higher proceeds. However, a complication is that the shareholders of the bankrupt holding foresee a problem when the shares are sold from the holding to the corporation. This may involve them missing out on a tax advantage (in connection with the deductibility of liquidation losses of participating interests). Nevertheless, this problem can be solved by converting the shares to be sold into depositary receipts. Still, a decision in this respect must be obtained from the supervising (bankruptcy) judge.

Meanwhile, the banks have appointed an interim manager who will try and guide the healthy firms through the situation. The banks are in a hurry as there are commercial risks. Customers and suppliers prefer not to have dealings with businesses associated with bankrupt firms. Advantage is that the healthy firms generate sufficient free cash flows as a result of which no additional credit is required. However, an amount of € 2.7 million is kept in reserve by the banks as an emergency credit and to fill any unexpected needs; in addition, it serves to instil some trust in customers and suppliers.

Current expectations are that the healthy firms will yield €54-63 million (much more than the offer received immediately after the liquidation). The banks expect therefore that approximately 70-80 % of their claims will be settled.

Analysis
The company ran into financial difficulties through a combination of over-expensive takeovers, no clear strategy and poor management. After it was endeavoured to carry through an informal reorganisation, which included selling/closing loss-making units, the shareholders refused to inject additional risk-bearing capital. As a result, the banks too decided not to make additional capital available. Subsequently, liquidation had become inevitable. Following liquidation, the healthy units were classed under a new legal entity in order to retain as much value as possible.

F2. Airline tickets

Description of the company
Airline Tickets is an intermediary for airline tickets, car rental and hotel reservations. It is a one-man business (proprietorship), established in 1995. In addition to the entrepreneur, four other persons are employed by the company. The company sells the tickets and other services via a branch and a website (25,000 hits a month of which 1,000 potential customers). In 2000, the turnover of the company amounts to an average

of €150/m per month.

Cause of the problems and the course of informal reorganisation
On 4 August 2000 the entrepreneur calls in a specialised consultancy agency in order to find a solution for the financial problems. The immediate cause comes from the largest supplier of airline tickets for the company, Travel Delivery BV, demanding payment of €67/m before 11 August 2000 or the supply of tickets will be ceased. The company's current accounts payable situation reads as follows: (in €)

Travel Delivery BV	338/m
Other ordinary creditors	20/m
Total	358/m

Due to a number of contingencies the company has ran into difficulties. The causes have been outlined below:

· private withdrawals are too extensive. Despite a loss of €13/m in 1997, more than €50/m was withdrawn from the company as a result of which the negative capital increased to €95/m at the end of 1996. Subsequently, in 1998, during which profits of €60/m were made, the equity capital increased by only €10/m to €-/- 85/m. In 1999 too, over €50/m was withdrawn from the company.
· due to illness the entrepreneur is not always present, which needs to be compensated by the other staff members;
· as a result of staff shortage not all orders can be carried out and errors are made.
· one of the employees commits fraud. The damage amounts to €10/m;
· a new branch is opened, but closes after two months as recruiting personnel appears to be impossible. However, the rental agreement remains in force;
· Travel Delivery BV omits to send invoices to the company for a considerably period of time, as a result the outstanding balance of Airline Tickets amounts to €350/m in 1999. The amounts payable have not been reserved by the company. Subsequently, the company is summoned to pay the amount in stages as a late settlement;
· commissions have decreased from 7 to 5%.
· the ticket suppliers introduce a new payment system meaning that purchasers must pay the tickets prior to delivery, instead of afterwards. For Airline Tickets this involves a reduction in (trade) credit of around €100/m.

The entrepreneur is planning to sell the company and discussions with a takeover candidate are held. He expects the value of the website to be large enough to pay the creditors in full. The advisor therefore suggests approaching the creditors for a voluntary deferment of payment for a period of six weeks in anticipation of the sale, during which the basic principle will be that they will be satisfied in full. Only when full payment appears not to be possible, will the possibilities of rescheduling the debts be examined. Meanwhile, current obligations must be strictly met.

The entrepreneur has meanwhile already informed the largest creditor to be prepared to cooperate with any solution, as ceasing the delivery of tickets would automatically lead to liquidation. This supplier agrees to a right of pledge to the current assets of

the company as well as a security in respect of the private residence of the entrepreneur, the value of which is estimated to be € 100/m. The deliveries will not be ceased provided that the monthly repayments in view of the accumulated debt continue (a minimum of € 5/m must be paid each month).

Early November 2000 the potential buyer withdraws. Subsequently, another party shows an interest, but is not prepared to take responsibility for the debts. Initially he would be prepared to cooperate with a restart following liquidation. The company at the time is profitable, albeit marginal. Therefore, on the basis of the forecast stated below, the entrepreneur is granted a bridging loan of €13/m for a number of weeks in order to meet the current obligations: (in € per month)

turnover on the basis of commission	10.5/m (7% of 150/m)
other revenues	4.5/m
gross profit	15/m
repayment Travel Delivery BV	5/m
other expenses (wages, rent etc.)	10/m

The large debt remains a problem however, and in the middle of November 2000 the entrepreneur is considering to discontinue the company and to opt for the PFP. Early December 2000 the suppliers cease the delivery of tickets as a result of which business must be stopped.

The advisor requests the creditors, on behalf of the entrepreneur, to again grant voluntary deferment of payment for a period of six weeks as well as validation of the debts, in addition the tax authorities are requested to grant deferment of payment. Meanwhile, the search for a candidate to take over the website is underway. The debts have then risen to € 600/m.

In January 2001, another request for voluntary deferment of payment is submitted for a period of eight weeks, pending the accession request to the PFP of the entrepreneur. Liquidation, so it is stated, would yield less. A workout arrangement is pursued, but appears to be unfeasible. So far the creditors have not yet filed a petition for liquidation.

At the end of May 2001 the by now ex-entrepreneur, is requested to forward the necessary documentation with regard to the application for accession to the PFP, when these are not sent in promptly liquidation will follow suit. In the end, he is admitted to the PFP on 22 August 2001. Meanwhile he has found a new job.

In 2003 the administrator announces that the PFP will probably be converted to liquidation as the entrepreneur is suspected of having sold tickets in bad faith in the run-up to the termination of business, as he knew he could no longer deliver these. The website has never been sold.

Analysis

The company ran into difficulties through a combination of poor management, extensive private withdrawals and insufficient management of the working capital. Since action was taken too late, a workout agreement offered little possibilities. When on the basis

of a realistic selling price the entrepreneur had actively searched for a takeover candidate, a formal procedure could perhaps have been prevented. The more so since the largest supplier was prepared to render his cooperation to a workout agreement.

F3. Furniture

Description of the company
Furniture Holding BV is a holding company of different furniture business formulas varying from 'classic' to 'trendy' furniture shops. The company employs around 250 people divided across head office, three distribution centres and the branch-stores. The company is managed by a Managing Director and major Shareholder with two sons as well as a financial manager.

Cause of the problems and the course of informal reorganisation
Early 1999 management of the company is taken over by the two sons. In June 2000 the housebank of the company concludes that the company is in an emergency situation, after it was announced that the turnover and forecasts have remained behind by €2 million and in some branches by 30%. It is decided to continue the credit facilities for some time, provided that the company comes up with a large-scale restructuring plan in cooperation with an external consultancy agency. Nevertheless, the housebank has, within reasonableness and fairness, the possibility to withdraw the credit on the grounds of the credit agreement.

The current situation is that the companies within Furniture Holding BV have been bringing in insufficient profits for a number of years. With an average turnover of around €50 million and a gross margin of 43%, the total (pre-tax) results of the last five years and the first six months of 2000 together are zero. Heavy losses are forecast for the result of the whole of 2000 also. This is shown in the financial overview below.

						x €1,000
1995	*1996*	*1997*	*1998*	*1999*	*1st six months 2000*	*Forecast 2000*
291	-/- 582	386	251	254	-/- 1,250	-/- 1,917

Table 1: Furniture

The solvency at the end of 1999 amounts to approximately 15%. In addition, it is found that the cash flow[16] proves to be insufficient in order to meet the current repayment obligations, when necessary investments in the restyling of certain branches are taken into account. It also appears that the forecasts of the last five years were far from being met and the forecasts until 2005 are doubtful. The investments in new branches have been financed by means of lease/rental and financing of third parties (read: trade creditors and Industrial Insurance Board), which has put the working capital under pressure. No additional loan capacity can be granted on the basis of past cash flow

16 Here cash flow is understood to mean the difference between revenue and expenditure from the company's business (operations/activities) in a certain period.

figures and the bank therefore concludes that risk-bearing capital must be brought in order to rectify the liquidity shortage, which is estimated to be € 3.5 million[17] on 1 July 2000.

On 12 September 2000 the consultancy agency publishes a report. It is concluded that the company must – on a very short term – convert from a *sales-driven* into a *profit-driven* organisation. The main causes for the poor results can be summarised as follows:

· the company has introduced all sorts of shop formulas into the market without a clear strategy;
· shops having made losses for years on end have been kept open for too long;
· the opening of four new branches in a number of furniture shopping centres involved considerable investments in inventory and stock and resulted in large start-up losses;
· a 5 to 10% reduction in consumer spending in the furniture sector;
· service and quality levels are insufficient – only 25% of the orders are delivered correctly first time;
· level of costs is too high, particularly in the field of sales and logistics.

When the above-mentioned causes could be removed, it is concluded, the company would be viable and profitable as early as 2001. The objective in this respect is a profit of approximately € 500/m. The turnaround plan comprises four projects stating the intended savings in brackets:

· closing the loss-making branches and with that ending one of the shop formulas (€ 356/m);
· reducing staff figures in branches, warehouses and the head office in addition to the cuts in staffing due to the closure of branches (€ 353/m);
· increasing service and quality levels (1% of the net turnover[18]);
· Improving the logistics process (€ 253/m).

Closing the branches will hardly affect the result of 2000 due to the additional costs. It is important that new lessees for the premises are found quickly (nearly all branch premises are rented) and that the inventory and stock are sold at reasonable prices. The result for 2001 is estimated to be € -/- 265/m. The effective savings will amount to € 962/m. The intended result in 2001 therefore, amounts to € 697/m following implementation of the action plans.

Early October 2000 the company addresses the bank, in connection with arrears in payment, about the possibility to temporarily exceed the current overdraft limit of € 2 million, to € 3.4 million. The bank replies that they wish to reduce credit facilities to an overdraft payment facility of € 1.25 million, related to an annual turnover of € 60 million and cash (payment) flows via their accounts (in the event of lower turnover

17 By means of a capital injection a large part of the short-term debts could be settled. It is estimated that €3.5 million relate to debt which is due and payable immediately.
18 Net effect in € is included in the intended savings of €253/m in the logistical process.

a lower limit will be enforced). In addition, a bank guarantee of €800/m will be granted in respect of the rental of branches. The reduction will be introduced in stages. The maximum allowed limit is set to € 2.75 million until the end of 2000, after which the limit in the current account must be gradually reduced to the stated level. The reduction must be realised through the stock proceeds from the closed branches. In order to finance the seasonal purchases the agreed limit may again be temporarily exceeded in May 2001. In addition, by closing the branches the bank guarantees must be reduced to € 800/m by means of the inventory proceeds – from the cash flow the bank will build up a credit balance equal to the amount of the guarantees which will apply then (continuously secured bank guarantee), all this to be completed no later than April 2002. The conditions for the facility are:

- a consolidated solvency of at least 25% at the end of 2001 and of 35 % at the end of 2002;
- subordinating the amounts deposited (loans) by the shareholders and third parties in 2000 totalling € 1 million;
- monthly reports with regard to the progress of the turnaround process.

On 30 May 2001 it appears that the turnover and results for 2001 remain behind and this trend is anticipated to continue throughout 2001 and 2002. Partly as a result of this, possible takeover candidates are sought for parts of the company. In addition, an attempt is made to raise new risk-bearing capital. In December 2000 profits of € 69/m were expected for 2001, approximately 10% of the initially budgeted result a couple of months earlier. In March 2001 this was revised to € -/- 730/m. However, in April 2001 another positive adjustment is made to a result of around zero, whilst a forecast of € 826/m is announced for 2002. The bank reacts by stating that despite the current reorganisation of the companies, the closure of loss-making branches and a maximum cost reduction plan as well as a strong recovery of the turnover – which remained behind budget – and of the disappointing result in the past quarter, are absolutely necessary for the continuity of the company. In addition, the requested relaxation of the conditions as stated in the plan to reduce the current credit facilities are granted under strict conditions, because the reduction has not been *fully* and *timely* realised by the company. The fact is, it appears that with the disappointing turnover and cash flow a delay has occurred in closing the branches and stock and inventory proceeds are also disappointing. As part of the relaxation the repayment amounts are adjusted somewhat downward on the condition that additional proceeds are used for further reduction – also, extra security must be created through the pledging of debts in respect of corporate tax still to be reclaimed. In addition, weekly reports must be submitted detailing the state of affairs.

In the middle of October 2001, it appears that the consolidated loss until September 2001 amounts to € 1.39 million and this is expected to be € 1.27 million for the whole year. The current equity is close to zero and a liquidity shortage of € 3.1 million for 2001 is forecast in addition to that (during which an attempt is made to compensate this via supplier credit). The company therefore decides to try and sell (parts of) the company. There appear to be four serious candidates for a part or complete takeover (either or not by means of a restart scenario). The bank is prepared to again grant temporary exceeding of the limit in the current account whilst discussions are under-

way. However, the bank indicates that appropriate repayment proposals must have been received by the bank by 10 November 2001, or the credit facilities will be withdrawn.

On 10 November 2001 Furniture Holding BV informs the bank that a takeover candidate is prepared to take over the claim and bank guarantee for an amount of €3 million, involving a loss of € 522/m for the bank in respect of their total claim and bank guarantee of €3.6 million. Initially the bank reacts positively to this and is prepared to accept a maximum loss of €331/m. However, the company reacts negatively; the takeover candidate pulls out whereupon the bank withdraws the credit on 17 November 2001.

Subsequently, on 19 November 2001 Furniture Holding BV applies for a moratorium, and the administrator indicates almost immediately that there will be a transfer of assets following liquidation. The bank is willing to cooperate with an amicable sale of the (mortgaged/pledged) assets and liabilities and is prepared to contribute 2.5% to the estate, provided its claim is not fully settled by selling the stock pledged to them. Also, there is no objection against the continuation of sales in the shops, provided the proceeds of the pledged goods go directly to the bank.

On 28 November 2001, the intended transfer of assets from liquidation to the initial interested party is completed, and it purchases nearly all assets. In addition, nearly all members of staff are taken over, as well as the orders (already paid). The former management will manage part of the branches taken over. The amount owed and the bank guarantee are fully settled from the proceeds of the sold assets, the recovery rate of the bank is 100%.

Analysis
The company ran into difficulties through the lack of a clear strategy for the shop formulas. The company proved to be unable to balance the proceeds and costs, the more so since consumer spending was down. The basics of the reorganisation plan seemed to be solid, but it was started too late. The structural lack of results compared to the forecasts maybe explains the reserved attitude of the housebank and the request to inject risk-bearing capital. In the end, there appeared to be takeover candidates who were prepared and able to rationalise the company by means of a workout agreement with creditors and inject the necessary financial means. Furthermore, the housebank was prepared to consider a proposal to write off (part of) its claim in order to preserve the company. The takeover candidates refused to negotiate this subject however which ultimately led to the liquidation of the entire group. After the liquidation the same candidates took over the company via a transfer of the assets. It is suspected that the takeover candidates ultimately waited for the liquidation to materialise, in order to only take over those parts which were essentially viable. A high-cost reorganisation became unnecessary. In the end, the losses of the company were carried by the trade creditors and the providers of the risk-bearing capital.

F4. Goods

Description of the company
Goods Group BV consists of a holding and a number of operating companies which design, develop and produce a variety of products. Production is for the most part carried out abroad. The turnover in the split financial year of 1998 – 1999 amounts to approximately €14 million. The group is owned by a number of investment companies.

Cause of the problems and the course of informal reorganisation
In 1998-1999 the company takes over a large company called GoodsCompetitor BV which is operative in the same sector. However, the results of this new acquisition remain behind and in the same year the company is faced with reorganisation costs of €1.3 million with regard to GoodsCompetitor BV, ultimately resulting in a loss for the group. In 1999-2000 the losses amount to €2 million. The results for 2000-2001 do not show any improvement and again a loss is made, partly as a result of the high (production) costs compared to the competitors (they already produce in cheap labour countries), as well as delays in the delivery of goods and automation problems. The company's housebank decides to continue credit during that period, following an equity injection of more than €3 million.

Early 2002 it is concluded that the company has indeed made a turn around, but the turnover and results of GoodsCompetitor BV still present too much of a negative influence on the result. Three options are considered in order to rationalise the company:

- *discontinuation of the activities.* This will lead to liquidation of the whole group. This option is not preferred;
- *continue as an independent company.* This option appears to be difficult as the results of GoodsCompetitor BV will remain poor for some time to come and the balance sheet provides little room for manoeuvre, the turnover of the group for 2001 – 2002 is expected to be very disappointing and there is a commercial risk. Customers (for example large store chains) may be reluctant to place orders in view of the financial situation;
- *cooperation with a financial or strategic partner.* This strategy must lead to the introduction of the necessary equity as well as improvement of the critical mass (read: cost advantages) and a better management structure.

Management and the housebank agree that the latter is in fact the only feasible option. Therefore a candidate is sought to enter a joint venture. Early 2002, in view of the current difficult market, it appears that in fact only one company shows a concrete interest. This company, called GoodsTogether BV, enjoys a healthy balance sheet and is profitable. Nevertheless, no operational and synergy effects seem to be present in advance. By the way, this company is managed by the same management as that of the Goods Group.

Although the housebank doubts the continuity of the group and is concerned in respect of the fact that the shareholders of the group are no longer prepared to make capital available, they render their cooperation with the following takeover scenario.

- Phase 1: GoodsTogether BV obtains a part interest (18%) in Goods Group BV.
- Phase 2: Cooperation will be expanded when Goods Group BV is profitable again.

However, absolute condition is that GoodsCompetitor BV must be profitable within the foreseeable future. A consultancy agency which has been called in calculates that a positive result of € 700/m can be achieved in 2002-2003. In addition, a financial restructuring must be carried through. The main points of the financial restructuring proposal are shown below:

- the housebank converts €4.6 million of claims into Goods Group BV shares to be issued and by doing so acquires 47.5% of the shares;
- the housebank provides a loan of € 1.8 million to GoodsTogether BV which the company uses to obtain Goods Group BV shares to be issued. This creates the aforementioned interest of 18%.
- GoodsTogether BV receives the right of purchase of the shares acquired by the bank for an amount of €4.6 million. This is to take place at a time to be determined later.

By using this construction, Goods Group BV is 'released' of a loan to the amount of € 6.4 million and GoodsTogether BV obtains an interest in Goods Group BV. For the bank this is *the* opportunity to eventually earn back the unsecured part of its claims (which would probably be lost in the event of liquidation).

However, at the end of 2002, the potential takeover party pulls out as a result of which the above-mentioned scenario is off the table. GoodsTogether BV wants to have its internal affairs in order first, prior to considering a takeover. Nevertheless, an offer is made to the profitable subsidiary called Goods Daughter BV (this subsidiary already incorporates a profitable part of GoodsCompetitor BV). It is also announced that during the first six months of 2001-2002 a loss of € 1.6 million has been incurred.

The housebank states that from that moment on the group no longer shows perspective for continuation and works out a scenario to 'secure' the profitable subsidiary (on which a right of pledge has been established) in the event of liquidation. The idea is to sell the shares to a corporation (which to this end borrows the required amount from the bank) which, when the time is right, subsequently sells the shares to a (financial) party. In the meantime the company pays out dividend to its new parent, which uses the proceeds to repay the loan. In this manner the bank receives cash, regardless of when and whether the company is sold.

At the end of 2002, initiated by the shareholders themselves, the liquidation of GoodsCompetitor BV is ordered. Shortly after, Goods Group BV applies for a moratorium which is converted into liquidation a little later. Reason is that the housebank refuses to provide the necessary seasonal financing. This refusal is especially caused by the fact that the shareholders were no longer prepared to provide any capital.

Multiple parties appear on the scene for a part or complete takeover of the assets of the bankrupt company. During this process the housebank is prepared to provide

emergency credit in order to deliver any ordered products, yielding additional cash flows.

In the end, part of the bankrupt company, including Goods Daughter BV, is sold to GoodsTogether BV.

Analysis
The Goods Group was a company with paper-thin margins and little perspective. The moment the shareholders no longer wanted to continue, the bank became reluctant, but a seasonal credit was required. However, the bank had lost confidence and as a result this financing was refused. This was only enhanced due to the pulling out of a potential takeover party. This takeover party was under the same management as Goods Group. It seems as if management made a comparative assessment: you either buy the company including all the expenses or you wait a little longer until liquidation, to subsequently purchase the useable assets for a relatively low price (*Cherry picking*). In retrospect, so the housebank concludes, the company should have moved its production earlier.

F5. Knowledge

Description of the company
Knowledge Holding BV is a parent company of eight firms (called: Knowledge Group). The company is active as a business service provider and advises companies in the field of organisation and business strategy and includes, if so required, the building in and managing of ICT-applications. In 2000 the turnover amounts to nearly € 58 million.

Cause of the problems and the course of informal reorganisation
In the middle of May 2001 management contacts a consultancy agency specialised in the field of companies in financial difficulties. The reason is anticipated limited liquidity as a result of poor business which may lead to a crisis situation (this despite a recent injection by the shareholders of risk-bearing capital totalling more than €480/m). The deteriorated business results are shown by the following data.

In € million	*2000*	*1999*	*1998*
Turnover	58	70	70
Net profits	-/- 4.8	3.5	5.5
Cash flow	-/- 3.2	4.7	5.6

In %	*2000*	*1999*	*1998*
Solvency	21%	40%	54%

Table 1: Knowledge

The causes of the problems in return and liquidity can be summarised as follows:

- market conditions have worsened – as a result turnover decreased and continues to do so;
- the operating costs, particularly those in respect of personnel costs, have not yet been sufficiently reduced as a result of non-approval by institutions (for example Centre for Labour Affairs/trade unions) for the redundancy of staff;
- high costs have been incurred during mergers/takeovers;
- the company has grown too quickly without having a clear strategy/focal point as a basis;
- substantial investments were made in the recent past;
- until recently the management information system functioned insufficiently, during which the company could not be properly managed on the basis of financial information. As a result, the liquidity (incoming and outgoing cash flows) was also insufficiently managed;
- a lot of changes in management have taken place. Management seems to be poor;
- in general the reorganisation was initiated too late.

In order to prevent a crisis situation the consultancy agency carries out the following three actions:

- *cash management*. The aim is to prevent a crisis by taking (stabilising) actions with (the increase of) liquidity in mind. This includes outlining the liquidity requirements in the next period and managing the organisation on the basis of (conservative) liquidity forecasts, adjusting the organisation to a period of limited liquidity (for example: introducing cut-backs where possible) as well as taking measures which improve the liquidity situation in the short term (for example: faster collection from debtors and sale of excess assets);
- *improvement of return.* The aim is to outline the causes of the operational losses as well as making suggestions/implementing plans to correct these;
- *developing an emergency scenario.* The aim is, in the event of an emergency, to outline the various possibilities to rationalise the company in a controlled manner, whether or not by means of formal procedures such as moratorium or (restart following) liquidation.

In this respect the following concrete reorganisation measures are considered, among other things:

Accounts receivable
- streamlining the invoicing processes;
- focussing on bad debtors;
- debtor policy aimed towards payment no later than due date.

Focussing on single revenues
- selling of excess assets;
- early collection of granted loans;
- investigating means of subsidy;
- settling claims in favour of the company.

Accounts payable
· prioritised payment

Costs
· reducing costs for temporary personnel;
· more efficient deployment of own personnel.

Investments
· ceasing (planned) investments;
· discontinuing personnel training courses;
· minimising marketing costs which do not directly generate funds;
· allowing only essential general and office expenses.

Long-term contracts
· re-negotiating or cancelling long-term lease and rental contracts not vital for operational management.

Staff
· replacing people holding key positions, if so required;
· forming interdisciplinary teams within the Knowledge Group in order to coordinate, control and manage activities within the reorganisation framework;
· continuing staff redundancies.

Participating interests
· no longer providing funds from holding to subsidiaries unless this generates cash in the short term;
· disposing of subsidiary firms;
· carrying through debt rescheduling (workout agreement with creditors).

Holding
· carrying through financial restructuring;
· moratorium and/or liquidation.

As such, financial restructuring of the holding may be understood to be:

· converting debt into share capital;
· converting short-term debts into long-term debts;
· generating capital from shareholders by issuing shares;
· attracting new participants in the form of a takeover of shares or issuing shares for an investor.

At the end of May 2001 it is concluded that, despite the actions taken, the liquidity shortage will rapidly increase from June/July onwards. The consultancy agency therefore concludes that a takeover in the short term or attracting a large investor (which will improve the cash position) will be required to continue the company. Meanwhile, negotiations must be started with credit providers and other relevant stakeholders (trade creditors, clients) in order to stabilise the situation in that field also. Basic principle

here should be that agreements made must be honoured. At this stage, financial restructuring is preferred to a moratorium and/or liquidation.

On 24 June 2001 it is found that cash management has generated €1.5 million in single liquidity improvements. However, turnover does not appear to structurally increase in the short term. The reduction in personnel costs (by 15%) and the discontinuation of providing funds (from holding to subsidiaries) also prove to insufficiently contribute to a better result. As a result, the liquidity shortage will continue to increase, also when the unsecured credit[19] of € 1.6 million with the housebank is maintained.

Although the change in management will improve the feasibility of the measures to be taken, it is concluded that a more rigorous reduction in costs must be carried through, an improvement in turnover must be continued to be pursued and additional funding must be made available (the more so since a takeover in the short term seems impossible). In addition, negotiations with stakeholders (particularly the tax authorities and the bank) must be started, potential takeover candidates (continue to be) sought and restart scenarios worked out (further).

On 29 June 2001 the unsecured credit amount is contractually reduced by € 800/m. The housebank appears not to be prepared to shift this term which makes the situation more awkward, however, the credit is not cancelled. Subsequently, the new manager decides to announce new redundancies and also requests staff[20] to accept a 20% voluntary cut in salary in order to avert liquidation.

In the beginning of August 2001 a number of potential buyers pull out, but further discussions are still underway. One of the potential buyers pulled out, as they preferred a restart following liquidation. At that moment there is an immediate need for € 1.6 million. The new manager does not want to request additional deposits from existing shareholders as yet.

At the end of August 2001 salary payments are blocked by the bank. Another bank and a number of shareholders appear to be prepared to inject capital. The housebank is prepared to do the same, but demands concrete plans. A takeover candidate appears to be interested, but has in mind a restart scenario following liquidation.

In the middle of September 2001 it appears that in the first six months of 2001 an operational loss of € 2.8 million has been made and a net loss (as a result of single expenses) of €7.8 million. Equity has become negative and all possible investors have pulled out altogether. From that moment on, management prepares various restart

---

19 Unsecured credit can be regarded as that part of the outstanding loans with a company which need not be covered by guarantees.

20 As a result personnel find themselves in a prisoner's dilemma. When they do not agree, liquidation will be filed for and they will receive 70% of their salaries (payment of unemployment benefits by the Industrial Insurance Board). When they do agree, liquidation may be averted and they will receive 80% of their salaries. However, when they do agree but liquidation can subsequently still not be averted, they will only receive 70% of their 80% salaries.

scenarios (assets/liabilities transactions following liquidation and workout agreements with creditors).

At the end of September 2001, a moratorium is requested for Knowledge Holding BV and at the same time a petition for liquidation is filed for the subsidiaries. After the liquidation, some parts are subsequently purchased by investors/competitors.

Analysis
The company ran into difficulties through a combination of poor management and economic circumstances. The initiated reorganisation proved to be insufficient. A significant problem here were the high costs involved with staff redundancies. In addition, potential investors pulled out, leading to a point when liquidation became inevitable.

F6. Machines I

Description of the company
MachineConstruct BV is a subsidiary of Machine Holding BV in addition to four other operating companies. The main activities of the group are developing and producing machines for a specialised industry – these activities mainly take place at MachineConstruct BV. The turnover amounts to approximately €25 million. The company employs nearly 200 people. Since 1995, the company is controlled by a single MDS, before that it was owned by a number of investors.

The machines are produced for a relatively small number of customers in the Netherlands and abroad. The company may be regarded leader of a market in which three other large competitors are active. In addition to the independent manufacturing of machines, third party (sub-) orders are carried out via MachineThirdParty BV (turnover of approximately € 2 million). In addition to that, the group is involved with construction work via the subsidiary Machine Construction Work BV (turnover of approximately € 2.5 million).

Cause of the problems and the course of informal reorganisation
MachineConstruct BV has in the past always recorded positive results in its main activity. At the end of 1997 the company decided to start building new premises involving a total investment of €7.3 million (later this investment will prove to be too substantial). In 1999 the company changes (risk-avoiding) financiers. Two banks are attracted; one finances the working capital (short-term loan capital/overdraft facility; total of €3.8 million), whereas the other finances the immovable property (long-term loan capital; total of € 5 million).

Following the change of banks, the overdraft facility is exceeded by approximately €500/m relatively quickly. The company attributes this to an increasing turnover and, as a result, a rise in debtors. The unofficial internal figures of 1999 therefore show a profit of €800/m. However, an external auditor adjusts these profits to €-/- 900/m. Subsequently, the forecast for 2000 shows a loss of €450/m. The causes of the losses are stated below:

- expensive (development) projects were started in unrelated sector activities;
- attention to the original (profitable) activities has weakened;
- attention is particularly focussed on growth rather than return;
- not enough attention is paid to controlling, financing and computation, as a result administrative organisation and internal reporting are insufficient.

In the third quarter of 2000 the company's liquidity situation has become pressing. A so-called (state-owned) Regional Development Corporation decides to deposit € 500/m as share capital and € 1.5 million in the form of a subordinated loan. The decision to make this capital contribution is based on the (internal) figures up to and including August 2000, showing a loss of approximately €500/m, as well as a forecast for the whole of 2000 of €425/m. This seems to have provided a long-term solution for any liquidity problems. By appointing a co-managing director a sufficient reorganisation is expected to take place also.

In January 2001, despite the discontinuation of a number of projects as well as a staff reorganisation, losses are estimated to be € 500/m (for 2000). However, a loss of €1.5 million is announced on 7 February 2001 followed by the publication of a €3.9 million loss on 12 February 2001. At the end of 2000 equity amounts to €-/- 1.7 million. The (financial) parties involved conclude that, at an earlier stage, the company must already have been aware of 'too many blanks in the balance sheet' as well as the operational losses of 2000 and with that they doubt the integrity of management.

However, management is convinced the losses are nonrecurring in nature and also believes, now that the company has revised its balance sheet and taken the necessary measures, that the problems have been solved. Nevertheless, in order to pay the creditors within the desired term, an additional liquidity need of €2 million is forecast. The afore-mentioned Regional Development Corporation appears to be prepared to make €500/m of this amount available. In order to restore the financial ratios to some extent, one of the banks states that this €2 million must in any case be risk-bearing (equity). They therefore refuse to extend credit any further. In addition, this bank highly doubts the indicated profit forecast of €1.6 million. The reasons for this are:

- in the past many additional costs were incurred due to the incorrect execution of orders. The question is whether this problem has been solved in 2001;
- for some time now there has been a decline in orders, this development is expected to continue;
- it remains to be seen whether savings in respect of purchasing and hours spent can be realised;
- in view of the past, it is hard to rely on the information supplied. The liquidity forecast is in any case already very much called into question.

At the end of February 2001 it is announced that the limited liquidity can probably be solved by means of a subordinated loan from the afore-mentioned Regional Development Corporation (at €500/m), as well as prepayment by a large client with regard to a number of projects. As a result, €1.5 million will become available (sooner); the total value of outstanding projects amounts to €10 million. The large client, Machine Use BV, has an interest in the continued existence of MachineConstruct BV, because

their products are used as parts in projects to be delivered by them. Liquidation would cause heavy damage to its operational management. The Regional Development Corporation also has an interest in Machine Use BV, creating a double motive. However, condition for the €2 million injection is that the bank (who provides the overdraft facility) maintains the limit and that it abandons the liquidity forecast of October 2000 (the basis on which the limit was set). The current overdraft balance amounts to approximately €3.8 million (original disposition of €3.5 million) and the bank therefore must be prepared to increase credit to a limit of €4.3 million. In principle the bank is prepared to cooperate, provided that the contribution is also truly effectuated (they estimate their losses to be approximately €2.5 to €3 million in the event of liquidation). Also, the parties conclude that many things are changing for the better (for example: only profitable rates are applied and no losses are sustained as a result of understaffing) and that the forecasts are more realistic than before. In addition, one of the competitors appears to be on the brink of liquidation which may have a positive effect on future turnover.

On 11 March 2001 the bank is asked to make another €500/m available. Prepayments of Machine Use BV would in that case amount to €1 million. In principle the bank refuses, as the risk-bearing capital would be insufficiently increased because of this, however, a final answer will follow a week later. The parties do agree that an interim manager must be appointed who must produce a financial forecast for 2001 as soon as possible.

On 12 March 2001 Machine Use BV pulls out of the negotiations. The main reason is that management foresees problems with its own shareholders and with the bank in respect of payment in advance. However, it is indicated there is interest in taking over any assets following liquidation.

At that moment the bank takes into account a loss of €2.1 million in respect of its claims, despite pledges on accounts receivable, inventory and machines.

On 15 March 2001 there is a meeting between the bank and the company. Subject matter is rescheduling the debts by means of a workout agreement. The bank calculates that the value of the securities, working on the basis of a going concern situation, is considerably higher than the debts. Having to settle for a lower amount is therefore not open to discussion. The bank withdraws the credit granted, but temporarily provides the company room to manoeuvre by means of the overdraft facility, pending the attempts to come to a rescheduling of the debts.

On 15 May 2001 it is clear that all prospects have gone. Moratorium/liquidation seems to be inevitable. The bank then also permanently withdraws the credit and indicates that any outstanding amounts have become due and payable. In addition, the company is summoned to cooperate with a so-called lease construction.[21]

---

21 In a lease construction undisclosed pledged goods (mostly company equipment and stock) is brought under the possessory pledge. This is established by leasing the ground on which the goods are located to the pledgee. This way, the pledgee can prevent missing out on

Around 20 May 2001 the liquidation of all firms part of the group is ordered. On 31 May 2001 the assets (exclusive of property) are sold to Machine Use BV, after a previously interested party pulled out at the last moment (the latter party, probably prompted by the necessity of a fast restart in connection with the going concern value, would have been able to partly finance the purchase with credit of the bank in this case). The purchaser pays approximately €3.7 million for this, which nearly fully settles any claims of the bank that provided the overdraft facility. The remainder is guaranteed by the purchaser by means of a bank guarantee.

Analysis

The company filed a petition for liquidation without being properly prepared; management did not really attempt to renegotiate the debts. In actual fact, the initial interested party has *taken over* the company via liquidation. They could start with 'a clean slate' as all claims by ordinary creditors and tax authorities had been 'shaken off'. The bank enjoyed a 100% security cover; the question therefore is whether they could be expected to agree to reschedule the debt. The problem was that at a certain moment there was insufficient liquidity and the question arose as to who would come up with the risk-bearing capital. The development corporation and the bank were left with little confidence because of the incorrect supply of information and had become very conservative in their forecasts. In addition, the development corporation could no longer make any capital contributions with a view to a statutory maximum. Ultimately, the transfer of assets following liquidation seems to have been the best solution, as maybe there would be many more unpleasant surprises. Because of the quick restart, 160 members of staff could keep their jobs in a 'clean' company. The ordinary creditors would probably not have received anything anyway, and neither will they in this situation. Ultimately, the bank came out best despite previous fears for substantial financial losses not long before that. In the end, they were able to partly 'direct' the process themselves by means of a lease construction.

F7. Machines II

Description of the company

Machines II Holding BV manufactures machines. The company has entirely outsourced its production so that it can fully concentrate on research and development, assembly and marketing. The company has sales offices in Europe, the United States and Asia. They are active in a fast-paced market and in general machines are replaced before they are technically worn out. A total of five banks have made available unsecured credit to the (remaining) amount of more than € 108 million.

Cause of the problems and the course of informal reorganisation

In the spring of 1999 the company is put under intensive care with a number of banks. This is due to acute liquidity difficulties as well as the fact that a number of conditions in the credit agreements are no longer met. Subsequently, the following steps are taken:

---

the (proceeds of the) goods via the right to claim compound bounded assets by the tax authorities.

- an investigation is started into the company's result development, its financial position, the stock, the accounts receivable position and the anticipated short-term credit requirement;
- management is instructed to disclose all relevant information and consultation takes place in respect of possible solutions;
- in order to solve the liquidity problem the banks provide an additional €15 million. The inventory, the stock, the intellectual properties as well as the receivables serve as security.

Management is not successful in solving the problems. Contrary to expectations, the market deteriorates and this only adds to the problems. An attempt to sell a subsidiary in Spain is unsuccessful as the amount offered is too low.

It is concluded that a large capital injection is needed in order to keep the company from going bankrupt. Introducing loan capital does not seem to be an option as that will put the equity situation in an even worse position. The additional finance requirement is urgent to the extent that a negative equity of dozens of millions of Euros arises. In addition, trade creditor debts (short-term loan capital) have risen to € 41 million. It is therefore endeavoured to sell the entire company. This attempt is unsuccessful as the conditions under which this should be done, as set out by a group of interested investors, are not acceptable in the opinion of management and the bank.

At the beginning of September 1999, the banks decide not to provide additional funds any longer, since the previous amount of € 15 million, which was made available temporarily, cannot be paid back in time. As a result, the company decides to request a moratorium. The banks and administrators agree to cease production and that only the service department will continue to be active, pending the search for takeover candidates (expectations are that the continuation of maintenance to machinery will be required to keep the company as a going concern). An emergency loan of € 1.5 million is made available by the banks, also because the estimated going concern value of the current assets (exclusive of accounts receivable) is considerably higher than the forced-sale value (by approximately € 11 million).

The administrators negotiate with various parties on a takeover as well as a restart scenario. In the end, one party remains who is interested in a restart following liquidation. This is an investment company owned by a previous co-owner of the company. Together with this party a restart will be effected after Machines II Holding BV has been put into liquidation. The main conditions of the takeover agreement are stated below:

- the takeover party will collect the outstanding debt on behalf of the bank and will receive 20% of the net proceeds. However, condition is that all service and maintenance obligations are met. On the date of liquidation the accounts receivable amount to € 86 million;
- the takeover party will buy equipment and spare parts for € 2.3 million. The tax authorities (right of seizure) will receive € 1.4 million of this; the remainder goes to the banks;

- the takeover party will, on behalf of the banks, try and sell the end products in stock and the work in progress. When being sold, 70 to 90% of the internal cost price will be paid. The purchaser will have until 1 July 2001 to sell the goods, after that time the unsold part will be sold at forced-sale value (this construction enables the purchaser to take advantage of higher margins on the goods to be sold).

At that moment the banks expect a successful restart to lead to high proceeds with regard to accounts receivable and stocks. Estimates in this respect vary from € 36 – 63 million compared to maximum proceeds of €21 million in the event of liquidation without a restart.

The company is restarted under the name of Machines II Holding New BV with a third of the staff. The restart appears to be difficult. A number of important reasons are stated below:

- the trustee of the Spanish subsidiary of Machines II Holding BV claims the intellectual property of Machines II Holding BV, as well as a considerable part of the stocks (however, in April 2000 the parties reach an agreement, settling the dispute).
- collection of the accounts receivable of Machines II Holding BV proves to be difficult (in November 2000 only € 18 million has been collected). In addition, it appears that more than €27 million of claims relate to non-produced and therefore unsold goods. The value of this is zero. A valuation agency estimates the remaining amount which can be collected at € 8 million, this could bring the total to € 26 million in relation to the (granted) nominal value of € 87 million;
- in addition, nearly each claim is surrounded by a (legal) dispute with regard to the goods delivered, as well as the corresponding service and maintenance issues.

In view of the above, an investigation has been started by the trustees into the dealings of management and the external accountant of Machines II Holding BV.

In July 2000, Machines II Holding New BV runs into difficulties. As a result of heavy losses – the market conditions are poor and the integration of Machines II Holding New BV into the purchasing company also proves to be difficult and costly – it is unable to meet a number of the agreements made at the restart (particularly the agreement that all revenues from sales on behalf of the bank are to be transferred to the bank straight away). A debt of € 2.7 million has arisen as a result of this. The banks and management agree that €1.4 million is settled in accordance with a fixed repayment schedule and that the remainder will be paid back in the course of 2002. All this is under the condition that no new debts will arise in that respect. Also, the sales period for the stock has been extended to 1 July 2002, so that the company can continue to take advantage of higher margins on the stock to be sold. Furthermore, the banks make an extra €4 million available in addition to the €3.8 million which was made available at the restart. An important reason here is trust in management and shareholders. Not only because of their alleged competence, but also because of their considerable contribution to the risk-bearing capital of Machines II Holding New BV.

In June 2001 one of the banks decides to attribute a loss of € 51 million to its claim of nearly € 57 million with the insolvent company Machines II Holding BV.

Analysis
Machines II was a company with 'skeletons in the cupboard' which partly contributed to its liquidation. The banks involved had large unsecured claims (based on a misrepresentation of affairs). When liquidation proved to be inevitable, the restart was financed by the same banks. After all, they recognised that the going concern value was represented in particular through the accounts receivable and stock and they thus had an interest in the continuation of activities. Ultimately, the takeover party too ran into difficulties, but because of the trust the banks had in the company (management) workout agreements were sought and found.

F8. Marketing

Description of the company
Marketing Holding BV is a company which, via a number of subsidiaries, takes care of the project management of (large international) marketing campaigns. In the early nineties the company was separated from an international ICT-company by means of an MBO. In the years thereafter the profits were invested into the build-up of an international network of offices as well as an expansion in services. In 1998 the turnover amounts to more than €23 million, approximately 50% of this can still be attributed to the afore-mentioned ICT-company.

Cause of the problems and the course of informal reorganisation
At the end of 1998, a specialised consultancy agency is called in to assist the company during a restructuring process. The liquidity has come under pressure because of investments into subsidiaries abroad. In order to remove this pressure, a number of measures have already been taken:

- extension of the accounts payable terms;
- savings on less necessary expenditures;
- terminating the activities of one of the subsidiaries as soon as possible.

Although the limited liquidity has improved, the situation worsens again when part of the sales is lost to the large ICT-company some time later. Therefore turnover has decreased by 40% and as a result staff numbers must be reduced, among other things, in order to adjust the costs to the new lower turnover. Since the company's financing from the bank (€3.6 million) is linked to the accounts receivable balance, a liquidity shortage threatens. This is only enhanced by the additional need for financing (between €675/m and €900/m) of a potentially profitable, but currently loss-making subsidiary which is involved in internet-related activities (capital interest amounts to 51%).

The consultancy agency supports the company in two fields:

- liquidity management, focal point here is to deal with incoming and outgoing cash flows as effectively as possible, as well as generating additional liquidity until the cash flow has become positive again;
- reorganisation of the business with the objective to adapt the company to the reduced turnover as soon as possible. Focal point here is to ensure that the cash flow becomes positive as soon as possible.

In the first quarter of 1999 the following plan is carried out:

1. a quick scan is conducted in order to gain an insight in the scope and nature of the problems;
2. the financial situation is stabilised by liquidity management, improving the management information system and working capital plus reducing the costs, as well as seeking additional financing from banks and other financial parties;
3. the company is assisted during the reorganisation, the focal point of which is to restructure the company as soon as possible. Cash flow forecasts and the impact of the reorganisation on the cash flow are important control tools here.

The company is successful in stabilising the situation. By means of liquidity management, it is able to carry through a reduction of 30% in costs and to finance the reorganisation. In addition, a repayment scheme is set up with the main non-bank creditors of the company (these 10% of the creditors represent approximately 80% of the total amount in outstanding debts). However, at the end of February 1999 the bank claims a large part of the amount owed, since the company does not meet the conditions of the credit agreement (any longer). A compromise is reached in respect of the amount. The financial room is created by approaching the afore-mentioned creditors with regard to a modified repayment schedule. Still, new lenders/investors are not found.

In July 1999 a customer representing 20 to 30% of the turnover is lost. As a result, the company runs into difficulties again. Therefore, an attempt is made to still reach an agreement with the largest creditors, as well as to find a new investor who brings in risk-bearing capital. Furthermore, an attempt is made to buy out a rental agreement (the building has become too large for the restructured organisation) however, this is unsuccessful although the lessor is prepared to grant voluntary deferment of payment until January 2000.

Since the attempts are (partly) unsuccessful, a restart following liquidation is prepared and implemented in the beginning of 2000. The company has become too weak as a result of the reduced turnover and the extent of the debts. The advisor states that the company would have had a chance to survive when a takeover candidate was found during the very first reorganisation.

Analysis

The company ran into difficulties as it was too dependent on a single few customers as well as a loss-making foreign subsidiary. When one of the customers was lost, an initially successful reorganisation was carried through, the focal point of which was to restructure the company as well as reversing any loss-making activities. When another large client was lost some time later, a crisis situation arose (again). The attempts to correct the balance sheet by means of a workout agreement as well as attracting additional risk-bearing capital proved unsuccessful and as a result liquidation had become inevitable.

F9. Packaging machine

Description of the company
Pack BV is the parent company of Pack Management BV (100% participating interest) which, via Pack Holding BV (100% participating interest), has an interest in four operating companies (hereafter called: Packaging machine BV c.s.). Pack BV is owned by a Managing Director and major Shareholder (MDS; 70%) and a (state-owned) Regional Development Corporation (30%). The company develops and sells packaging machines for a number of specific industries. About 90% of the turnover is realised abroad. The company in its current form came about through an MBO in July 2001. This MBO was largely financed via an unsecured bank loan to the top holding Pack BV. The company employs 130 people.

Cause of the problems and the course of informal reorganisation
On 16 March 2002, the company's dossier is passed to the Intensive Care Department of the bank that financed the MBO. In addition to this loan (balance at the end of March 2002: € 1.8 million) the bank also provided an overdraft facility (balance at the end of March 2002: € 614/m). Reason for the transfer is the amount of € 945/m of additional liquidities which the company had applied for at the bank in the preceding days, in order to finance the current (acute) obligations. These are as follows.

Current obligations	x €1,000
Salaries	180
Social security insurance (IIB) contributions	225
Taxes	225
Accounts payable	675
Interest and repayments MBO loan/overdraft facility	234
Various	36
Total	*1,575*
Expected receipts (partly realised)	-/- 630
Credit requirement	*945*

Table 1: Packaging machine

The limited liquidity is explained by the company as follows:

- a tax claim of € 1 million with an outstanding balance of € 225/m;
- a relatively large stock amount of incorrect parts has been purchased as a result of an error whilst ordering. The goods cannot be returned and have to be paid;
- a loss of € 70/m was made in 2001. In addition, € 785/m in development costs have been capitalized as a result of which the actual loss can be set to € 855/m;
- moreover, turnover drastically decreased from €22 million to €15 million in 2001.

Since to company cannot give a clear explanation for the sharp reduction in turnover the bank is reluctant. The announcement that the turnover will improve again in 2002

and that the limited liquidity is short-term, does not change anything. The company can only think of extending the bank credit as a solution, since the creditors, the tax authorities and the pension fund no longer offer any room for manoeuvre. The shareholders too, it is stated, cannot do anything else. The Regional Development Corporation has already invested the statutory maximum and the MDS cannot see any private possibilities of injecting 'new money' into the company.

The bank does not intend to take up the requested extension in credit. This is enhanced by the fact that in their view the (foreign) debtors, the stock of specific parts, as well as the work in progress do not offer a 'solid' cover for the securities provided in respect of the overdraft facility. Payment transactions are therefore halted in anticipation of a short-term solution by the shareholders. This comes at a relatively favourable moment for the bank as the then current balance of the overdraft facility amounts to €614/m, whereas on the basis of the agreement a maximum of €1 million would be possible (based on the value of the securities). The total overdraft facility on the grounds of the agreement for that matter amounts to €2 million.

However, the bank estimates that in the event of liquidation of the company a loss of more than €2 million must be taken into account. The securities have been listed below including the calculated potential loss.

x € 1,000	*Balance of loan*	*Value of securities*	*Forced-sale value securities*	*Shortage (risk)*
Pack BV	1,715	0	0	1,715
Packaging machine BV c.s.	614	1,035	168*	446
Total				2,161

Table 2: Packaging machine

* In view of the specific character of the underlying assets a considerably lower liquidation value is anticipated

Following the company's announcement not to have found a solution for the current situation (plus the announcement that no prospects are present in the form of, for example, new risk-bearing capital), credit is withdrawn on 24 March 2002. The company replies by commencing interlocutory proceedings in order to regain access to the granted facilities. In the beginning of April 2002, the sub-district court judges that the bank must re-open the overdraft facility of €1 million until 4 May 2002. The bank is not pleased, as the decision has been taken very quickly without an extensive examination into the financial position of the company having been conducted. In addition, the company has produced a liquidity forecast which, in any case, is doubted by the bank.

In April 2002 the company decides to apply for a moratorium. The administrators conclude that the company can only survive when the accumulated debts of €3.3 million are reduced by means of a moratorium-composition in which payment percentages amount to 30 to 50% in full settlement – a financier needs to be found in this respect.

In order to reverse the moratorium the administrators are examining three options during the month of April:

- refinancing by another bank (there appear to be two interested parties at the time);
- selling the company (there appear to be two candidates at the time);
- a transfer of assets from liquidation of the entire group of firms.

In order to keep the company a going concern, the bank is requested to voluntarily keep credit lines open until 5 June 2002. The bank agrees to this. The reasons have been outlined below:

- the administrators are busy trying to collect claims and are undertaking other cash-increasing activities;
- from the liquidity forecast, drawn up under the supervision of the administrators, it appears that the overdraft loan from early June 2002 can be fully settled to zero. Despite scepticism, forecasts have often proved to be incorrect in the past, it is thought to be feasible;
- overdue interest on the unsecured loan has meanwhile been received;
- a busy search is underway for parties who are prepared to make either risk-bearing or risk-avoiding capital available;
- the administrators enjoy confidence.

Although the activities can lead to a solution, the parties realise that in particular a refinancing or a takeover is required to prevent liquidation.

At the end of May 2002, all attempts appear to have been unsuccessful and a petition for liquidation for the operating companies is filed. Reasons are the high-cost redundancy scheme for in particular management, as well as the fact that only part of the operations appears to be viable, which would involve an expensive reorganisation. As a result, the interested parties have pulled out.

Ultimately, part of the company has been restarted by means of a transfer of assets (restart) following liquidation. With a view to the confidence the bank has in the trustees a short-term preferential loan to the estate was made available.

In July 2002, the trustees repaid the entire overdraft balance – including the short-term preferential loan to the estate – from the proceeds of the sold assets.

The bank was left with a loss of €1.7 million from the unsecured loan granted to the top holding, which in the meantime has gone bankrupt as well. Currently the trustees are investigating the conduct of the MDS during the stages preceding the liquidation.

Analysis
Due to reasons unknown the company had hit bad weather. The fact that company management only requested additional financing at an advanced stage, in combination with unclear reasons for the reduction in turnover, resulted in the bank not being prepared to grant this financing. A breach of trust was caused, the more so since it was made clear during the credit application that the shareholders were by no means

prepared to provide additional financing. In addition, company management had clearly ignored signals of a decreasing turnover and started reorganising too late. By halting payment transactions and withdrawing credit the company was forced to seek either risk-bearing capital or new providers of loan capital. Although forced the first time, the bank continued financing twice. The second time (voluntarily) this was done mainly due to the confidence the administrators enjoyed. In the end it proved to be impossible to either find takeover candidates or (risk-avoiding) funding. The main reason for this is that the interested parties at some point preferred to purchase assets following liquidation to purchasing a group of companies which still needed a (high-cost) reorganisation.

F10. Reconstruction

Description of the company
Reconstruction is a one-man business (proprietorship). The company purchases in bulk and subsequently processes goods which are used during the (re-)construction of houses. The company buys nearly all goods from a Danish supplier. The company employs fifteen people. In addition to the one-man business, a company called Reconstruction Trade BV is run, which buys and sells large batches of the afore-mentioned goods. This company is formally owned by the entrepreneur's wife.

Cause of the problems and the course of informal reorganisation
In the middle of 1999 the company runs into difficulties as a result of insufficient margins and excessive costs. An acute cash problem has arisen and debts with the Danish supplier have run up high. In order to avert liquidation the entrepreneur (under pressure from his housebank) reaches an agreement with the Danish supplier to partly convert his claim into a 50% share interest in a private limited company (BV) still to be established and to which the one-man business will be transferred. In addition, it is agreed that part of the debt is repaid by applying slightly higher purchase prices to future orders.

An advisor who is called in later does not fully agree with certain aspects of the agreement (particularly so because the goodwill in the company has not been taken into account) and some time later a final agreement is signed, entailing:

- the Dutch entrepreneur establishes a holding (Reconstruction Holding BV) as well as an operating company (Reconstruction BV). The one-man business is transferred into the holding and the relevant assets and liabilities are transferred into the operating company ('subside') against 50% of the shares in the operating company. The Danes, on the basis of the converted claim (to the amount of €800/m), receive the other 50% as well as one additional share (a so-called *Golden share*[22]). The machines and the intangible assets (a patent) are let by Reconstruction Holding BV to the operating company, the business premises are privately let by the Dutch entrepreneur to the operating company; the remainder of the claim will be repaid

22 In this instance, a golden share means the share which gives the Danish party the actual control of Reconstruction BV.

by the company on the basis of a purchase bonus (also known as a *Snack*). The more the company purchases from the Danish supplier, the quicker the remainder of the debt will be repaid. The remainder can also be repaid in an alternative manner;

· after three years, either party will receive the possibility to take over each other's share interest. When the remainder of the debt has been fully repaid, the Dutch entrepreneur will receive the right of first refusal to take over the shares from the Danes, however, when part of the debt is still in place this right will be granted to the Danes.

In the middle of 2001 the advisor is called in again. There seems to be a conflict of interest between the Dutch and Danish shareholders. The problems have been outlined below:

· the company, despite a forecast of €100/m profit for 1999 and a turnover of €2.25 million, is making a loss (at the end of 1999, losses amount to approximately € 50/m);
· the amount of goods which needs to be purchased by the company in order to repay the remainder of the debt appears to be too high (from the Dutch entrepreneur's point of view);
· the purchase price of goods for Reconstruction BV has been considerably increased by the Danes. However, the alternative of purchasing cheaper elsewhere means that the repayment obligation can no longer be met. As a result, the Dutch shareholder loses his chance of fully taking over the company;
· the Danes appear not to be interested in the health of the company and seem to regard the company as a lucrative money spinner. Indicative is the fact that other Dutch companies are supplied at considerably lower prices. Because of the excessive purchase costs, nearly €750/m is paid too much on an annual basis. The Danes do not allow purchasing somewhere else;
· because of the high purchase prices, the operating company is in fact largely financed by a new rising debt with the Danish supplier;
· there is a dispute as to who is to manage Reconstruction BV. The Danes have appointed a manager in addition to the Dutch entrepreneur (who via a management agreement manages the operating company from his holding).

Technically the company appears to be bankrupt (in April 2001 the working capital consisting of the current assets -/- short-term debts amounts to € -/- 1.4 million). In addition, a Dutch financier (factoring company) threatens to discontinue its service, as a result of which an acute financing problem would arise (nevertheless, they are prepared to wait some time). The above problems must be solved in order to prevent liquidation.

The Dutch shareholder therefore tries to obtain full ownership of Reconstruction BV. The first step to this end is paying the remainder of the debt – as described in the final agreement – from his own holding. This way the first right of refusal of the shares of Reconstruction BV, lies with him. Subsequently, he proposes the following on 10 September 2001:

- Reconstruction Holding BV buys all the Danish shares of Reconstruction BV for €1 (after all, the company is technically bankrupt);
- In order to breathe new life into Reconstruction BV an agreement will need to be reached with regard to gradually repaying the debt. Attempts to refinance the entire debt were unsuccessful.

In addition to the proposal, the factoring company emphasises that its decision will depend on the outcome of the proposal. Should no agreement be reached then liquidation is all that is left.

On 25 September 2001 there is a meeting between the shareholders/management. No agreement is reached and the Dutch shareholder is suspended by the Danes (this is possible on the basis of the *Golden share*).

Since the business premises, the machines as well as the intellectual property are owned by the Dutch shareholder, an intolerable situation has arisen and in the beginning of October 2001 a petition for liquidation has to be filed in respect of Reconstruction BV.

In June 2001, the Dutch entrepreneur had already found a supplier able to supply the goods at very competitive prices enabling a profitable operation. Via Reconstruction Trade BV – a profitable company with a healthy balance sheet – and the help of this supplier the company is restarted. The realistic forecast of 2002 subsequently shows a net result of 4.4% and a turnover of over €2.8 million.

Analysis
The company ran into difficulties through a combination of insufficient margins and high costs. Following a successful informal reorganisation in the first instance, in which the main supplier (partly) converted its claim into shares, the company ran into difficulties again. The fact is, the shareholder/supplier charged excessive purchase prices as a result of which Reconstruction BV was unable to make any profit. When the Dutch shareholder indicated the wish to purchase cheaper (in order to restore profitability) a conflict of interest arose which ultimately led to liquidation.

F11. Services

Description of the company
Services Management BV is a holding company of six subsidiaries. The activities of the company focus on providing support services to companies. Approximately 80% of the turnover is generated by multi-year contracts. The turnover is distributed across a large group of customers the largest of which represents approximately 5% of the total turnover. The company employs approximately 370 people on a full-time basis.

In 1995, Services Management BV was taken over from the original owner by the current management by means of an MBO. The company that takes over, at present called New Services Holding BV, is owned by the management of Services Management BV (4%), an administration office corporation (8%), the original owner (29.7%) and an investment company (associated with a bank; 58.3%). In 1995, the shares of Services

Management BV were sold for more than €15 million, whilst it was anticipated that the profits in that year would amount to €2.75 million.

Cause of the problems and the course of informal reorganisation
At the end of 1995, it appears that the company is facing organisational problems and that the business economic situation is showing a negative deviation compared to the basic principles which formed the basis for the takeover (in the end, the profit in 1995 amounts to only €89/m instead of €2.75 million). The expenses (interest and repayments) arising from the financing structure of the – as it then turns out – too expensive takeover, prove to be too substantial for the original holding company Services Holding BV. At the end of 1997 therefore, it is decided to carry through financial restructuring. This restructuring entails the following:

- Services Holding BV transfers the shares in Services Management BV to a still to be established New Services Holding BV, after which Services Holding BV will be sent into 'silent liquidation'.
- The takeover price is €6 million. Prior to the liquidation, these proceeds will be used to repay loans (totalling €3.85 million) granted by the investment company, as well as purchasing preference (holding) shares from this investment company (totalling €2 million), the remainder (€150/m) concerns the repayment of a subordinated loan from the investment company and the original owner.
- The takeover will result in a new control ratio (as indicated above). The original owner writes off more than €3 million of his original investment in the holding to be sent into liquidation.
- The housebank of Services Management BV extends the overdraft facility by €1.25 million and converts €2.75 million of the total loan amount into a subordinated convertible loan. In addition, the loan repayments (total loan amount is approximately €20 million) are postponed until 1 January 1999.

Until then, the result trend is as follows: 1996 still saw a (modest) profit of €392/m with a turnover of €25.5 million; however, in 1997 losses of €1.3 million are sustained with a turnover of €28 million.

Since the announced measures to improve the margins and reduce costs are to no avail, the shareholders and the housebank start to doubt the abilities of the management to carry through the necessary reorganisation. Therefore, in the course of 1998, an expert is called in to scan the company and to initiate the required reorganisation. The expert draws the following conclusions:

- the deviations in relation to the MBO-plan are caused by increased wage costs (over 11%), particularly as a result of a rise in the sickness absence rate;
- the margins are under pressure as a result of tougher competition;
- there is insufficient insight into the relation between the costs and proceeds of various activities;
- problems have arisen in a new branch whilst the investment in that respect has not yet been completed;
- there is a lack of effective centralised control of the industrial operations;
- the results for the next few years will remain behind, because the high level of cost can be insufficiently passed on to the prices.

The reorganisation therefore particularly aims to reduce the cost level of the company, streamline the industrial processes, decrease the sickness absence as well as gain a better insight into the structure with regard to costs and proceeds. However, losses are again made in 1998. In the end, this loss is converted into a profit of €36/m, because of an incidental profit of € 1.1 million in connection with the sales of a business unit. The proceeds of € 2.15 million are used to lower the overdraft facility.

At the end of 1998 an attempt is made to sell the company to a financially strong company within the same sector, because the company is unable to get the costs and margins under control. A number of parties are interested, but ultimately one candidate remains to take over the shares in Services Management BV. The negotiations take place in the course of 1999, meanwhile – pending the takeover – the repayments of Service Management BV are again postponed more than once. In addition, the housebank makes a provision of € 7.5 million due to a funding shortfall with regard to established securities (property mortgage and right of pledge to inventory, stock and receivables). Also, pledging of contracts is demanded in order to sell these in the event of liquidation.

Nevertheless, in the autumn of 1999 it becomes clear that an agreement cannot be reached with the intended takeover party of the company. Negotiations with this party are unsuccessful, on the one hand due to the reluctant attitude of two majority shareholders to transfer the shares for € 1 (they demanded payment of € 1 million) and on the other hand because no agreement is reached with regard to concessions of the bank demanded by the intended buyer. The negotiations process is further complicated, as the costs of a necessary social plan (partly due to the high rate of sickness absence) would be too high. Nonetheless, the intended takeover party remains interested in taking over the assets following liquidation. The bank foresees that when no risk-bearing capital is introduced in the short term, whether or not through a takeover, the company will be heading for liquidation. On the one hand because the margins are still too much under pressure and no improvement is to be expected under the current circumstances, and on the other hand because two large loans will expire in the medium term for which no solution to repay these has been found as yet, especially now that the intended purchaser has pulled out. Current expectations are that the losses for the bank will rise to € 12.5 million.

On 4 October 1999 the bank announces, in writing, that in accordance with the previously made agreements on 19 October 1999 an amount of €2 million of risk-bearing capital must have been injected under penalty of withdrawal of the credit. Thereupon the company considers applying for a moratorium after which the bank withdraws the credit. A moratorium is granted early November 1999 and it is nevertheless agreed with the administrator that – under the condition that the securities do not deteriorate – the credit arrangement remains unchanged for a period of three weeks. The aim is to complete the transfer of assets (following liquidation) on 23 November 1999.

In the end, all assets and activities of Services Management BV are sold on 21 November 1999. After the intended takeover party had made an initial offer of € 11 million, it was increased to € 13 million under pressure of a competitor. Because of the going concern sale, during which the activities (which cannot stop in this sector) continued, the bank's ultimate losses amounted to € 6 million.

Analysis
Through a combination of an over-expensive MBO, fierce competition, poor management and ineffective reorganisation measures the company ran into difficulties. In fact, an (attempted) informal reorganisation took place twice. The first time mainly concerned a financial restructuring in order to reduce the high expenses caused by the over-expensive MBO combined with an attempt to restructure industrial operations. The second time was particularly aimed at accommodating the company with a financially strong party in order to reach synergy in this manner. In the end, a combination of excessive redundancy costs and a reluctant attitude of a number of shareholders in respect of the amount of the takeover price, led to liquidation. At a certain point the intended (and ultimately the factual) takeover party seemed to be aiming for a restart following liquidation rather than a takeover within the framework of an informal reorganisation. Although in accordance with the definition of the investigation the informal reorganisation was unsuccessful (failed), socially and economically the reorganisation may be regarded successful, because of the fast going concern transfer of the assets and the willingness of the bank to continue financing.

F12. Steel

Description of the company
Steel Holding BV is active in the metal trade and industry. The company specialises in constructing steel constructions. In the early nineties, the turnover of the company amounted to an average of approximately € 30 million. In the years thereafter, the company grows explosively and the turnover increases to €99 million in 1996. At the end of the nineties the company employs some 350 people. Steel Holding BV has 4 shareholders: 3 investment companies and a Managing Director and major Shareholder (MDS) with a majority interest. Steel Holding BV has a 96% interest in Steel Work BV, the subsidiary to which most of the business has been transferred (4% is controlled by an important supplier of the operating company). At the end of the nineties the company shifts its core business of only producing steel constructions for projects to the turnkey delivery of entire projects. In addition, the subsidiary Steel Japan BV specialises in unrelated sector activities, particularly in Japan.

Cause of the problems and the course of informal reorganisation
In 1996 the results are developing well. Whilst turnover increases considerably, the annual results amount to an average of €2.5 million. In 1997 however, things go wrong, the turnover is considered paramount and the margins are subordinated to it. As a result, losses are sustained in that year.

In the spring of 1998 the company requests its housebank to extend the current credit of €18 million with an additional €28 million. The housebank rejects this application and internally the company is put under intensive care. The reasons for this vary. The adjustment of the strategy seems to be ineffective and particularly the (loss-making) activities in Japan put the working capital under pressure, furthermore, the current order book in respect of the original activities is meagre. Because of the losses incurred

the minimum solvency ratio (40%)[23] is no longer feasible, the bank therefore deems it injudicious to extend financing, worse still, the credit facility is more likely to be withdrawn.
However, because of the lack of an adequate exit-scenario[24] and the large potential loss within that route, termination is not effected straight away, but the process to come to an adequate insight into the problems is started in line with that of a turnaround process.

Partly on the bank's initiative, it is subsequently decided to recapitalise, i.e. parties are sought who are prepared to introduce risk-bearing capital (equity). Two parties issue a letter of intent, but in the end the attempt is unsuccessful as no agreement can be reached with the MDS of Steel Holding BV in respect of the shareholder's interest (the MDS wants to remain majority shareholder).

A consultancy agency, specialised in the reorganisation of companies in financial difficulties, is called in to start working on improving the inadequate cash flows and to increase the extensively eroded equity. At the end of 1998 the consultancy agency concludes that the company can be regarded viable, provided that a number of radical measures are taken. As a positive step an internal reorganisation is already underway, including a restructuring of the activities in Japan. Main conclusion: aim towards the current core and an altogether better performance. Causes found with regard to past problems: the entire organisation and financial affairs were of secondary importance compared to meeting strategy and business objectives, as well as a negative enhancement of this through the inconsistency and opportunism of the MDS.

In January 1999 a comprehensive plan is ready. The essence implies discontinuing the unrelated sector activities in Japan as well as separating sales and production in which producing steel constructions will again be the core business with all other activities centralised around this. Reducing staff numbers by 50 – 70 people, entering into strategic partnerships with suppliers, introducing production efficiency programs, as well as improving the management information system (MIS) are all part of this restructuring of business. The financial reorganisation in this respect is based on improving capital by attracting new investors as well as converting a loan from one of the shareholders into share capital.

Partly under pressure of the supervisory board the MDS subsequently withdraws, he will be involved with sales whilst two co-directors are taking over the management of the company. The new management is working on a number of restart scenarios out of sight from the banks and shareholders. The bank understands this, but the former managing director does not. The managing directors are dismissed; the former owner is appointed managing director and a number of managers from the second echelon are included. The consultancy agency is shown the door.

---

23 Solvency provides an indication as to what extent the company will be able to meet its long-term (financial) obligations. A common method to measure this is to relate equity to the total assets. A percentage of 40% is generally regarded as sufficient.

24 An exit-scenario may be considered a scenario in which a certain party (in this instance a bank) tries to terminate a relation as favourably as possible.

The search for new capital continues and the bank tightens the screws. The bank's position entails a high risk as Steel Holding BV is active in a specific sector with only a handful of clients worldwide. In addition, it is hard for the bank to obtain reliable (financial) information from the company.

The new management starts working with the new rescue plan straight away, which is focused at coming to a rescheduling of the accounts payable and capital enhancement. The housebank is actively involved in the process with regard to filling out the details in the field of banking facilities. However, the company is informed that maintaining the current facilities will be the best possible option (the bank does not offer an extension of any kind).

In the middle of March/April 1999 it becomes clear that securing new investors is going to be unsuccessful. At the end of April 1999 the bank therefore informs the company that it must have resolved the problems before 1 June 1999. The bank stipulates new securities in this respect (mortgage and pledging of intangible assets) in order to reduce its risk. It seems that the bank foresees no other solution, as attracting new investors (read: cash) appears to be unsuccessful each time due to shareholders' interests.

In the beginning of May 1999 investors appear on the scene prepared to inject €8.8 million into the share capital, under the condition of full control and management. However, the condition is that the annual figures of 1998/1999 are in line with the forecasts, as well as that the necessary concessions are made by the afore-mentioned shareholder/creditor with regard to rescheduling its debt. The figures are so disappointing however – losses amount to € 11 million (including reorganisation costs) – that participation is only possible when the unsecured creditors come to a joint rescheduling (workout agreement). The rescheduling entails 30 to 40% of the outstanding debt which should lead to a net impulse (balance sheet enhancement) of €5.5 million. Additional condition is that the bank maintains its credit and liability facilities.

The current forecasts look reasonably favourable. To an extent, the reforms have already led to the organisation being lean and mean, staff numbers for example were reduced by 80 to 220 within one year. Turnover is rising whilst costs are going down and the company now only sells when the margins are good. The order book looks healthy and there are clear indications that the company is on the right track. Expectations are that only the next quarter will still show a slight loss. The rescheduling of the balance sheet aims to normalise the financial ratios and is projected as follows: (x € 1 million)

Injection from investors	8.8
Revaluation of property	1.64
Rescheduling of accounts payable	5.46
Total	15.9

The so-called capital base[25] ultimately comprises the following: (x €1 million)

Equity	3.88
Subordinated loan 1	6.06
Subordinated loan 2	0.79
Technical development credit	7.15
Total	17.88

Because cash is injected, the property revaluated and the accounts payable rescheduled, the company will enjoy solvency of practically 40%. In view of the favourable business developments the company seems to have gained sufficient perspective. The investors' injection will mainly be used to normalise the liquidity position. The objective is to induce the creditors to reschedule as per 15 June 1999 and to initiate payment on 15 August 1999. This concerns the large creditors only, the small ones are paid in full. The housebank decides to grant a waiver[26] with regard to solvency, until the beginning of July 1999. The decision to do this, as well as maintaining the credit until the end of June 1999, is also caused by the fact that liquidation involves maximum losses for the bank. In addition, the developments are favourable and there is trust with regard to the (intended) installation of the new management. The calculated risk profile of the housebank is shown below: (x €1,000)

Security	*Valuation*	*Going concern*	*Liquidation*
Property	3.740	2.970	2.244
Machines	2.130	1.065	851
Accounts receivable	6.050	3.630	2.420
Total security		7.665	5.515
Credit facility from bank		17.468	17.468
Risk profile		9.803	11.953

The bank only enjoys 43% security in relation to the credit facilities made available. The value of the assets is anticipated to reduce (forced-sale value) when the company is wound up. As a result, security will decrease to 32%. By keeping the company a going concern it is prevented that the theoretical loss is converted into an actual loss. The investors too favour such a scenario, as from a market point of view a negative impact is expected.

On 20 June 1999, discussions between the various parties involved (investors, bank and company) are held. The final figures of 1998/1999 are even worse (the financial figures of the past 18 months show a loss of €22 million), which necessitates a 60% rescheduling ('haircut') of accounts payable in full settlement. It is then also known

25 The capital base can be described as the balance of properties deducted by the obligations of a company enforceable on demand. Subordinated loans are not enforceable on demand, as first all other obligations must be met before these can be settled.

26 In this case waiver means a financier deciding not to withdraw the credit, despite the fact that the company no longer meets one or multiple conditions of the credit agreements.

that the accounts payable pressure (within the working capital) has risen to €20 million compared to only € 3.3 million of incoming claims. In addition, at least another 90 people have to be made redundant involving a high-cost redundancy scheme in view of the length of service – given the circumstances this cannot be afforded. Finally, the accounts receivable of €3.3 million are disputed and threatened by a claim for damages of € 5 million.

In the end, the negotiations are unsuccessful and the investors pull out (main reason: it is completely impossible to gain an insight into the company's true financial situation). Subsequently, credit is permanently withdrawn and Steel Work BV has to file a petition for liquidation as salaries can no longer be paid.

On 21 June 1999 liquidation is filed for in respect of the eight firms which are part of Steel Holding BV. The trustee starts looking for candidates for a restart almost immediately and is surprised to find that no concrete restart plan has been worked out prior to the liquidation. The trustee states that the importance of a restart is two-tiered. First of all, a restart will lead to an increase of the assets in respect of the proceeds of the securities provided to the bank. Secondly, the claim of the Industrial Insurance Board (IIB) must be kept as low as possible by offering new contracts during the restart to as many members of staff as possible. By means of an analysis the trustee estimates that the proceeds in the event of a *non going concern* sale of assets will always be lower than € 5.5 to € 8.3 million. However, the bank alone has a claim of over € 7 million as well as a risk of approximately €10.5 million in respect of outstanding bank guarantees.

The trustee is surprised by the number of interested parties – 12 in total. The interest ranges from possibilities for a part or full restart, taking over part of the staff, purchasing of properties to the buying up of company equipment and stock.

Soon two parties emerge from the candidates, namely the former MDS on the one hand and management on the other. In the previous months the former MDS has intensively sought and found a powerful partner in SteelSupply BV, a company which, as an important supplier of the bankrupt Steel Work BV, has a clear incentive for a restart.

On 4 July 1999 the former MDS and SteelSupply BV submit a proposal. The proposal is as follows:

- the assets are sold to a new company by the name of Steel Work II BV and this company also takes over the bank guarantee of €10.5 million from the housebank;
- 140 people will be offered an employment contract;
- management will be reinforced considerably and the powers of the former MDS will be restricted;
- the healthy and powerful Steel Supply BV will receive 80% of the shares in Steel Work II BV. In addition, in the event of a (temporary) disappointing result in turnover, staff from the new company may carry out services for Steel Supply BV and vice versa. This yields synergy.

At first the bank (as mortgage holder/pledgee) rejects this offer, when the total offer is raised to approximately € 11.6 million the bank accepts. The offer of the other candidates is not accepted as it is not entirely clear what exactly the consequences will be, also the number of employees taken over is considerably lower. Ultimately, payment and delivery are completed on 13 July 1999.

Analysis
The company ran into difficulties through an over-opportunistic drive to expand, partly in unrelated fields of the sector. Profit was subordinated to turnover. After the problems had emerged, the organisation was not reorganised quickly and adequately enough. Losses continued to mount up as a result. The rigid attitude of the MDS has in any case led to a considerable delay in the introduction of new risk-bearing capital combined with new management. In the end a solution seemed to be near, however, a combination of claims for damages, forecasts that again proved to be incorrect, as well as (even) higher staff redundancy costs formed reason for the investors to pull out. Subsequently, a situation arose in which liquidation had become inevitable as cash resources had gone and no new funds were available. Because of the uncertain factors neither party was left prepared to keep the company going. However, a new and restructured company 'free of insecurities' (and with another legal entity) is realised two weeks later.

F13. Systems

Description of the company
Systems BV is a full subsidiary of an investment company. Among other things, the company is active in the international field of implementing and maintaining systems for business clients. The company consists of three business units: Service, Engineering and Support. In 1997 the company employs about 460 people. Management has been subject to many changes during the past years. The turnover amounts to approximately € 80 million.

Cause of the problems and the course of informal reorganisation
In 1995, in the eyes of the bank, a disappointing net profit of € 1.5 million is made, followed by a loss of € 4 million in the first six months of 1996. At the time, management is convinced that this loss can be compensated in the second part of 1996. However, management fails to deliver, worse still, a loss is incurred of € 6.3 million for the whole year. At the end of 1996 the housebank decides to place the company under intensive care.

In 1997 a reorganisation is initiated and an active search for a company that wants to take over Systems BV is underway. However, the search for a takeover candidate fails. The reasons for this are listed below.

- The asking price is relatively high (between € 12.5 and € 20 million).
- The company is unable to show sufficiently detailed figures.
- The financial position is weak. Equity is still positive, but at the end of 1996 this amounts to more than half that of 1995. The working capital (current assets -/- short-term debts) is negative.

At the end of March 1997, following lengthy negotiations and postponement of payments, agreement is reached between the company and the housebank about a new credit arrangement (this involves creating additional securities on a property). This is based on the most recent, relatively favourable, liquidity forecast for the company.

However, in July 1997, the parent company announces that in the first six months losses of €10 million have been incurred and that it does not intend to support the subsidiary by means of a capital injection. As a result, the bank decides to withdraw the credit with immediate effect. When attempts to reach a solution fail, management decides to apply for a moratorium in the beginning of August 1997.

The claim of the bank is then €13 million and covered by rights of pledge and mortgage on current assets and property assets respectively. Nevertheless, nearly €6 million has not been covered. That is to say, these are the calculated losses of the bank when the company is sent into liquidation.

The administrator takes stock of the situation and establishes that neither the parent company nor the bank are prepared to grant a short-term preferential loan to the estate and on 5 August 1997 Systems BV is put into liquidation.

Immediately after the liquidation a buyer appears on the scene to take over part of the business. Ultimately, the company buys the work in progress, the inventory, the stocks and the pledged accounts receivable (against 60% of the nominal value) of in particular Service and decides to take over 175 members of staff. Some time later, another party buys the current profitable projects of the company.

Although neither party has any interest in purchasing the property, part of the property will temporarily be rented against market price. Early 1998 it appears that the property would be suitable in respect of a certain real estate project development, it is therefore anticipated that the proceeds will be higher than the current valuation of €3.5 million.

In August 2000 there appears to be a buyer who is prepared to take over the property for €5.5 million. The bank, who previously calculated a loss of €6 million, concludes that the remaining claim including lost interest and costs incurred can be redeemed as a result.

Analysis
The company ran into difficulties through a combination of poor management and management information being ignored. The situation deteriorated because the reorganisation was started too late and because of a continuous lack of insight into the financial situation of the company. In addition, potential takeover candidates pulled out as a result of the takeover price being too high. When the shareholders indicated not to make additional liquidity available (any longer), the housebank lost confidence and terminated the credit facility. As a result, liquidation had become inevitable.

F14. Techno

Description of the company

The Techno Group consists of Techno Holding BV which holds a 100% share interest in Techno BV. Techno BV has participating interests abroad. The group is owned by a number of investment companies.

The Techno Group develops technologically high-quality machinery and also coordinates large (international) projects with regard to the installation of the machines. The production and installation in this respect is carried out by external partners, assembly though is (partly) completed in-house. In addition, technological knowledge is exploited by issuing licenses to (international) producers. The company is known to be innovative and is a market leader. In 1998, the company employs around 50 people.

Cause of the problems and the course of informal reorganisation

At the end of 1994 the company is placed in the Intensive Care Department of its housebank. The company suffers from an acute liquidity problem as a result of rising figures in balance sheet items such as stock and accounts payable. In anticipation of a number of orders, parts had already been ordered and assembled to prevent problems in view of low staffing levels. However, the orders never materialised.

In 1995, in order to prevent liquidation, a workout agreement with creditors is set up in which the company pays 30% straight away, whilst 40% is provided by the creditors in the form of a subordinated loan – 30% is waived. In addition, the shareholders inject over €2 million of risk-bearing capital. In order to carry out the future plans, lengthy discussions regarding a capital participation of € 3.3 million (20% interest) are held with an interested company. These negotiations fail, as a result the existing shareholders decide to again introduce risk-bearing capital (to the amount of €1.4 million) in order to meet any liquidity and capital needs in line with the growing business.

Because the business is incapable to self-support any growth, the shareholders decide to sell the company in the beginning of 1999. The price range in that respect is estimated to be € 40 – 60 million.

In order to meet the liquidity requirements during the selling process, a subordinated loan of €2.4 million is taken out with a bank, the existing shareholders bring in €0.8 million and the housebank increases the credit limit (from €5.4 to 6.3 million). Some of the group's financial details are shown below.

In millions of €	*1997*	*1998*	*1999*
Turnover	40	37	38
Gross profit	3.8	3.5	1.2
Net profit	-/- 0.389	-/- 0.791	-/- 2
Solvency	34%	27%	20%

Table 1: Techno

Although the turnover of 1999 remains approximately the same compared to that of 1998, a steep drop in the gross margins can be detected (particularly as a result of high development costs), as a result net profits too considerably decrease. Despite the introduction of risk-bearing capital solvency reduces from 34 to 20% in three years. Profits of €0.8 million are forecast for 2000.

The attempted selling process is slow. At a certain moment an interested party tables an offer of €20 million. The shareholders decline this offer; as a result the sale falls through in the spring of 2000. However, discussions with new parties are started straight away. The problem is that a number of deferred claims (project-related) weaken the saleability of the group. In order to improve the saleability, a construction is devised in which the technology is sold to a new company called New Techno BV, which is still to be established. This includes the transfer of staff. The new company will be owned by the current shareholders as well as a new investor. The proceeds of this transaction (€3.6 million) will see to the short-term continuity of Techno Holding BV. In addition, converting short-term debts into subordinated loans will be pursued as well as converting a subordinated loan into shares. The housebank, despite further deterioration of security (funding deficit is estimated to be €5.2 million), is prepared to transfer part of the overdraft finance facilities to the new company; however, this does require a minimum deposit of €4 million in risk-bearing capital into the new company (by shareholders). In addition, the bank is prepared to grant a waiver until 1 October 2000 with regard to the required solvency of 30% (as arranged in the credit agreement). Also, an interim manager is appointed who will improve the internal organisation as well as customer contact.

The cooperation of the housebank stems from trust in the relevant product market plus the company's technological position which can be regarded as strong. In addition, it is believed that a strategic and financially strong partner will be found soon.

Early July 2000 the bank withdraws the credit. Reason is the fact that despite many discussions with takeover candidates, no concrete agreements have been reached. In anticipation of the realisation of the intended sale, as well as the negative security position, security interests are not enforced. A couple of weeks later the company applies for a moratorium, since the only party with which negations are held, has pulled out. The moratorium is not granted due to a procedural error in the application.

In reaction to that, one of the shareholders submits a business plan with the bank in order to save the company from liquidation. The objective is to ultimately sell assets and activities via an organised restart (either or not via a moratorium or a so-called technical liquidation). The underlying thought is to prevent loss in value of the intangible assets during an uncontrolled scenario of a moratorium and/or liquidation (the loss in value is estimated to be €10.4 million). Since the bank has confidence in the shareholder who, together with a number of shareholders and interested parties, is prepared to inject €1.4 million of risk-bearing capital, the bank is willing to re-open its credit facilities for a period of three months. In those three months, the bank is informed, an organised restart will be completed during which full settlement will be made.

In April 2001, the bank concludes that ever since the credit withdrawal was reversed, the company already had to deal with over fifteen requests for liquidation. As a result of an open dialogue with the creditors, during which it is made clear that a (controlled) transfer of assets would be in the interest of all parties, peace has been created in that respect. However, the discussions and negotiations have not resulted in a takeover as yet. A complicating factor is that clients are no longer prepared to pay deposits for (parts of) projects prior to completion. This puts further pressure on the liquidity. However, the bank is prepared to temporarily increase the overdraft facility by € 1 million, partly due to new-found confidence in management following the appointment of two interim managing directors.

Also, there is dispute between another department of the bank and the company. This relates to the invoice for supervising the selling process of the company. In order to facilitate the contact between the Intensive Care Department and the company a compromise is made, meaning that part of the claim will be remitted when risk-bearing capital is introduced in settlement of the debt.

On 12 July 2001 the company yet decides to apply for a moratorium. There appears to be a need for €600/m to pay the salaries (payment is two months in arrears). Since the shareholders are not prepared to inject a minimum of €280/m this time, the bank refuses to extend credit any further. In addition, a takeover candidate from France whom the company is holding discussions with seems to be aiming for a transfer of assets following liquidation.

At the end of July 2001 personnel files for liquidation of the company. Subsequently, the appointed trustee starts looking for a takeover candidate. Ultimately, on 12 September 2001, a transfer of assets is completed with an Italian party which, in addition to the assets, takes over half of the number of staff.

Analysis
The company ran into difficulties through a combination of low margins, weak management and a management information system which functioned insufficiently. In first instance the company was informally reorganised successfully. However, during the period thereafter attempts to make the business profitable failed. In the end, the long search for new investors/takeover candidates to bring in additional risk-bearing capital was unsuccessful, after which the company applied for a moratorium which subsequently led to liquidation. Since the shareholders were no longer prepared to bring in additional risk-bearing capital, the bank refused to extend credit any further. In addition, a possible takeover candidate seemed to be aiming for a transfer of assets (restart) following liquidation.

F15. Welding

Description of the company
Welding is a commercial partnership owned by a couple. The company employs 6 members of staff, four of which work fulltime. The company carries out welding and construction work by order of various customers.

Cause of the problems and the course of informal reorganisation
The company ran into difficulties through a number of contingencies. The causes as found by the entrepreneurs are listed below:

- high rate of sickness absence and the costs involved with this;
- ill advise by external advisor (as well as high consultancy costs);
- substantial investment in connection with a relocation;
- large investment into a machine;
- uncollectible debts.

Since the entrepreneurs are convinced that refinancing of the company is possible with a fast and successful rescheduling of the debt, they try to reach a workout agreement with their creditors. This attempt is unsuccessful and therefore the assistance of a specialised consultancy agency is called in on 25 October 2000.

The accounts payable situation is as follows: (in €)

- Tax Authority/Industrial Insurance Board: 72,608
- ordinary creditors: 230,000
- overdraft facility with housebank: 61,000
- long-term loan with housebank: 51,000

The loans of the housebank are secured by securities given on equipment, paid stock, accounts receivable as well as a 3rd registration of mortgage on the couple's residence. It is concluded that the bank is 100% 'covered' and it would therefore not be advisable to propose a rescheduling of debts with the bank. However, the consultancy agency will try and arrange a rescheduling of debt/workout agreement with the other creditors. The following steps are taken:

- an application is made for a FAE-loan. An independent investigation[27] into the creditworthiness and viability of the company has already been completed. A positive recommendation has been made (a condition for granting credit);
- creditors are approached with the request to grant deferment of payment as well as a request to validate current claims. By doing so it is endeavoured to also stabilise the situation.
- the company will make an effort to honour all current agreements/obligations.
- the proposal to reschedule the debt is prepared. The extent of it (percentage) will depend on the FAE-loan to be received.

After the letter requesting voluntary deferment of payment is sent on 29 October 2000, a number of creditors nevertheless file a petition for liquidation on 20 November 2000. In reaction to that, the tax authorities, despite a deferment of payment already granted on 4 September 2000, attach the property found on the premises on 22 November 2000 and a sale under execution is announced to take place on 12 December 2000 (however,

27 The so-called Institute for Small and Medium-Sized Businesses (IMK) conducts these investigations on request.

this never takes place). A number of petitions for liquidation are filed after that. The proceedings in the insolvency section of the district-court are planned to take place on 10 December 2000.

On 3 December 2000 the consultancy agency submits a proposal to reschedule the debts on behalf of the company stating the following:

- it has been found that a proper solution to the problems can be reached only by means of radical and complete debt rescheduling – subsequent continuation of the business is possible;
- a FAE-loan of € 150/m will be made available provided that the debt burden is rescheduled. € 116/m of this amount will be available to finance the agreement;
- the ordinary creditors receive 20.3% in full settlement;
- the tax authorities/Industrial Insurance Board receives double the percentage, i.e. 40.6% (in accordance with the Collection Directive 1990 which states that at least double the amount must be received in the event of a debt rescheduling arrangement);
- creditors liable to charge Dutch VAT are entitled to re-claim the VAT paid by them (in respect of the 'settled' part of the debt) pursuant to article 29, paragraph 2 of the Dutch Value Added Tax Act. Subsequently, these amounts (to the extent of € 30,443) will be collected from the company by the tax authorities. Part of the credit, therefore, must be reserved for this purpose;
- although actually 100% of the creditors must agree, the arrangement will be carried through when two-thirds of the creditors, representing three quarters of the total debt, cooperate with the proposed debt rescheduling. This is because these conditions apply in respect of a moratorium and liquidation. When the creditors do not agree the formal procedures remain, which can still lead to an arrangement;
- in the unlikely event that no agreement is reached, the associates will probably need to make an appeal to the PFP. Payment in such instance is expected to be low, as business is ceased and the afore-mentioned FAE-loan will in any case not be made available;
- a request to reply within fourteen days.

As a result of the proceedings of the petition for liquidation on 10 December 2000, the consultancy agency requests the court on 17 December 2000 to defer the petition for liquidation pending the debt rescheduling proposal. At that moment, approximately 30 of the 60 creditors have agreed to the proposal. Ultimately, no agreement is reached and early 2001, with a view to the petitions in that respect, liquidation is ordered.

Subsequently, the consultancy agency tries to induce the trustee to carry out the debt rescheduling proposal pursuant to article 329 of the Dutch Bankruptcy Act, during which it is possible to propose an arrangement (composition) to end the PFP (in that instance the liquidation must first be reversed to the PFP).[28] The main arguments for this are stated below:

28 After court approval of the composition the PFP ends (art. 340 DBA).

- it is in the interest of both the creditors and the entrepreneurs. Through an arrangement within the PFP it will be possible to continue the company. In addition, the FAE-loan will become available increasing payment for the creditors. Furthermore, payment will be instant rather than after 36 months (the minimum period of a PFP-route);
- within the PFP it is possible to reach an agreement when an ordinary majority of creditors (50% + 1), who together form an ordinary majority of the debt (50% + 1) and who are present at the creditors' meeting, agree to the arrangement. In other words, a lower threshold compared to liquidation;
- the claim by the tax authorities pursuant to article 29, paragraph 2 of the Dutch Value Added Tax Act is preferential debt, enabling a double percentage in the event of an arrangement. However, in the event of liquidation this claim must be settled in full to the detriment of the ordinary creditors.

In first instance the trustee is prepared to cooperate. He sends a letter to the creditors explaining the situation putting forward a proposal at the same time. The proposal is as follows:

- the company is viable and corporate financing will be continued by means of an (unsecured) loan (a short-term preferential loan to the estate) from the housebank based on continuation of the company;
- when agreement is reached, the FAE-loan of € 116/m will become available to finance the arrangement;
- the associates have expressed the wish to offer a workout agreement. The minimum amount will be 10 % with a maximum of 20%. Preferential creditors will receive double that percentage.

Ultimately the attempt failed because no effective action was taken towards the creditors, as was concluded by the consultancy agency. The process took more than two months during which the trustee took on a passive attitude. When the consultancy agency was finally given the room to become involved in approaching the creditors, it was concluded that, in the light of a new viability investigation, the company was no longer viable. Because of the prolonged uncertainty and (temporary) inactivity of the company, customers and suppliers started to seek alternatives. Meanwhile the company has been wound up and the former entrepreneurs are now subject to the PFP. The bank has probably completely lost the unsecured part of its claim.

Analysis
The company ran into liquidity difficulties through a number of contingencies. After it was first attempted to come to a workout agreement, the assistance of a professional consultancy agency was called in, which in its turn tried to stabilise the situation and subsequently offered a workout agreement on the basis of new anticipated financing (FAE). Because a number of creditors refused, no agreement was reached and the company drifted towards liquidation. Subsequently it was endeavoured to reach an agreement by means of a formal procedure in which the PFP seemed to be a golden opportunity to come to a composition due to a number of less stringent requirements. Since proceedings were too slow and the creditors were not actively approached and/or convinced, the process dragged along until the moment the business no longer appeared

to be viable, practically removing the basis of the agreement. Payment percentages for the ordinary creditors will probably be zero in respect of the FAE-loan no longer being available. The informal reorganisation actually failed at an earlier point through the refusal of some creditors to cooperate in combination with a petition for liquidation.

Overview of causes, measures and bottlenecks in dossiers

The used codes represent the dossiers in which a specific cause, measure or bottleneck has been detected.

S = Successful informal reorganisation (S1 = Advertising etc.)
F = Failed informal reorganisation (F1 = Agrarian etc.)
Number = Number of dossiers

Table A: Causes	*S:*	*F:*	*Number*
Marketing			
Disappointing turnover	1, 5, 6, 7, 18	3, 5, 8, 9, 12	10
No clear strategy	2, 3, 8, 20	1, 3, 5, 8, 9, 12	10
Insufficient quality	6	3, 4	3
Margins too low	4, 5, 9, 13, 14	2, 10, 11, 12, 14	10
Management			
Poor management	1, 3, 5, 8, 9, 15, 17, 18, 19	1, 2, 4, 5, 6, 9, 11, 12, 13, 14, 15	20
Gross errors/ mismanagement	3, 9, 10, 12, 18	1, 2, 7, 9, 12	10
Excessive withdrawals	16, 18, 19	2	4
Conflicts within management	8, 20	-	2
Information			
MIS inadequate	3, 4, 5, 7, 8, 9, 10, 12, 15, 17, 20	1, 4, 5, 6, 7, 11, 12, 13, 14	20
Efficiency			
Unsatisfactory management of working capital	2, 5, 6, 15, 19	2, 5, 15	8
Excessive costs	1, 2, 4, 5, 7, 8, 12, 17, 19	3, 4, 5, 9, 10, 11, 12, 15	17
Takeover(s) too expensive	1, 5	1, 5, 11	5
Excessive investments	7, 12, 15	2, 5, 6, 8, 11, 12, 15	10
Loss-making activities not halted	2, 12	3, 6, 8	5
Under-investment	20	-	1
Economy			
Economic conditions	8, 9, 11, 13, 14, 16	2, 5, 7	9
Non-forthcoming spending	6	3, 5	3
Fierce competition	5, 14	11	3

Table B: Measures within the framework of restructuring business operations	*S:*	*F:*	*Number*
Marketing			
Formulation of strategy	5, 6, 8, 13, 17	12	6
Adjustment of marketing tactics	8, 10	3, 5	4
Rationalisation of product assortment	2, 5, 6, 10, 15	-	5
Improvement of margins	2, 10, 17	6, 12, 15	6
Management			
Change in management structure	5	4	2
Appointment of third parties	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 20	1, 2, 4, 5, 6, 8, 10, 11, 12, 14, 15	28*
Changes in positions	5, 7, 10, 12, 20	5, 6, 12	8
Information			
Improvement of MIS	4, 5, 7, 10, 15, 17, 20	5, 6, 7, 8, 11, 15	13
Efficiency			
Reduction in personnel	2, 5, 6, 8, 10, 15	3, 5, 6, 8, 12	11
Cutting overhead costs	5, 6, 8, 10, 11, 12, 13, 14	3, 5, 8, 11	12
Reduction of withdrawals	4, 16	-	2
Improving production and logistic processes	2, 5, 6, 8, 12	3, 6, 11	8
Improving procurement	2	-	1
Improving working capital	2, 5, 6, 8, 11, 13, 17, 19	3, 5, 6, 8	12
Improving liquidity management	5, 11	5, 8	4
Integrating business units	5, 8, 12	1	4
Closing loss-making business units	2, 4, 5, 8, 10, 12, 15	1, 3, 5, 6, 7, 8, 11, 12	15
Selling excessive assets	1, 2, 5, 10, 11, 12, 15	1, 3, 5	10
Selling non-core activities	2, 6, 12, 17	-	4
	* due to far-reaching anonymity all dossiers are presented here (from banks and consultancies). See also § 3.3.2.		

Table C: Measures within the framework of financial restructuring	*S:*	*F:*	*Total*
Repayments			
Workout agreement with remission	1, 3, 4, 6, 9, 10, 14, 16, 19, 20	3, 6, 8, 9, 10, 11, 12, 14, 15	19
Workout agreement with subordinated loan	2, 12, 14	14	4
Deferment of repayments	1, 2, 4, 5, 6, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19	2, 3, 5, 7, 8, 11, 13, 15	23
Conversion of loan(s)	1	11, 14	3
Repayment scheme coupled to term or products to be sold	2, 6, 9, 16, 18, 19	10	7
Cash sweep	2, 10, 11, 14	-	4
Debt equity swap	6, 12	4, 10, 12, 14	6
Discharging parent company from liability	12	-	1
Interest			
(Temporary) discontinuation of interest	1, 10, 19	-	3
Increase of interest	4, 5, 10	-	3
Increasing cash funds			
New risk-bearing funding	1, 2, 5, 6, 7, 8, 10, 11, 13, 14	3, 4, 5, 6, 7, 8, 9, 11, 12, 14	20
New risk-avoiding funding	1, 3, 6, 11, 12, 14, 15, 17	4, 6, 8, 9	12
Increasing available credit	1, 2, 9, 12, 13, 19	1, 2, 3, 7, 9, 11, 14	13
Takeover	1, 8, 12, 13, 14	1, 2, 3, 4, 5, 7, 9, 10, 11, 13, 14	16

Table C: Measures within the framework of financial restructuring	*S:*	*F:*	*Total*
Other			
Transfer of finance agreement(s)	1, 3, 4, 9, 10, 12, 16, 18, 19	11, 15	11
Threatening to cancel credit	2, 4, 5, 8, 10, 11, 17, 18	3, 9, 11, 12	12
Lowering of credit ceiling	4, 5, 6, 19	-	4
Additional securities	1, 5, 8, 10, 14, 15, 19	2, 7, 12, 13	
Consultation with		1	11
banks	5, 6, 10, 14		5
Let-go constructions	10	4	2
Waivers	2, 5, 8, 10, 13, 19	3, 6, 10, 12, 14	11
Credit cancellation		6, 14	7
without selling off	1, 4, 16, 17, 19		
Postponement of execution of attachment	1, 3, 16, 17, 18	15	6
Petition for liquidation of group company	1, 12	11, 14	4
Application for a moratorium for group company	12, 13	-	2
Deferment of liquidation petition	9	15	2
Financing estate	-	11, 15	2

Table D: Bottlenecks	S:	F:	Total
Effectiveness			
· Reorganisation too late	1, 4, 16, 18	2, 3, 5, 8, 9, 13	10
· Reorganisation too long	4, 10	3, 4, 14, 15	6
· Reorganisation measures insufficient	1, 3, 6, 10, 17, 20	1, 3, 4, 5, 8, 10, 11, 12	14
· Profit perspectives uncertain	1, 13	6	3
· High costs of staff redundancies	20	5, 9, 11, 12	5
· Disappointing incidental results	2, 8	3	3
Creditors			
· Cancellation of credit	11	8	2
· No more flexibility from creditors	-	2, 5, 9, 14	4
· Internal conflicts among creditors	10	-	1
· Petition for liquidation by creditors	9	14, 15	3
· Attachment of property found on the premises	1	-	1
· Creditors refuse agreement	12, 16, 18, 19	2, 8, 15	7
· No more confidence	2, 3, 4, 5, 10, 19	1, 4, 6, 7, 9, 13, 14	13
· Decisions against the will of creditors	5	-	1
Investors			
· Investors pull out	1, 8, 10, 12, 13, 19, 20	2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14	18
Management			
· Insufficient information	1, 3, 8, 9, 10, 15, 17	2, 6, 9, 12, 13	12
· Incapable management	1, 3, 20	1, 2, 6, 7, 9, 10, 11, 12	11
· Prognoses structurally deviate from reality	1, 5, 8, 10, 15, 20	3, 6, 9, 12	10
· Failure to comply with agreements	3, 4, 5, 17, 18, 19	11	7
· Proposed solution unsatisfactory	19	-	1
Shareholders			
· Shareholders/owners are reticent with regard to contribution of risk-bearing capital	8, 12, 14	1, 4, 9, 14	7
· Shareholders are reticent with regard to contribution of risk-bearing capital by third parties	-	11, 12, 13, 14	4
· Passive attitude shareholders	5	2, 10	3
Other			
· Large claim (for damages)	-	12, 14	2
· Departure of key figures	20	-	1
· Trustee/administrator does not cooperate sufficiently	-	15	1
· Legal disputes	13	-	1
· Market conditions	3, 5, 13	4, 6, 7	6

VI Survey results[1]

Survey VVCM

VVCM		*Number*	%
1.1 Within which discipline are you active?	Credit Management	177	76.0
	Credit Insurance	19	8.2
	Credit Information	6	2.6
	Bailiffs sector	9	3.9
	Legal Service	6	2.6
	Consultancy	2	.9
	Other	14	6.0
Total		233	100.0

VVCM		*Number*	%
1.2 Number of years experience in current working position?	<= 1 year	6	2.6
	> 1 – <= 5 years	62	26.8
	> 5 – <= 10 years	51	22.1
	> 10 years	112	48.5
Total		231	100.0

1 The answers to open questions are only incorporated in the main text, as a result the chronological order of questions / results sometimes deviate.

VVCM		*Number*	*%*	*Average*	*St.dev.*[2]
2.1 Companies in financial difficulties ruin the market for healthy companies	fully agree	9	3.8		
	agree	72	30.4		
	neutral	53	22.4		
	disagree	84	35.4		
	fully disagree	18	7.6		
	don't know/no opinion	1	.4		
Total		237	100.0	3.1	1.1
2.2 Banks always have the advantage at the expense of ordinary creditors	fully agree	60	25.2		
	agree	119	50.0		
	neutral	25	10.5		
	disagree	21	8.8		
	fully disagree	12	5.0		
	don't know/no opinion	1	.4		
Total		238	100.0	2.2	1.1
2.3 Banks are useful in preventing moratoriums and liquidations	fully agree	2	.8		
	agree	29	12.2		
	neutral	68	28.6		
	disagree	87	36.6		
	fully disagree	46	19.3		
	don't know/no opinion	6	2.5		
Total		238	100.0	3.6	1.0
2.4 Interim managers for companies in financial difficulties increase the chances of survival	fully agree	12	5.0		
	agree	113	47.5		
	neutral	80	33.6		
	disagree	26	10.9		
	fully disagree	1	.4		
	don't know/no opinion	6	2.5		
Total		238	100.0	2.5	.8
2.5 Specialised (insolvency) advisors for companies in financial difficulties increase the chances of survival	fully agree	18	7.6		
	agree	165	69.3		
	neutral	38	16.0		
	disagree	12	5.0		
	fully disagree	2	.8		
	don't know/no opinion	3	1.3		
Total		238	100.0	2.2	.7

2 Standard deviation calculation based on: (total number) minus (don't know / no opinion).

VVCM		*Number*	*%*	*Average*	*St.dev.*
2.6 Credit insurance is *the* solution for deliveries to companies in financial difficulties	fully agree	11	4.6		
	agree	35	14.7		
	neutral	46	19.3		
	disagree	83	34.9		
	fully disagree	60	25.2		
	don't know/no opinion	3	1.3		
Total		238	100.0	3.6	1.2
2.7 The position of ordinary creditors in relation to mortgage holders and pledgees is good	fully agree	2	.8		
	agree	32	13.5		
	neutral	43	18.1		
	disagree	85	35.9		
	fully disagree	63	26.6		
	don't know/no opinion	12	5.1		
Total		237	100.0	3.8	1.0
2.8 A statutory obligation to continue to supply is debatable provided the corresponding claim is granted a priority status	fully agree	13	5.5		
	agree	104	43.7		
	neutral	37	15.5		
	disagree	47	19.7		
	fully disagree	28	11.8		
	don't know/no opinion	9	3.8		
Total		238	100.0	2.9	1.2
2.9 The tax authorities cannot select their debtors and it is therefore justified that they have the right to claim compound bounded assets	fully agree	4	1.7		
	agree	60	25.3		
	neutral	45	19.0		
	disagree	66	27.8		
	fully disagree	53	22.4		
	don't know/no opinion	9	3.8		
Total		237	100.0	3.5	1.2

VVCM		*Number*	*%*	*Average*	*St.dev.*
2.10 The information supply of companies in financial difficulties towards non-banking creditors is generally sufficient	fully agree	3	1.3		
	agree	13	5.5		
	neutral	25	10.5		
	disagree	113	47.5		
	fully disagree	74	31.1		
	don't know/no opinion	10	4.2		
Total		238	100.0	4.1	.9
2.11 It takes few creditors to frustrate an informal reorganisation	fully agree	29	12.2		
	agree	159	67.1		
	neutral	26	11.0		
	disagree	16	6.8		
	fully disagree	3	1.3		
	don't know/no opinion	4	1.7		
Total		237	100.0	2.2	.8
2.12 The real danger of an informal reorganisation is that the individual rights of creditors are disregarded	fully agree	8	3.4		
	agree	140	59.3		
	neutral	48	20.3		
	disagree	35	14.8		
	fully disagree	3	1.3		
	don't know/no opinion	2	.8		
Total		236	100.0	2.5	.8
2.13 Cooperating with workout agreements will ultimately reduce the anticipated proceeds for creditors	fully agree	9	3.8		
	agree	75	31.8		
	neutral	41	17.4		
	disagree	93	39.4		
	fully disagree	14	5.9		
	don't know/no opinion	4	1.7		
Total		236	100.0	3.1	1.1
2.14 Bridging loans from banks must at all times receive priority status in relation to existing company debts	fully agree	5	2.1		
	agree	98	41.7		
	neutral	59	25.1		
	disagree	57	24.3		
	fully disagree	12	5.1		
	don't know/no opinion	4	1.7		
Total		235	100.0	2.9	1.0

VVCM		*Number*	*%*	*Average*	*St.dev.*
2.15 Workout agreements reduce “destruction of value” in companies in financial difficulties compared to moratorium and liquidation	fully agree	20	8.4		
	agree	144	60.8		
	neutral	37	15.6		
	disagree	27	11.4		
	fully disagree	1	.4		
	don’t know/no opinion	8	3.4		
Total		237	100.0	2.3	.8
2.16 Cooperation between creditors and company increases the chances of survival	fully agree	51	21.7		
	agree	168	71.5		
	neutral	10	4.3		
	disagree	5	2.1		
	fully disagree	1	.4		
	don’t know/no opinion				
Total		235	100.0	1.9	.6
2.17 Mediators can play a pre-eminent role in the event of disputes between creditors and company	fully agree	12	5.1		
	agree	109	46.2		
	neutral	73	30.9		
	disagree	23	9.7		
	fully disagree	4	1.7		
	don’t know/no opinion	15	6.4		
Total		236	100.0	2.5	.8
2.18 The credit policy with regard to companies in financial difficulties is always stricter compared to that of healthy companies	fully agree	71	30.1		
	agree	117	49.6		
	neutral	14	5.9		
	disagree	26	11.0		
	fully disagree	6	2.5		
	don’t know/no opinion	2	.8		
Total		236	100.0	2.1	1.0
2.19 Change of management is good for the survival chances of a company in financial difficulties	fully agree	12	5.1		
	agree	55	23.3		
	neutral	121	51.3		
	disagree	39	16.5		
	fully disagree	4	1.7		
	don’t know/no opinion	5	2.1		
Total		236	100.0	2.9	.8

VVCM		*Number*	*%*	*Average*	*St.dev.*
2.20 A stricter credit	fully agree	57	24.3		
policy must be in	agree	131	55.7		
place immediately	neutral	18	7.7		
after suspicions have	disagree	26	11.1		
arisen that a	fully disagree	1	.4		
company is in	don't know/no opinion	2	.9		
financial difficulties					
Total		235	100.0	2.1	.9
2.21 A restart	fully agree	20	8.5		
following liquidation	agree	97	41.1		
is an efficient	neutral	51	21.6		
manner to reorganise	disagree	42	17.8		
a company in	fully disagree	19	8.1		
financial difficulties	don't know/no opinion	7	3.0		
Total		236	100.0	2.8	1.1
2.22 A viable	fully agree	46	19.6		
company must at all	agree	127	54.0		
times be reorganised	neutral	37	15.7		
(in order to prevent	disagree	22	9.4		
moratorium or	fully disagree	1	.4		
liquidation)	don't know/no opinion	2	.9		
Total		235	100.0	2.2	.9
2.23 A restart	fully agree	35	14.9		
following liquidation	agree	119	50.6		
is an efficient	neutral	29	12.3		
manner to lose debt	disagree	30	12.8		
for a company in	fully disagree	18	7.7		
financial difficulties	don't know/no opinion	4	1.7		
Total		235	100.0	2.5	1.1
2.24 Timely detection	fully agree	73	31.1		
of problems prevents	agree	147	62.6		
"destruction of	neutral	9	3.8		
value"	disagree	5	2.1		
	fully disagree	1	.4		
	don't know/no opinion				
Total		235	100.0	1.8	.7

VVCM		*Number*	*%*
3.1 The number of	0	8	4.9
customers who in 2002	> 0 <= 10	72	43.9
were subject to	> 10 <= 20	32	19.5
moratorium and/or	> 20 <= 30	18	11.0
liquidation is:	> 30 <= 40	2	1.2
	> 40 <= 50	2	1.2
	> 50	30	18.3
Total		164	100.0

VVCM		*Number*	%
3.2 The number of customers who in 2002 offered a workout agreement amounts to:	0	18	11.0
	> 0 <= 10	90	55.2
	> 10 <= 20	19	11.7
	> 20 <= 30	12	7.4
	> 30 <= 40	3	1.8
	> 40 <= 50	1	.6
	> 50	20	12.3
Total		163	100.0

VVCM		
3.3 Can you indicate what the two most frequent signals are which you generally receive from companies which are or threaten to get into financial difficulties?	Structural arrears in payment	159
	Requested credit reports show a deteriorated state of affairs	31
	Rumours from the market	72
	Company announces themselves	39
	Decreasing demand	7
	Other	16
Total (respondents)		168

VVCM		
3.4 Our company generally delivers goods/services:	Under retention of title	102
	Under right of pledge	6
	Under right of mortgage	2
	Without reservation	51
	Other	21
Total (respondents)		164

VVCM		
3.5 Can you indicate which 2 workout solution types stated here were offered most frequently in 2002?	Reduction of nominal debts	69
	Temporary suspension of any payment obligations	112
	Cash delivery whilst suspension of existing payment obligations	59
	No interest on existing claims	30
	No workout agreements have been proposed	16
	Other	19
Total (respondents)		168

VVCM		*Number*	*%*
3.6 Does your company have a specially developed policy with regard to solutions	Yes	40	23.8
offered in workout routes?	No	128	76.2
Total		168	100.0

VVCM		*Number*	*%*
3.8 When a workout	0%	9	5.5
agreement to reduce	> 0% <= 10%	9	5.5
existing debts is offered,	> 10% <= 20%	9	5.5
which percentage is	> 20% <= 30%	14	8.5
generally agreed upon?	> 30% <= 40%	15	9.1
	> 40% <= 50%	10	6.1
	> 50% <= 60%	10	6.1
	> 60% <= 70%	8	4.9
	> 70% <= 80%	7	4.3
	> 80% <= 90%	2	1.2
	> 90% <= 100%	1	.6
	Depends on the situation	70	42.7
Total		164	100.0

VVCM		*Number*	*%*
3.10 In general, is it possible to negotiate with the offering party about the conditions of	Yes	130	77.8
the workout solution?	No	37	22.2
Total		167	100.0

VVCM		*Number*	*%*
3.11 Are the terms and conditions of delivery adjusted when companies are in	Yes	112	66.7
financial difficulties?	No	56	33.3
Total		168	100.0

VVCM		
3.12 If so, what sort of changes are these?	Supply is only possible via cash on delivery	86
	No further deliveries are made	50
	Payment terms are reduced	38
	Payment terms are extended	23
	Delivered goods are reclaimed on the grounds of retention of title	34
	Company must submit financial forecast	43
	Other	26
Total (respondents)		110

VVCM		*Number*	*%*	*Average*	*St.dev.*
3.13 We are regularly involved in discussions aimed to reorganise and revitalise a company (debtor)	fully agree	8	4.7		
	agree	34	20.1		
	neutral	45	26.6		
	disagree	47	27.8		
	fully disagree	30	17.8		
	don't know/no opinion	5	3.0		
Total		169	100.0	3.3	1.2
3.14 Forming creditor committees (of ordinary creditors, banks, lease companies etc.) is a common thing to do in The Netherlands	fully agree	4	2.4		
	agree	9	5.4		
	neutral	38	22.6		
	disagree	61	36.3		
	fully disagree	26	15.5		
	don't know/no opinion	30	17.9		
Total		168	100.0	3.7	.9

Additional comments (aggregated) with regard to companies in financial difficulties and informal reorganisations – VVCM	*Number*
Each workout agreement proposal is assessed on an individual basis	54
The consideration to agree with the proposal depends on the future turnover and added value/commercial interest/size of the customer	52
The consideration to agree depends on the viability displayed/reorganisation plan/future forecasts/motivation of plan/solid substantiation	44
Openness leads to increased preparedness among creditors/problems are not brought to light or revealed too late/parties are involved too late/timely notification provides possibilities/information supply is insufficient/appearances have been kept up for too long	28
Past experiences/(duration of) relation determines for preparedness to cooperate with a workout agreement	26
The position with regard to a workout agreement depends on the amount of the claim	21
The policy with regard to workout agreements is aimed to deferment of payment/part repayments/payment in instalments/preparedness of the company to carry damage ('approval with remission is reward for shareholders at the expense of creditors'/ 'Deferment of payment often already suffices')	18
Only in the event of (complete) openness/consultation and information from the company is a solution being worked on	17

Additional comments (aggregated) with regard to companies in financial difficulties and informal reorganisations – VVCM	*Number*
A restart is too easy/is used as an easy way out of debts	11
Skilled persons (mediators/insolvency specialists) must be deployed in the event of financial difficulties/there is a lack of skilled support	11
Negotiating a workout agreement is in principle not possible	9
Mismanagement is blamed on creditors	8
The consideration with regard to workout agreements depends on morality/quality of management	6
Agreements must be observed/informal reorganisations fail as agreements are not being observed	5
The consideration to agree depends on the position of the other creditors	5

SURVEY OKB

OKB		*Number*	*%*
1.1 How long have you been involved with OKB as a consultant?	<= 1 year	2	4.3
	> 1 – <= 5 years	27	58.7
	> 5 – <= 10 years	14	30.4
	> 10 years	3	6.5
Total		46	100.0

OKB		*Number*	*%*
2.1 Can you indicate how many companies, guided by you in 2002, looked for a workout agreement for their financial problems?	0	4	8.7
	> 0 <= 10	36	78.3
	> 10 <= 20	5	10.9
	> 20 <= 30	1	2.2
Total		46	100.0

OKB		
2.2 Which causes of financial difficulties do you come across most?	Mismanagement (gross errors)	14
	Fraud	-
	Poor Management (insufficient expertise, wrong market vision)	36
	Insufficient management of working capital (accounts receivable, accounts payable, stock control)	25
	Strangulation contracts	6
	Poor administration/insufficient management information	34
	Increased competition	6
	Loss of market share	9
	Market related (customers or markets being lost)	9
	Poor financing	21
	Over-financing by bank or third-parties	7
	Reduced suppliers' credit (creditors need to be paid quicker)	4
	Non-payment/bad debts (doubtful accounts)	16
	Under-investment (business set-up structurally and/or technically obsolete/unfavourable location)	1
	Excessive (inconsistent) investments	4
	Overrunning of investment budgets	6
	Fast/excessive growth	4
	Speculative transactions	1
	Cost level too high (insufficient cost management)	23
	Other	9
Total (respondents)		45

OKB		
2.3 Can you indicate which argumentation banks generally give for placing a company under 'special administration' (intensive care)?	Continuous losses	22
	Confidence in management lost	15
	Exceeding the credit limit	23
	No longer meeting the conditions of the credit agreement	17
	Rumours	1
	Stagnation of turnover	3
	Other	2
Total (respondents)		44

OKB		Number	%
2.4 In your opinion, is the bank's decision to place a company under special administration generally correct?	Yes	37	88.1
	No	5	11.9
Total		42	100.0

OKB		
2.5 What is the most common reason for a workout route to fail?	Banks lose confidence as a result of which moratorium/liquidation becomes inevitable	26
	Management does not take sufficient action	13
	(Unsecured) Creditors file for liquidation	11
	Suppliers refuse to deliver any further	14
	The tax authorities exercise their right to claim compound bounded assets	12
	Management requests a moratorium	3
	Management decides to restart following liquidation	3
	Staff cannot be made redundant (in a low-cost manner)	6
	Other	2
Total (respondents)		43

OKB		*Number*	*%*
2.6 Is the moratorium sometimes used to confirm a proposed workout agreement?	Yes	26	65.0
	No	14	35.0
Total		40	100.0

OKB		*Number*	*%*
2.7 What is generally the main reason to opt for this route?	Enforce a majority of the creditors to agree to it	15	46.9
	Seeking protection against creditors ('Cooling-off period')	16	50.0
	Other	1	3.1
Total		32	100.0

OKB		
2.8 Can you indicate the problems which companies in financial difficulties do NOT encounter during reorganisation routes aimed to prevent moratorium or liquidation?	Creditors refuse to cooperate	14
	Management is insufficiently capable to carry through turnaround measures	9
	Shareholders refuse to agree with reorganisation plans	6
	Tax authorities exercise their right to claim compound bounded assets	1
	Tax authorities/IIB refuse to cooperate with an arrangement	8
	Tax authorities impose claim due to profit from remission of debt (or are planning to impose this)	4
	Employees (for example strike/work stoppage)	7
	Works Council frustrates turnaround measures	8
	Employment protection of employees	3
	Trade unions frustrate turnaround measures	8
	Suppliers refuse to (continue to) deliver	11
	Financing ceiling has been reached and no other parties are left prepared to finance	10
	Non of the above	12
	Other	-
Total (respondents)		42

OKB		
2.10 Which measures are generally NOT taken when a company is in financial difficulties?	Redundancies	7
	Cutting overhead costs	12
	Adjusting market strategy	12
	Rationalising the product range	9
	Improving purchase processes	7
	Improving management information systems	7
	Improving working capital and cash flow management	10
	Closing loss-making business units	7
	Capitalise (excessive) fixed assets	9
	Selling (profitable) business which is not part of the core-business	7
	Changing the organisation and management structure	8
	Positional changes for certain members of staff (management)	10
	None of the above	16
	Other	1
Total (respondents)		43

OKB		*Number*	*%*
2.11 Who generally takes the initiative with regard to the measures to be taken?	Bank	21	47.7
	Company	23	52.3
Total		44	100.0

OKB		*Number*	*%*
2.12 Are the measures proposed by the bank generally supported by company management?	Yes	23	56.1
	No	18	43.9
Total		41	100.0

OKB		
2.13 In the event of workout agreements, which of the 3 financial measures here do you come across in practice most often?	Reduction of the nominal debt(s) with banks and other financial institutions	7
	Reduction of the nominal debt(s) with suppliers and other creditors	30
	Temporary suspension of any interest obligations	6
	Temporary reduction of any interest obligations	8
	Postponing the instalment term of the debts	35
	Making new funding available	17
	Converting debt in equity	4
	Issuing new shares	1
	None of the above measures are generally taken	3
	Other	2
Total (respondents)		44

OKB		*Number*	*%*
2.14 In general, are agreements entered into with ordinary creditors within the route of informal reorganisations?	Yes	30	68.2
	No	5	11.4
	No opinion	9	20.5
Total		44	100.0

OKB		
2.15 If so, what sort of agreements are they?	Reduction of nominal debts	13
	Temporary suspension of any payment obligations	20
	Continued supply on credit	1
	Continued supply cash on delivery	22
	No interest charged on existing debt	8
	Other	1
Total (respondents)		30

OKB		*Number*	*%*
2.16 In the event of a reduction of the nominal debts, what are the reduction percentages ordinary creditors generally agree to?	> 10% <= 20%	3	7.7
	> 20% <= 30%	9	23.1
	> 30% <= 40%	6	15.4
	> 40% <= 50%	4	10.3
	> 50% <= 60%	1	2.6
	Depends on the specific situation	16	41.0
Total		39	100.0

OKB		*Number*	*%*
2.17 Do you have a standard procedure in place for guiding companies in financial difficulties?	Yes	16	36.4
	No	28	63.6
Total		44	100.0

OKB		
2.19 In the event of failed workout routes, which of the 3 reasons below do you come across in practice most often?	Conflicts within company management	6
	Customers lose confidence in the company	19
	Employees leave	-
	Banks withdraw credit	34
	Suppliers refuse to deliver any further	33
	Companies fail to get costs under control	13
	Tax authorities exercise their right to claim compound bounded assets	12
	Costs for redundancy schemes too high	7
	Other	1
Total (respondents)		43

OKB		*Number*	*%*	*Average*	*St.dev.*
3.1 The decision-making process which forms the basis for the bank to withdraw credit is generally transparent	fully agree	1	2.3		
	agree	16	37.2		
	neutral	11	25.6		
	disagree	14	32.6		
	fully disagree	1	2.3		
Total		43	100.0	3.0	1.0
3.2 Improved cooperation between the company and creditors increases the chances of success for a workout agreement	fully agree	11	25.0		
	agree	32	72.7		
	neutral	1	2.3		
Total		44	100.0	1.8	.5
3.3 Publishing the financial problems reduces the chances of survival for a company	fully agree	7	15.9		
	agree	14	31.8		
	neutral	9	20.5		
	disagree	10	22.7		
	fully disagree	4	9.1		
Total		44	100.0	2.8	1.2
3.4 Employment protection for employees frustrates any rescue attempts of the company	fully agree	6	14.0		
	agree	20	46.5		
	neutral	9	20.9		
	disagree	6	14.0		
	fully disagree	1	2.3		
	don't know/no opinion	1	2.3		
Total		43	100.0	2.4	1.0
3.5 Administrators frequently request accountants to test the viability of a company during a moratorium	fully agree	1	2.3		
	agree	7	15.9		
	neutral	14	31.8		
	disagree	14	31.8		
	fully disagree	6	13.6		
	don't know/no opinion	2	4.5		
Total		44	100.0	3.4	1.0

OKB		*Number*	*%*	*Average*	*St.dev.*
3.6 Trustees frequently request accountants to test the viability of a restart plan in the event of liquidation	agree	10	22.7		
	neutral	13	29.5		
	disagree	11	25.0		
	fully disagree	5	11.4		
	don't know/no opinion	5	11.4		
Total		44	100.0	3.3	1.0
3.7 The possibilities for a workout solution (outside moratorium or liquidation) are, in general, sufficiently examined	fully agree	1	2.3		
	agree	10	22.7		
	neutral	3	6.8		
	disagree	25	56.8		
	fully disagree	4	9.1		
	don't know/no opinion	1	2.3		
Total		44	100.0	3.5	1.0
3.8 Accountants are frequently requested to test the viability of a workout solution	agree	7	15.9		
	neutral	14	31.8		
	disagree	17	38.6		
	fully disagree	3	6.8		
	don't know/no opinion	3	6.8		
Total		44	100.0	3.4	.9
3.9 Accountants should signal the banks in respect of a deteriorated state of affairs within a company ('early warning')	fully agree	6	13.6		
	agree	7	15.9		
	neutral	7	15.9		
	disagree	16	36.4		
	fully disagree	8	18.2		
Total		44	100.0	3.3	1.3
3.10 When entrepreneurs would be aware of financial difficulties sooner, additional 'destruction of value' can be prevented	fully agree	16	36.4		
	agree	26	59.1		
	neutral	1	2.3		
	fully disagree	1	2.3		
Total		44	100.0	1.7	.7

OKB		*Number*	*%*	*Average*	*St.dev.*
3.11 Companies in financial difficulties ruin the market for healthy companies	fully agree	1	2.3		
	agree	7	15.9		
	neutral	14	31.8		
	disagree	17	38.6		
	fully disagree	5	11.4		
Total		44	100.0	3.4	1.0
3.12 Banks always have the advantage at the expense of ordinary creditors	fully agree	12	27.9		
	agree	19	44.2		
	neutral	6	14.0		
	disagree	3	7.0		
	fully disagree	1	2.3		
	don't know/no opinion	2	4.7		
Total		43	100.0	2.1	1.0
3.13 Banks are useful in preventing moratoriums and liquidations	agree	7	15.9		
	neutral	10	22.7		
	disagree	17	38.6		
	fully disagree	9	20.5		
	don't know/no opinion	1	2.3		
Total		44	100.0	3.7	1.0
3.14 Interim managers for companies in financial difficulties increase the chances of survival	fully agree	1	2.3		
	agree	16	37.2		
	neutral	17	39.5		
	disagree	5	11.6		
	don't know/no opinion	4	9.3		
Total		43	100.0	2.7	.7
3.15 The position of ordinary creditors in relation to mortgage holders and pledgees is good	fully agree	1	2.3		
	agree	6	13.6		
	neutral	11	25.0		
	disagree	17	38.6		
	fully disagree	9	20.5		
Total		44	100.0	3.6	1.0

OKB		*Number*	*%*	*Average*	*St.dev.*
3.16 The tax authorities cannot select their debtors and it is therefore justified that they have the right to claim compound bounded assets	fully agree	1	2.3		
	agree	13	30.2		
	neutral	13	30.2		
	disagree	8	18.6		
	fully disagree	7	16.3		
	don't know/no opinion	1	2.3		
Total		43	100.0	3.2	1.1
3.17 The information supply of companies in financial difficulties towards non-banking creditors is generally sufficient	agree	7	15.9		
	neutral	10	22.7		
	disagree	22	50.0		
	fully disagree	5	11.4		
Total		44	100.0	3.6	.9
3.18 It takes few creditors to frustrate an informal reorganisation	fully agree	6	13.6		
	agree	31	70.5		
	neutral	4	9.1		
	disagree	3	6.8		
Total		44	100.0	2.1	.7
3.19 The real danger of informal reorganisations is that the individual rights of creditors are disregarded	agree	18	40.9		
	neutral	15	34.1		
	disagree	8	18.2		
	fully disagree	2	4.5		
	don't know/no opinion	1	2.3		
Total		44	100.0	2.9	.9
3.20 Cooperating with workout agreements will reduce the anticipated proceeds for creditors	fully agree	3	6.8		
	agree	17	38.6		
	neutral	6	13.6		
	disagree	12	27.3		
	fully disagree	4	9.1		
	don't know/no opinion	2	4.5		
Total		44	100.0	2.9	1.2

OKB		*Number*	*%*	*Average*	*St.dev.*
3.21 Bridging loans from banks must at all times receive priority status in relation to company debts	fully agree	1	2.3		
	agree	18	40.9		
	neutral	8	18.2		
	disagree	12	27.3		
	fully disagree	4	9.1		
	don't know/no opinion	1	2.3		
Total		44	100.0	3.0	1.1
3.22 Workout agreements reduce "destruction of value" in companies in financial difficulties compared to moratorium and liquidation	fully agree	8	18.2		
	agree	29	65.9		
	neutral	3	6.8		
	disagree	1	2.3		
	fully disagree	2	4.5		
	don't know/no opinion	1	2.3		
Total		44	100.0	2.1	.9
3.23 Cooperation between creditors and company increases the chances of survival	fully agree	9	20.5		
	agree	31	70.5		
	neutral	3	6.8		
	fully disagree	1	2.3		
Total		44	100.0	1.9	.7
3.24 Mediators can play a pre-eminent role in the event of disputes between creditors and company	fully agree	7	15.9		
	agree	18	40.9		
	neutral	13	29.5		
	disagree	2	4.5		
	fully disagree	1	2.3		
	don't know/no opinion	3	6.8		
Total		44	100.0	2.3	.9
3.25 The credit policy with regard to companies in financial difficulties is always stricter compared to that of healthy companies	fully agree	9	20.5		
	agree	30	68.2		
	neutral	2	4.5		
	disagree	2	4.5		
	don't know/no opinion	1	2.3		
Total		44	100.0	1.9	.7

OKB		*Number*	*%*	*Average*	*St.dev.*
3.26 Change of management is good for the survival chances of a company in financial difficulties	fully agree	3	6.8		
	agree	9	20.5		
	neutral	25	56.8		
	disagree	4	9.1		
	fully disagree	1	2.3		
	don't know/no opinion	2	4.5		
Total		44	100.0	2.8	.8
3.27 A stricter credit policy must be in place immediately after suspicions have arisen that a company is in financial difficulties	fully agree	7	15.9		
	agree	27	61.4		
	neutral	6	13.6		
	disagree	4	9.1		
Total		44	100.0	2.2	.8
3.28 A restart following liquidation is an efficient manner to reorganise a company in financial difficulties	fully agree	1	2.3		
	agree	20	45.5		
	neutral	12	27.3		
	disagree	8	18.2		
	fully disagree	2	4.5		
	don't know/no opinion	1	2.3		
Total		44	100.0	2.8	.9
3.29 A viable company must at all times be reorganised (in order to prevent moratorium or liquidation)	fully agree	8	18.2		
	agree	24	54.5		
	neutral	6	13.6		
	disagree	5	11.4		
	fully disagree	1	2.3		
Total		44	100.0	2.3	1.0
3.30 A restart following liquidation is an efficient manner to lose debt for a company in financial difficulties	fully agree	2	4.7		
	agree	20	46.5		
	neutral	12	27.9		
	disagree	4	9.3		
	fully disagree	3	7.0		
	don't know/no opinion	2	4.7		
Total		43	100.0	2.7	1.0
3.31 Timely detection of problems prevents "destruction of value"	fully agree	22	50.0		
	agree	20	45.5		
	neutral	2	4.5		
Total		44	100.0	1.5	.6

Additional comments (aggregated) with regard to companies in financial difficulties in general and informal reorganisations in particular – OKB	*Number*
Management is weak/management is not able to reorganise/insufficient vision from entrepreneur/management does not dare to take tough measures/management refuses to hire consultancy	20
Reorganisations are started too late/early action is required	10
Banks have too much influence/rigid attitude/think along too little/unwillingness of bank	10
One or more ordinary creditors are uncooperative/insufficient cooperation	8
Administration is poor/management manages too little using financial data	8
Rigid attitude tax authorities/IIB involved with informal reorganisations/decisions of tax authorities/IIB and social services take too much time	7
Confidence among financiers/suppliers has gone/no preparedness left to cooperate	6
Quality of advisors is often insufficient/insufficient knowledge/insufficient preparedness to try and find solutions	6
Reorganisations take too long	4
Employment protection is a bottleneck during informal reorganisations	4
Hard to find additional financing/insufficient possibilities to finance agreement	4

SURVEY INSOLAD

Insolad		*Number*	*%*
1.1 How many years of experience do you have as an administrator/liquidation trustee?	> 1 – <= 5 years	2	2.2
	> 5 – <= 10 years	12	13.5
	>10 years	75	84.3
Total		89	100.0

Insolad		*Number*	*%*
2.1 How many clients have you guided in 2002 during a workout route (workout agreement)	0	11	12.4
	> 0 <= 10	63	70.8
	> 10 <= 20	11	12.4
	> 20 <= 30	2	2.2
	> 30 <= 40	1	1.1
	> 50	1	1.1
Total		89	100.0

Insolad		*Number*	*%*
2.2 Who mostly is the commissioning party in the event of workout routes?	Bank	6	7.3
	Company	44	53.7
	Company's advisors	26	31.7
	Other	6	7.3
Total		82	100.0

Insolad		
2.4 What is the most important reason for a workout route to fail?	Banks lose confidence as a result of which moratorium/liquidation becomes inevitable	40
	Management does not take sufficient action	12
	(Unsecured) Creditors file for liquidation	31
	Suppliers refuse to deliver any further	19
	The tax authorities exercise their right to claim compound bounded assets	6
	Management requests a moratorium	1
	Management decides to restart following liquidation	4
	Staff cannot be made redundant (in a low-cost manner)	37
	Other	11
Total (respondents)		78

Insolad		*Number*	*%*
2.5 Is the moratorium sometimes used to confirm a proposed workout agreement?	Yes	38	47.5
	No	42	52.5
Total		80	100.0

Insolad		*Number*	*%*
2.6 What is generally the main reason to opt for this route?	Enforce creditors to agree to reorganisation plan	34	64.2
	Seeking protection against creditors ('Cooling-off period')	15	28.3
	Other	4	7.5
Total		53	100.0

Insolad		
2.7 Can you indicate the problems which companies in financial difficulties do NOT encounter during reorganisation routes aimed to prevent moratorium or liquidation?	Creditors (banks) refuse to cooperate	7
	Management is insufficiently capable to carry through turnaround measures	10
	Shareholders refuse to agree with reorganisation plans	30
	Tax authorities exercise their right to claim compound bounded assets	9
	Tax authorities/IIB refuse to cooperate with an arrangement	8
	Tax authorities impose claim due to profit from remission of debt (or are planning to impose this)	9
	Employees (for example strike/work stoppage)	24
	Works Council frustrates turnaround measures	28
	Employment protection of employees	6
	Trade unions frustrate turnaround measures	20
	Suppliers refuse to (continue to) deliver	7
	Financing ceiling has been reached and no other parties are left prepared to finance	5
	Non of the above	28
	Other	-
Total (respondents)		77

Insolad		
2.8 In the event of workout agreements, which of the 3 financial measures here do you come across in practice most often?	Reduction of the nominal debt(s) with banks and other financial institutions	19
	Reduction of the nominal debt(s) with suppliers and other creditors	58
	Temporary suspension of any interest obligations	16
	Temporary reduction of any interest obligations	4
	Postponing the instalment term of the debts	30
	Making new funding available	54
	Converting debt in equity	15
	Issuing new shares	5
	None of the above measures are generally taken	6
Total (respondents)		81

Insolad		*Number*	*%*
2.9 In general, are agreements entered into with ordinary creditors within the route of informal reorganisations?	Yes	75	92.6
	No	5	6.2
	No opinion	1	1.2
Total		81	100.0

Insolad		
2.10 If so, what sort of agreements are they?	Reduction of nominal debts	65
	Temporary suspension of any payment obligations	45
	Continued supply on credit	11
	Continued supply cash on delivery	30
	No interest charged on existing debt	21
	Other	1
Total (respondents)		75

Insolad		*Number*	*%*
2.11 In the event of a reduction of the nominal debts, what are the reduction percentages ordinary creditors generally agree to?	> 0% <= 10%	1	1.3
	> 10% <= 20%	9	11.3
	> 20% <= 30%	14	17.5
	> 30% <= 40%	10	12.5
	> 40% <= 50%	5	6.3
	> 50% <= 60%	4	5.0
	> 60% <= 70%	1	1.3
	> 70% <= 80%	1	1.3
	Depends on the specific situation	35	43.8
Total		80	100.0

Insolad		*Number*	*%*
2.12 Does your office have a standard procedure in place for guiding companies in financial difficulties?	Yes	20	23.8
	No	64	76.2
Total		84	100.0

Insolad		
2.14 In the event of failed workout routes, which of the 3 reasons below do you come across in practice most often?	Banks withdraw credit	58
	Customers lose confidence in the company	10
	Ordinary creditors refuse to cooperate with agreement	27
	Employees leave	7
	Conflicts within company management	7
	Suppliers refuse to deliver any further	28
	Companies fail to get costs under control	18
	Tax authorities exercise their right to claim compound bounded assets	12
	Costs for redundancy schemes too high	43
	Other	5
Total (respondents)		80

Insolad		*Number*	*%*	*Average*	*St.dev.*
3.1 A restart following liquidation is an efficient manner to reorganise a company in financial difficulties	fully agree	23	27.1		
	agree	52	61.2		
	neutral	6	7.1		
	disagree	3	3.5		
	fully disagree	1	1.2		
Total		85	100.0	1.9	.8
3.2 Mediators can arbitrate in the event of disputes between creditors and company	fully agree	2	2.4		
	agree	11	12.9		
	neutral	21	24.7		
	disagree	26	30.6		
	fully disagree	19	22.4		
	don't know/no opinion	6	7.1		
Total		85	100.0	3.6	1.1
3.3 Employment protection for employees frustrates any rescue attempts of the company	fully agree	21	24.7		
	agree	52	61.2		
	neutral	6	7.1		
	disagree	3	3.5		
	fully disagree	3	3.5		
Total		85	100.0	2.0	.9
3.4 A company which, via an Intensive Care Department of a bank, nevertheless proceeds to moratorium can be restarted quicker (compared to company which has not been under special administration)	fully agree	3	3.5		
	agree	21	24.7		
	neutral	34	40.0		
	disagree	11	12.9		
	fully disagree	11	12.9		
	don't know/no opinion	5	5.9		
Total		85	100.0	3.1	1.1
3.5 The possibilities for a workout solution are, in general, sufficiently examined	fully agree	3	3.5		
	agree	24	28.2		
	neutral	19	22.4		
	disagree	27	31.8		
	fully disagree	7	8.2		
	don't know/no opinion	5	5.9		
Total		85	100.0	3.1	1.1

Insolad		*Number*	*%*	*Average*	*St.dev.*
3.6 A decision regarding the viability of a restart (in a formal procedure) can be made quicker after a serious workout attempt	fully agree	7	8.2		
	agree	53	62.4		
	neutral	12	14.1		
	disagree	11	12.9		
	don't know/no opinion	2	2.4		
Total		85	100.0	2.3	.8
3.7 When applying for moratorium, the company generally supplies sufficient financial information	fully agree	1	1.2		
	agree	22	25.9		
	neutral	20	23.5		
	disagree	34	40.0		
	fully disagree	7	8.2		
	don't know/no opinion	1	1.2		
Total		85	100.0	3.3	1.0
3.8 When applying for moratorium, the company practically never submits a reorganisation plan (indicating its viability)	fully agree	10	12.0		
	agree	49	59.0		
	neutral	13	15.7		
	disagree	9	10.8		
	fully disagree	1	1.2		
	don't know/no opinion	1	1.2		
Total		83	100.0	2.3	.9
3.9 Banks are generally helpful during the stages of moratorium	fully agree	1	1.2		
	agree	9	10.6		
	neutral	31	36.5		
	disagree	35	41.2		
	fully disagree	8	9.4		
	don't know/no opinion	1	1.2		
Total		85	100.0	3.5	.9
3.10 In the event of moratorium or liquidation, a judge will need less time to come to a decision with regard to a restart scenario when it has been attempted to bring about a workout solution	fully agree	1	1.2		
	agree	24	28.2		
	neutral	33	38.8		
	disagree	12	14.1		
	fully disagree	9	10.6		
	don't know/no opinion	6	7.1		
Total		85	100.0	3.1	1.0

Insolad		*Number*	*%*	*Average*	*St.dev.*
3.11 An administrator/ trustee will need less time to come to a decision with regard to a restart scenario when it has been attempted to bring about a workout solution.	fully agree	3	3.5		
	agree	50	58.8		
	neutral	17	20.0		
	disagree	10	11.8		
	fully disagree	4	4.7		
	don't know/no opinion	1	1.2		
Total		85	100.0	2.5	.9
3.12 Insolad solicitors should play a bigger part during the stages of the workout route	fully agree	21	24.7		
	agree	49	57.6		
	neutral	11	12.9		
	disagree	2	2.4		
	fully disagree	1	1.2		
	don't know/no opinion	1	1.2		
Total		85	100.0	2.0	.8
3.13 Restructuring at an early stage (within an informal procedure/workout route) results in higher proceeds for creditors (compared to formal procedures)	fully agree	20	23.8		
	agree	51	60.7		
	neutral	9	10.7		
	disagree	2	2.4		
	fully disagree	1	1.2		
	don't know/no opinion	1	1.2		
Total		84	100.0	2.0	.7
3.14 Banks are generally well covered (mortgage/right of pledge) in the event of moratorium and liquidation	fully agree	28	32.9		
	agree	45	52.9		
	neutral	9	10.6		
	disagree	3	3.5		
Total		85	100.0	1.8	.7
3.15 Creditors' preferences must never be compromised	fully agree	2	2.4		
	agree	17	20.2		
	neutral	20	23.8		
	disagree	33	39.3		
	fully disagree	11	13.1		
	don't know/no opinion	1	1.2		
Total		84	100.0	3.4	1.0

Insolad		*Number*	*%*	*Average*	*St.dev.*
3.16 Reorganisations can only be successful outside moratorium	fully agree	2	2.4		
	agree	13	15.3		
	neutral	11	12.9		
	disagree	44	51.8		
	fully disagree	13	15.3		
	don't know/no opinion	2	2.4		
Total		85	100.0	3.6	1.0
3.17 Reorganisations must take place outside the Bankruptcy Act	fully agree	2	2.3		
	agree	21	24.4		
	neutral	23	26.7		
	disagree	30	34.9		
	fully disagree	8	9.3		
	don't know/no opinion	2	2.3		
Total		86	100.0	3.3	1.0
3.18 An obligation to continue to supply during moratorium increases the chances of success	fully agree	6	7.0		
	agree	49	57.0		
	neutral	15	17.4		
	disagree	10	11.6		
	fully disagree	3	3.5		
	don't know/no opinion	3	3.5		
Total		86	100.0	2.5	.9
3.19 An obligation to continue to finance during moratorium will save more companies	fully agree	5	5.9		
	agree	52	61.2		
	neutral	13	15.3		
	disagree	12	14.1		
	fully disagree	2	2.4		
	don't know/no opinion	1	1.2		
Total		85	100.0	2.5	.9
3.20 Informal procedures (workout solutions) are cheaper than formal procedures (moratorium/ liquidation) as these are not public	fully agree	11	12.8		
	agree	29	33.7		
	neutral	17	19.8		
	disagree	19	22.1		
	fully disagree	4	4.7		
	don't know/no opinion	6	7.0		
Total		86	100.0	2.7	1.1

Insolad		*Number*	*%*	*Average*	*St.dev.*
3.21 The possibilities for a workout solution are, in general, sufficiently examined	fully agree	2	2.4		
	agree	20	24.1		
	neutral	18	21.7		
	disagree	33	39.8		
	fully disagree	6	7.2		
	don't know/no opinion	4	4.8		
Total		83	100.0	3.3	1.0
3.22 A failed attempt for a workout solution results in any case in a quicker completion of the formal procedures	fully agree	1	1.2		
	agree	37	43.5		
	neutral	22	25.9		
	disagree	18	21.2		
	fully disagree	4	4.7		
	don't know/no opinion	3	3.5		
Total		85	100.0	2.8	.9
3.23 When the parties involved trust each other more, there will be a better chance of the company surviving	fully agree	18	20.9		
	agree	54	62.8		
	neutral	10	11.6		
	disagree	1	1.2		
	don't know/no opinion	3	3.5		
Total		86	100.0	1.9	.6

Additional comments (aggregated) with regard to companies in financial difficulties in general and informal reorganisations in particular – Insolad	*Number*
One or more ordinary creditors are uncooperative/render insufficient cooperation	30
Employment protection is a bottleneck during informal reorganisations	30
Reorganisations are started too late/early action is required	20
Rigid attitude tax authorities/IBB involved with informal reorganisations/decisions of tax authorities/IBB and social services take too much time	19
Hard to find additional financing/insufficient possibilities to finance agreement	12
Banks have too much influence/rigid attitude/think along too little/unwillingness of bank/banks render insufficient cooperation/cancellation of credit	11
Lack of transparency/'Skeletons in the cupboard'	9
Confidence among financiers/suppliers has gone/no preparedness left to cooperate	4
Credit insurance companies are uncooperative	4

SURVEY SRA

SRA		*Number*	%
1.1 Position of the respondent	Accountant	16	17.4
	Chartered Accountant	66	71.7
	Advisor	8	8.7
	Other	2	2.2
Total		92	100.0

SRA		*Number*	%
2.1 Can you indicate how many of your clients found a workout solution in 2002 in respect of their financial problems?	0	15	16.7
	> 0 <= 10	71	78.9
	> 10 <= 20	2	2.2
	> 20 <= 30	1	1.1
	> 30 <= 40	1	1.1
Total		90	100.0

SRA		*Number*	%
2.2 Can you indicate how many of your clients applied for moratorium and/or filed for liquidation in 2002?	0	41	44.6
	> 0 <= 10	51	55.4
Total		92	100.0

SRA		
2.3 Which causes of financial difficulties do you come across most?	Mismanagement (gross errors)	17
	Fraud	2
	Poor Management (insufficient expertise, wrong market vision)	67
	Insufficient management of working capital (accounts receivable, accounts payable, stock control)	40
	Strangulation contracts	6
	Poor administration/insufficient management information	38
	Increased competition	30
	Loss of market share	28
	Market related (customers or markets being lost)	33
	Poor financing	16
	Over-financing by bank or third-parties	8
	Reduced suppliers' credit (creditors need to be paid quicker)	3
	Non-payment/bad debts (doubtful accounts)	37
	Under-investment (business set-up structurally and/or technically obsolete/unfavourable location)	1
	Excessive (inconsistent) investments	9
	Overrunning of investment budgets	12
	Fast/excessive growth	20
	Speculative transactions	1
	Cost level too high (insufficient cost management)	44
	Other	7
Total (respondents)		92

SRA		
2.4 Can you indicate which argumentation banks generally give for placing a company under 'special administration' (intensive care)?	Continuous losses	59
	Confidence in management lost	46
	Exceeding the credit limit	29
	No longer meeting the conditions of the credit agreement	23
	Rumours	-
	Stagnation of turnover	1
	Other	2
Total (respondents)		92

SRA		*Number*	%
2.5 In your opinion, is the bank's decision to place a company under special administration generally correct?	Yes	63	68.5
	No	29	31.5
Total		92	100.0

SRA		
2.6 What is the most common reason for a workout route to fail?	Banks lose confidence as a result of which moratorium/liquidation becomes inevitable	45
	Management does not take sufficient action	29
	(Unsecured) Creditors file for liquidation	21
	Suppliers refuse to deliver any further	15
	The tax authorities exercise their right to claim compound bounded assets	14
	Management requests a moratorium	2
	Management decides to restart following liquidation	13
	Staff cannot be made redundant (in a low-cost manner)	26
	Other	4
Total (respondents)		91

SRA		*Number*	%
2.7 Is the moratorium sometimes used to confirm a proposed workout agreement?	Yes	36	40.4
	No	53	59.6
Total		89	100.0

SRA		*Number*	*%*
2.8 What is generally the main reason to opt for this route?	Enforce a majority of the creditors to agree to it	19	32.2
	Seeking protection against creditors ('Cooling-off period')	36	61.0
	Other	4	6.8
Total		59	100.0

SRA		
2.9 Can you indicate the problems which companies in financial difficulties do NOT encounter during reorganisation routes aimed to prevent moratorium or liquidation?	Creditors refuse to cooperate	14
	Management is insufficiently capable to carry through turnaround measures	13
	Shareholders refuse to agree with reorganisation plans	25
	Tax authorities exercise their right to claim compound bounded assets	10
	Tax authorities/IIB refuse to cooperate with an arrangement	20
	Tax authorities impose claim due to profit from remission of debt (or are planning to impose this)	16
	Employees (for example strike/work stoppage)	24
	Works Council frustrates turnaround measures	16
	Employment protection of employees	11
	Trade unions frustrate turnaround measures	16
	Suppliers refuse to (continue to) deliver	17
	Financing ceiling has been reached and no other parties are left prepared to finance	12
	Non of the above	29
	Other	-
Total (respondents)		88

SRA		
2.11 Which measures are generally NOT taken when a company is in financial difficulties?	Redundancies	7
	Cutting overhead costs	5
	Adjusting market strategy	31
	Rationalising the product range	12
	Improving purchase processes	12
	Improving management information systems	32
	Improving working capital and cash flow management	7
	Closing loss-making business units	6
	Capitalise (excessive) fixed assets	16
	Selling (profitable) business which is not part of the core-business	17
	Changing the organisation and management structure	20
	Positional changes for certain members of staff (management)	32
	None of the above	22
	Other	-
Total (respondents)		90

SRA		*Number*	*%*
2.12 Who generally takes the initiative with regard to the measures to be taken?	Bank	21	23.1
	Company	70	76.9
Total		91	100.0

SRA		*Number*	*%*
2.13 Are the measures proposed by the bank generally supported by company management?	Yes	46	53.5
	No	40	46.5
Total		86	100.0

SRA		
2.14 In the event of workout agreements, which of the 3 financial measures here do you come across in practice most often?	Reduction of the nominal debt(s) with banks and other financial institutions	13
	Reduction of the nominal debt(s) with suppliers and other creditors	61
	Temporary suspension of any interest obligations	14
	Temporary reduction of any interest obligations	6
	Postponing the instalment term of the debts	72
	Making new funding available	26
	Converting debt in equity	25
	Issuing new shares	4
	None of the above measures are generally taken	4
	Other	2
Total (respondents)		91

SRA		*Number*	*%*
2.15 In general, are agreements entered into with ordinary creditors within the route of informal reorganisations?	Yes	78	84.8
	No	8	8.7
	No opinion	6	6.5
Total		92	100.0

SRA		
2.16 If so, what sort of agreements are they?	Reduction of nominal debts	61
	Temporary suspension of any payment obligations	50
	Continued supply on credit	10
	Continued supply cash on delivery	37
	No interest charged on existing debt	23
	Other	1
Total (respondents)		78

SRA		*Number*	*%*
2.17 In the event of a reduction of the nominal debts, what are the reduction percentages ordinary creditors generally agree to?	0%	1	1.2
	> 0% <= 10%	2	2.3
	> 10% <= 20%	7	8.1
	> 20% <= 30%	11	12.8
	> 30% <= 40%	11	12.8
	> 40% <= 50%	10	11.6
	> 50% <= 60%	9	10.5
	> 60% <= 70%	3	3.5
	> 70% <= 80%	3	3.5
	Depends on the specific situation	29	33.7
Total		86	100.0

SRA		*Number*	*%*
2.18 Does your office have a standard procedure in place for guiding companies in financial difficulties?	Yes	9	9.8
	No	83	90.2
Total		92	100.0

SRA		
2.20 In the event of failed workout routes, which of the 3 reasons below do you come across in practice most often?	Conflicts within company management	11
	Customers lose confidence in the company	31
	Employees leave	14
	Banks withdraw credit	70
	Suppliers refuse to deliver any further	52
	Companies fail to get costs under control	22
	Tax authorities exercise their right to claim compound bounded assets	21
	Costs for redundancy schemes too high	36
	Other	2
Total (respondents)		91

SRA		Number	%	Average	St.dev.
3.1 The decision-making process which forms the basis for the bank to withdraw credit is generally transparent	fully agree	12	13.0		
	agree	16	17.4		
	neutral	44	47.8		
	disagree	18	19.6		
	don't know/no opinion	2	2.2		
Total		92	100.0	3.8	.9
3.2 Improved cooperation between the company and creditors increases the chances of success for a workout agreement	fully agree	16	17.6		
	agree	69	75.8		
	neutral	6	6.6		
Total		91	100.0	1.9	.5
3.3 Publishing the financial problems reduces the chances of survival for a company	fully agree	5	5.5		
	agree	41	45.1		
	neutral	20	22.0		
	disagree	21	23.1		
	fully disagree	4	4.4		
Total		91	100.0	2.8	1.0
3.4 Employment protection for employees frustrates any rescue attempts of the company	fully agree	15	16.5		
	agree	59	64.8		
	neutral	8	8.8		
	disagree	7	7.7		
	fully disagree	2	2.2		
Total		91	100.0	2.1	.9
3.5 Administrators frequently request accountants to test the viability of a company during a moratorium	fully agree	1	1.1		
	agree	12	13.2		
	neutral	21	23.1		
	disagree	27	29.7		
	fully disagree	23	25.3		
	don't know/no opinion	7	7.7		
Total		91	100.0	3.7	1.1

SRA		*Number*	*%*	*Average*	*St.dev.*
3.6 Trustees frequently request accountants to test the viability of a restart plan in the event of liquidation	fully agree	1	1.1		
	agree	7	7.8		
	neutral	21	23.3		
	disagree	36	40.0		
	fully disagree	17	18.9		
	don't know/no opinion	8	8.9		
Total		90	100.0	3.7	.9
3.7 The possibilities for a workout solution (outside moratorium or liquidation) are, in general, sufficiently examined	fully agree	5	5.5		
	agree	28	30.8		
	neutral	12	13.2		
	disagree	40	44.0		
	fully disagree	6	6.6		
Total		91	100.0	3.2	1.1
3.8 Accountants are frequently requested to test the viability of a workout solution	fully agree	2	2.2		
	agree	25	27.8		
	neutral	20	22.2		
	disagree	29	32.2		
	fully disagree	10	11.1		
	don't know/no opinion	4	4.4		
Total		90	100.0	3.2	1.1
3.9 Accountants should signal the banks in respect of a deteriorated state of affairs within a company ('early warning')	fully agree	1	1.1		
	agree	10	11.1		
	neutral	16	17.8		
	disagree	37	41.1		
	fully disagree	23	25.6		
	don't know/no opinion	3	3.3		
Total		90	100.0	3.8	1.0
3.10 When entrepreneurs would be aware of financial difficulties sooner, additional 'destruction of value' can be prevented	fully agree	16	17.6		
	agree	69	75.8		
	neutral	2	2.2		
	disagree	3	3.3		
	fully disagree	1	1.1		
Total		91	100.0	1.9	.7

SRA		*Number*	*%*	*Average*	*St.dev.*
3.11 Companies in financial difficulties ruin the market for healthy companies	fully agree	1	1.1		
	agree	18	19.8		
	neutral	33	36.3		
	disagree	35	38.5		
	fully disagree	4	4.4		
Total		91	100.0	3.3	.9
3.12 Banks always have the advantage at the expense of ordinary creditors	fully agree	22	24.4		
	agree	48	53.3		
	neutral	9	10.0		
	disagree	8	8.9		
	fully disagree	3	3.3		
Total		90	100.0	2.1	1.0
3.13 Banks are useful in preventing moratoriums and liquidations	agree	12	13.2		
	neutral	27	29.7		
	disagree	38	41.8		
	fully disagree	13	14.3		
	don't know/no opinion	1	1.1		
Total		91	100.0	3.6	.9
3.14 Interim managers for companies in financial difficulties increase the chances of survival	agree	26	28.9		
	neutral	46	51.1		
	disagree	13	14.4		
	fully disagree	4	4.4		
	don't know/no opinion	1	1.1		
Total		90	100.0	2.9	.8
3.15 The position of ordinary creditors in relation to mortgage holders and pledgees is good	agree	7	7.7		
	neutral	15	16.5		
	disagree	44	48.4		
	fully disagree	24	26.4		
	don't know/no opinion	1	1.1		
Total		91	100.0	3.9	.9

SRA		Number	%	Average	St.dev.
3.16 The tax authorities cannot select their debtors and it is therefore justified that they have the right to claim compound bounded assets	fully agree	1	1.1		
	agree	24	26.4		
	neutral	14	15.4		
	disagree	37	40.7		
	fully disagree	14	15.4		
	don't know/no opinion	1	1.1		
Total		91	100.0	3.4	1.1
3.17 The information supply of companies in financial difficulties towards non-banking creditors is generally sufficient	agree	8	8.8		
	neutral	21	23.1		
	disagree	49	53.8		
	fully disagree	11	12.1		
	don't know/no opinion	2	2.2		
Total		91	100.0	3.7	.8
3.18 It takes few creditors to frustrate an informal reorganisation	fully agree	10	11.0		
	agree	62	68.1		
	neutral	11	12.1		
	disagree	6	6.6		
	fully disagree	2	2.2		
Total		91	100.0	2.2	.8
3.19 The real danger of informal reorganisations is that the individual rights of creditors are disregarded	fully agree	1	1.1		
	agree	43	47.3		
	neutral	25	27.5		
	disagree	18	19.8		
	fully disagree	4	4.4		
Total		91	100.0	2.8	.9
3.20 Cooperating with workout agreements will reduce the anticipated proceeds for creditors	fully agree	2	2.2		
	agree	19	20.9		
	neutral	11	12.1		
	disagree	44	48.4		
	fully disagree	15	16.5		
Total		91	100.0	3.6	1.1

SRA		*Number*	*%*	*Average*	*St.dev.*
3.21 Bridging loans from banks must at all times receive priority status in relation to company debts	fully agree	4	4.4		
	agree	54	59.3		
	neutral	13	14.3		
	disagree	18	19.8		
	fully disagree	2	2.2		
Total		91	100.0	2.6	.9
3.22 Workout agreements reduce "destruction of value" in companies in financial difficulties compared to moratorium and liquidation	fully agree	9	9.9		
	agree	65	71.4		
	neutral	7	7.7		
	disagree	7	7.7		
	fully disagree	1	1.1		
	don't know/no opinion	2	2.2		
Total		91	100.0	2.2	.8
3.23 Cooperation between creditors and company increases the chances of survival	fully agree	8	8.8		
	agree	78	85.7		
	neutral	2	2.2		
	disagree	3	3.3		
Total		91	100.0	2.0	.5
3.24 Mediators can play a pre-eminent role in the event of disputes between creditors and company	fully agree	7	7.8		
	agree	30	33.3		
	neutral	34	37.8		
	disagree	13	14.4		
	fully disagree	1	1.1		
	don't know/no opinion	5	5.6		
Total		90	100.0	2.7	.9
3.25 The credit policy with regard to companies in financial difficulties is always stricter compared to that of healthy companies	fully agree	9	9.9		
	agree	69	75.8		
	neutral	6	6.6		
	disagree	6	6.6		
	fully disagree	1	1.1		
Total		91	100.0	2.1	.7

SRA		*Number*	*%*	*Average*	*St.dev.*
3.26 Change of management is good for the survival chances of a company in financial difficulties	fully agree	1	1.1		
	agree	25	27.5		
	neutral	53	58.2		
	disagree	9	9.9		
	don't know/no opinion	3	3.3		
Total		91	100.0	2.8	.6
3.27 A stricter credit policy must be in place immediately after suspicions have arisen that a company is in financial difficulties	fully agree	5	5.5		
	agree	64	70.3		
	neutral	11	12.1		
	disagree	9	9.9		
	fully disagree	1	1.1		
	don't know/no opinion	1	1.1		
Total		91	100.0	2.3	.8
3.28 A restart following liquidation is an efficient manner to reorganise a company in financial difficulties	fully agree	4	4.4		
	agree	48	52.7		
	neutral	27	29.7		
	disagree	8	8.8		
	fully disagree	2	2.2		
	don't know/no opinion	2	2.2		
Total		91	100.0	2.5	.8
3.29 A viable company must at all times be reorganised (in order to prevent moratorium or liquidation)	fully agree	10	11.1		
	agree	54	60.0		
	neutral	21	23.3		
	disagree	5	5.6		
Total		90	100.0	2.2	.7
3.30 A restart following liquidation is an efficient manner to lose debt for a company in financial difficulties	fully agree	2	2.2		
	agree	50	55.6		
	neutral	22	24.4		
	disagree	10	11.1		
	fully disagree	5	5.6		
	don't know/no opinion	1	1.1		
Total		90	100.0	2.6	.9
3.31 Timely detection of problems prevents "destruction of value"	fully agree	23	25.8		
	agree	64	71.9		
	neutral	2	2.2		
Total		89	100.0	1.8	.5

Additional comments (aggregated) with regard to companies in financial difficulties in general and informal reorganisations in particular – SRA	*Number*
Rigid attitude tax authorities/IIB involved with informal reorganisations/decisions of tax authorities/IIB and social services take too much time	21
Banks have too much influence/rigid attitude/think along too little/unwillingness of bank	16
One or more ordinary creditors are uncooperative/insufficient cooperation	16
Insufficient level/knowledge among advisors/insufficient cooperation between legal and financial experts	13
Management is weak/management is not able to reorganise/insufficient vision from entrepreneur/management does not dare to take tough measures/management refuses to hire consultancy	9
Employment protection is a bottleneck during informal reorganisations	8
Reorganisations take too long	7
Hard to find additional financing/insufficient possibilities to finance agreement	6
Reorganisations are started too late/early action is required	5
Information supply is crucial	4

Index

A
ABI | 106, 112
Access to information | 39, 96, 187
Actions to increase cash flow | 20
Additional comments surveys | 69
· Insolad | 340
· OKB | 322
· SRA | 352
· VVCM | 319
Administrator | 2, 15, 18, 48, 54, 61, 75, 195
Advantages informal reorganisation | 29-30, 33-34, 36, 39, 82, 86
Advantages mediation | 106, 115
Advisors | 7-8, 22, 41, 44, 50, 57, 75, 80-88, 95-97, 102-104, 116, 125-134, 187
Alternative dispute resolution | 90-92, 100-107, 117, 140, 171
American Bankruptcy Institute, *see ABI*
Analysing phase | 19-22
Appendices | 181
Applicable law | 129
Asian Development Bank | 35-37
Asset stripping | 20, 171
Association of Business Recovery Professionals, *see R3*
Attachment of property | 53, 61, 111, 177
Attitude interested parties | 6-7, 71-72, 76, 79-80, 84, 90-92, 127, 131, 136

B
Balance sheet (ratios) | 18, 23-24, 52, 57-58, 66, 83, 86, 120, 126-127, 130, 132, 136
Bangkok rules | 37, 106
Banking Ombudsman | 102
Banking sector | 117, 140
Bank of England | 38-39
Bankruptcy act (law) | 5, 30, 35-36, 40, 96, 105, 108
Banks
· in general | 4-8, 20, 35-41, 43-44
· role of | 19, 26-29, 52, 55-62, 66-67, 72, 88, 90, 92-93, 97, 99-103, 110-112, 115-117, 123-128, 130-140
Banks and Businesses Code | 93, 100-103, 110, 116, 130, 137-140, 171-172, 174
BBA | 38, 101-103, 116, 130
Best efforts plan | 18
Bibliography | 159-170
Big bath accounting | 171, 216
Bleeder | 171, 223
Bottlenecks informal reorganisation | 5-6, 9, 33-34, 43, 45-46, 48, 53-54, 57, 61-62, 64-67, 69, 73-74, 76, 79-80, 88-89, 92, 108, 117, 119, 125, 128-134, 139
Branch of industry | 44
Bridging loan | 22, 83, 98, 171
British Bankers' Association, *see BBA*
British Bankers' Association (BBA-) Statement (of Principles) | 101-103, 116, 130
Business & Law Research Centre, *see OO&R*
Business sector | 28, 92, 104-105, 117, 13

C
Case studies
· appendices | 199-310
· in general | 6-9, 43-48, 65-67, 89, 93, 96-97, 100, 103, 119-136

Case studies, failed informal reorganisations | 58-65
- Agrarian | 62, 261
- Airline tickets | 62, 264
- Furniture | 62, 267
- Goods | 62, 271
- Knowledge | 62, 273
- Machines I | 62, 277
- Machines II | 63, 280
- Marketing | 63, 283
- Packaging machine | 63, 285
- Reconstruction | 63, 288
- Services | 63, 290
- Steel | 63, 293
- Systems | 63, 298
- Techno | 63, 300
- Welding | 63, 302

Case studies, successful informal reorganisations | 48-58
- Advertising | 55, 199
- Aid | 55, 203
- Cable | 55, 207
- Candy | 55, 210
- Car | 55, 213
- Food | 55, 217
- Garden | 55, 221
- ICT | 55, 222
- Lamps | 55, 225
- Lease | 55, 227
- Office | 55, 233
- Products | 56, 236
- Raw | 56, 239
- Renting out | 56, 241
- Sales | 56, 244
- Soil drilling | 56, 247
- Sound | 56, 249
- Training | 56, 252
- Tree nursery | 56, 254
- Wood | 56, 258

Cash flow | 12, 19-21, 52, 92, 98, 171-172
Cash sweep | 51, 60, 171
Catalysts | 135, 138
Categories causes, measures and bottlenecks | 9, 45
Causes financial difficulties | 9, 11-14, 18, 21-22, 48-49, 57-59, 64-66, 73, 78, 81, 87, 125
CBS | 13, 44, 124
Center for Public Resources (CPR) | 112
Central Bureau for Statistics, *see CBS*
Centre for Labour Affairs, *see CL*
Chamber of commerce | 99
Chances of failure | 41, 64-67, 98, 127, 129
Chances of success (survival) | 38, 40-41, 65, 71, 74, 76, 79, 81, 109, 117, 126, 138
Cherry picking | 171
CL | 31, 171
Code(s) of conduct for informal reorganisation | 1, 9, 37-38, 82, 86, 89-93, 100, 103, 107, 109, 117, 128, 138, 140, 175, 178
Code of conduct between banks and SMEs | 90-92, 100-103, 107, 109, 117, 140, 171
Common pool problem | 91, 171
Company in financial difficulties | 3-4, 18-19, 38, 41, 71, 75, 77, 88-89, 93-94, 100, 110, 112, 119, 128, 135
Competency of the Reorganisation Mediator | 108
Competition, Deregulation and Quality of Legislation, *see MDW-project*
Compound bounded assets | 28, 82, 88, 111, 132, 140, 174, 177
Confidence | 19-20, 22-23, 39, 42, 53-54, 58, 61-62, 74-79, 84-87, 89, 97, 111, 126-127, 131-139
Confidentiality | 7, 26, 97
Conflict relationships | 110-112
Confrontation - successful and failed informal reorganisations | 65
Cons workout agreement/informal reorganisation | 12, 14, 29-33, 121
Control | 16, 30-31, 71, 73-74, 78, 81, 87, 90, 105, 122, 127, 131
Cooling-off period | 15-16, 121
Cooperation | 5, 7, 26, 35-41, 71, 74, 79, 90-96, 102, 111, 115, 128-129, 134, 138-139
Coordinated response creditors | 95
Coordination-problem | 33, 91

Core business (activities) | 74, 172
Costs of mediation | 116
Court approval of composition | 12, 172
Court-Ordered-Mediation (or Court-Annexed ADR) | 109, 172
Court | 12, 15-16, 24, 31-33, 82, 84-85, 100, 107, 112, 115, 131, 133-134, 172, 174
Credit cancellation | 27, 47, 52-53, 60-61
Creditors
· in general | 2-4, 8, 13, 15-18, 24-34, 36, 41, 57, 70, 72, 74, 76, 79, 80-82, 84-87, 95-99, 107-108, 110, 113, 119-120, 122, 125-129, 131-134, 136, 138
· relative positions | 56-57, 71-72, 75, 83, 85, 87, 92, 96, 121-122, 128, 130-131, 135, 138
· reluctant attitude (tense relationship) | 54, 61-64, 67, 71-72, 75-77, 79, 84-87, 89-94, 96, 103, 110-113, 115, 121, 131, 134, 136
Cross-border insolvency | 35-36
Customers | 21, 30, 74, 79, 121

D

Deadlock | 132
Debt | 3, 15-17, 25-26, 31-32, 36-39, 51, 54, 60, 66, 70-76, 79, 85, 89, 91-92, 95-99, 106, 111, 120-121, 131, 138, 176-179
Debt equity swap | 25, 51, 60, 172
Debt overhang | 54
Debt Recovery unit | 26
Debt restructuring agreement / Debt rescheduling arrangement (DRA) | 3, 172, 243
Debtor-in-Possession (DIP) | 98,
Debtors' integrity | 95
Debt-write-off | 172, 179
Default | 54, 70, 172, 177
Deferment of payments | 3, 15, 25, 47, 51-52, 60, 71, 79, 87, 121, 129, 131, 138
Definition ADR | 104, 171
Definitions and translations of terms | 171-180
Descriptions causes, measures, bottlenecks (appendix) | 189-197
Direct costs | 90, 121, 140
Disadvantages informal reorganisation | 29-41, 86, 134
Dried-up liquidity | 103, 132
Dutch Approach | 117, 172, 174
Dutch Bankruptcy Act (DBA) | 2-6, 17, 32, 84, 117, 140, 172, 174-176
Dutch Civil Code | 18, 105
Dutch Federation of Accountants, *see NOvAA*
Dutch Federation (consultative body) of Banks, *see NVB*
Dutch Federation of Debt collection companies, *see NVI*
Dutch Federation of Employers, *see VNO-NCW*
Dutch Federation of Independent Accounting Firms, *see SRA*
Dutch Fiscal Intelligence and Investigation Service, *see FIOD*
Dutch Foundation for the promotion of Mediation, *see NMI*
Dutch Foundation for the provision of advice and support to SMEs, *see OKB*
Dutch institute for SMEs, *see IMK*
Dutch National Bank (DNB) | 100
Dutch trade organisation for credit management, *see VVCM*
Dutch trade organisation for employers in SMEs, *see MKB-Nederland*

E

Early warning | 93, 135
EBITDA | 213
Economy (economic circumstances) | 13-14, 22, 39, 46, 49, 59, 66, 125
Effectiveness | 2, 14, 34, 48, 53, 61, 65
Efficiency | 5, 10, 13-14, 22, 46-50, 58-59, 66, 83, 120, 125
Eight principles INSOL International | 38-39, 90-98, 116, 129
Emergency loan | 22, 171

Employment (protection) | 16-17, 31, 34, 65, 74, 79-80, 88, 108, 121, 131, 133, 136
Enlightened self-interest | 92
Enterprise Division of the Amsterdam Court of Appeal | 82, 134
Entrepreneurship | 13, 140
Equity | 20, 24-25, 28-29, 32, 51, 54, 60, 66, 91, 128, 172-173, 177
Estate | 3, 12, 15-16, 47, 52, 60, 174
European commission | 37, 106
European Federation of Accountants, *see FEE*
European SME employers' organisation, *see UEAPME*
Evaluation advantages and disadvantages informal reorganisation | 33-34
Excessive costs | 14, 49, 58-59, 65
Exit-scenario | 172, 294

F
FAE-loan | 55-57, 132, 136, 172
Failed informal reorganisation(s) | 43-67, 129, 133, 139, 261-306
· characteristics | 64, 125
Failure factors informal reorganisation | 9, 43, 62-67, 92, 100, 117, 125, 128
Federation of Dutch Insolvency Lawyers, *see Insolad*
FEE | 66
Financial Aid programme Entrepreneur-debtors (FAE) | 55, 126, 132, 172
Financial restructuring | 11, 18-26, 30, 41, 45, 47, 51-52, 60-61, 65-66, 72, 90, 93, 99, 107, 111, 119, 123-126, 173
Financial (sector) institutions, p.135
Financial Sector Assessment Program, *see FSAP*
FIOD | 172, 207
Flexibility | 30, 33, 40, 53, 61, 82, 105, 120
Forced participation in a workout agreement | 32, 41, 115, 134
Formal reorganisation (procedure/-methods) | 3-5, 9, 11-12, 14-18, 21, 29-35, 40-42, 71, 74, 76-78, 82, 87, 90, 98, 100, 106-107, 109-110, 117, 119-123, 127-128, 131, 134, 138-139, 173
Fraud | 13, 94, 126
Free-rider behaviour | 91, 115, 173
Fresh money, *see new money*
Fresh Start Proceeding, *see PFP*
FSAP | 37
Further study | 139-140

G
Going concern value | 33, 55-57, 91, 94, 97, 99, 104, 122-123, 134, 173
Golden share | 288-290
Goodwill | 16, 173
Government | 1-2, 8, 92, 117, 128, 134-135, 140, 175, 178
Gross errors / mismanagement | 49, 58
Gross working capital | 173, 175

H
Habits | 40
Haircut | 173, 179
Hausbank | 26
Heads of Agreement | 173, 220
Healthy company (management) | 11-12, 19, 23, 55, 174, 177
Het Financieele Dagblad | 27, 30, 104
Holdout | 91
Housebank | 26, 41, 47, 93, 173
Hybrid procedure | 34-35, 121, 173, 176

I
IIB | 31, 99, 111, 115, 173
IMF | 35-37
IMK | 174, 212, 303
Implicit workout | 130
Increasing cash funds (cash flow) | 19-20, 25, 47, 51, 60, 192
Indirect costs, *see opportunity costs*
Industrial Insurance Board, *see IIB*
Informal reorganisation | 1-140.
· definition | 3-5, 43
· estimate of number | 123-124
· methods | 11, 18-25

Informal risk-bearing capital | 173
Information | 13-14, 22-23, 26-30, 37, 39, 46, 49-50, 53-54, 58-61, 66-67, 71-87, 89-97, 101-102, 105, 112-113, 119-122, 125, 129-131, 135, 175
Information a-(dis)symmetry | 33, 91
Innovation | 140
INSOL International
· in general | 35, 37
· Statement of Principles | 38, 90-100, 106, 116, 128, 178, 187-188
Insolad | 6-8, 75-77, 87-88, 99, 115, 123, 173
Insolvency (insolvent) | 4, 12-13, 16-17, 36-37, 98, 114, 120
Insolvency process | 12, 22, 43, 124, 174
Institute for Small and Medium-Sized Businesses, *see IMK*
Institutionalised Informal Approach (institutionalisation) | 89, 92, 101, 106, 117, 139, 172
Intensive Care Department | 8, 26, 83, 124, 137, 174
Interest | 24-25, 28, 47, 51, 60, 83, 120
Interested parties | 1, 4, 6-10, 17, 19, 20, 22-23, 27, 29, 34, 40-42, 43-45, 57-58, 67, 69-70, 75-76, 80-81, 84-87, 89-92, 99-103, 109-112, 115-116, 120, 125-140
Interim manager | 8, 22, 50, 85, 104, 116, 125-127, 135
International Association of Restructuring, Insolvency and Bankruptcy Professionals, *see INSOL International*
International developments | 6, 35-41, 90, 117, 129, 138
International Monetary Fund, *see IMF*
Interviews | 6-10, 69, 80-87
Investors
· in general | 13, 22, 34, 48, 53, 81, 86, 88, 132, 136
· pulling out | 53-54, 61-63, 65, 67, 86, 132, 140

J
Jakarta Initiative | 37
Junior debt (subordinated debt) | 38, 174, 176-178
Just-In-Time | 174

K
Knowledge centre companies in financial difficulties | 135
Korea Financial Institution Agreement for Promotion of Company Restructuring | 37

L
Lean and mean | 174, 205, 295
Lease construction | 28, 111, 174
Legislation | 1-2, 5-6, 35, 39-40, 81-82, 86, 117, 119, 133-136
Let-go construction | 47, 52, 60, 174
Liquidation | 1-7, 11-18, 26-34, 38-39, 43-44, 47, 52-53, 60-67, 70-88, 91, 94, 98-99, 102, 107, 109, 111, 113, 117, 120, 123-124, 129-133, 137-146, 171-178
Liquidation Prevention Project | 73
Liquidation (forced sale) value | 17, 99
Liquidation-composition | 12, 16, 109, 123
Liquidity (management) | 3, 22, 25, 50, 52, 59, 66, 71, 81, 83-84, 99, 103, 127, 130, 132, 136, 171, 174
London Approach | 1, 39-41, 107, 117
Loss-sharing provision | 94

M
Main findings | 119-140
Management | 4-6, 12-16, 19-23, 26-28, 30-34, 42, 45-67, 69-70, 73-83, 85-87, 90, 92-93, 99, 101-102, 104, 111, 113, 115-116, 120-122, 125-127, 119-140
Management Buy Out | 175, 199
Management change | 50, 59, 66
Management information system (MIS) | 14, 22, 49-50, 58-59, 65-66, 74, 87, 125, 131, 175
Managing Director and major Shareholder (MDS) | 34
Managing expectations | 81

Marketing | 13-14, 21-22, 46-50, 58-59, 63, 66, 108, 120
MDW-project | 1-5, 175
Measures within the framework of financial restructuring | 47, 51, 60, 65-67, 69-88, 119-140
Measures within the framework of restructuring business operations | 46, 50, 59, 65-67, 69-88, 119-140
Mediation
· Code of Ethics | 116
· commitment | 112-113, 115
· costs | 116
· definition | 104-106
· framework | 115
· in general | 103-116, 172-176
· institutionalisation of | 92, 106, 139
· voluntary cooperation | 115
Mediation process
· in general | 112
· plenary mediation phase | 112-113
· post-mediation phase | 112, 114
· post-mediation settlement agreement | 114
· preparatory phase | 112
Mediator(s)
· impartiality | 109, 113, 116
· moment to call in | 107, 109-110
· skills and knowledge | 108
Methods applied | 6
Ministry of Economic Affairs | 2, 100, 115, 135
Ministry (minister) of Justice | 1-2, 100, 105-106, 115, 135-136, 179
Miscommunication | 135
Misuse | 136
MKB-Nederland | 103, 115, 135, 175
Moratorium
· as tool | 121, 134
· in general | 1-6, 12-16, 29-35, 43, 47, 52, 60, 70-84, 107, 117, 120, 123, 131-132, 134, 136, 140, 172-177
Moratorium-composition | 15-16, 123, 175
Mortgage | 26, 91, 94, 130, 177
Multi-Creditor Protocol (Multi-Creditor Workout) | 41, 98, 128, 175, 178

N

Negotiations in the shadow of the law | 105
Net working capital | 175
New money | 25-27, 98, 132
NIVRA | 99, 115, 135, 175
NMI | 115-116, 135, 175
Nonperforming Loan(s) (NPL) | 26
Non-transparency | 131
NOvAA | 99, 115, 135, 176
NRC Handelsblad | 27
NVB | 7, 99, 101, 103, 115, 135, 137, 176
NVI | 115, 176

O

Obligations | 12, 15, 18-25, 31-32, 105, 107, 128, 135, 172, 174, 177
OKB | 6-8, 73-75, 87-88, 176
OO&R | 5, 13, 15-16, 25
Opportunity costs | 31, 121
Ordinary creditors | 15-16, 30, 70-76, 79, 84-85, 111, 120, 130-131, 134, 175-176, 178
Ordinary debts | 32, 174, 176, 177-178
Out-of-court
· insolvency process | 37-38
· compulsory agreements | 84, 115, 134
· settlement | 136, 176
· work out | 120, 129
Overview causes, measures, bottlenecks
· established | 196-197
· dossiers | 306-310

P

Personnel (dismissal) | 31, 50, 59, 74, 79, 81, 82, 84, 86-88, 131-132
PFP | 1, 5, 11, 14, 17-18, 29, 43, 82, 107, 134, 172, 176, 177
Phases of restructuring process | 19-24
Pledge | 28, 91, 130, 174, 177

Poor management | 13-14, 49, 58-59, 65-66, 73, 78, 87, 125
Possessory pledge | 28
Practical experiences and opinions | 69-88
Preferences | 114, 126
Preferential (preferred) creditor(s) | 15, 91, 95, 176, 178
Pre-pack procedures
· implicit | 121,
· in general | 34-35, 52, 121, 136, 173, 176
Principles INSOL International, *see INSOL International*
Priority bridging loan | 39, 84, 98, 129
Prisoner's dilemma interested parties | 89-91, 276
Private person Fresh start Proceedings, *see PFP*
Problem definition | 5-6
Process of calling in a mediator | 109-110
Project Better Civil Service for Citizens and Companies (B4) | 2
Project Competition, Deregulation and Quality of Legislation, *see MDW*
Pros workout agreement/informal reorganisation | 12, 14, 29-33, 121
Public domain | 30, 33, 82, 97, 120, 122

R
R3 | 65-66
Race to collect | 91-92, 97, 176
Rationalisation | 12, 50, 59, 176
Reason for the study | 1-5
Recovery rate | 31, 38, 121, 176
Redundancy costs (package / payments) | 24, 31, 86, 107, 110, 131, 178
Reflection of law | 96, 138
Rehabilitation | 36
Reinforcing phase | 19, 23-24
Relative positions, *see creditors*
Remission | 15, 25, 51-52, 55-57, 60, 66, 71, 79, 85, 121, 128, 131, 138, 172-173, 179
Reorganisation | 1-140
Reorganisation-mediator | 135
Reorganisation plan | 20-24
Repayments | 25, 47, 51-52, 56-57, 60, 66, 80, 83-84, 87-88, 120-121, 126, 128, 131
Reports on the Observance of Standards and Codes, *see ROSCs*
Repositioning phase | 19, 23
Rescue unit | 26
Research institute of the Dutch Ministry of Justice, *see WODC*
Research methodology | 6-9
Research project Dutch Ministry of Justice | 1
Research questions | 6, 185-186
Residual debts | 121-122
Restart following liquidation | 3, 7, 16, 44, 64, 76-77, 79, 120, 123, 129, 132-133, 135, 138-139, 176
Restructuring | 2, 6, 10-42, 45-67, 71-74, 79, 87, 89-99, 103-108, 111-113, 119, 123-126, 130, 132-133, 139, 172-176
Restructuring in the shadow of the law, *see shadow of the law*
Restructuring the business operations, *see measures*
Results surveys, *see surveys*
Retention of ownership | 91
Review of insolvency legislation (revision bankruptcy act) | 5-6, 36, 117, 136, 140
Right to claim compound bounded assets | 28, 82, 88, 111, 132, 140, 174, 177
Ring fence facility | 177
Risk-avoiding capital (funding / financing) | 24-28, 51, 53, 55, 57, 60-61, 66, 83, 85, 92, 98, 120-121, 127-130, 132, 135-137, 173, 177
Risk-bearing capital (funding / financing) | 22, 25, 28, 51-67, 83-88, 94, 98, 120-121, 125-139, 173, 177
Roles interested parties, *see interested parties*
ROSCs | 37
Royal Dutch Institute of Chartered Accountants, *see NIVRA*

Rules of play | 42, 107, 128

S

Sacrifices creditors | 138
Sale and Leaseback | 214
Samenvatting (Summary in Dutch) | 149
Satisfaction creditors | 121-122
Savings rescheduling scheme | 247, 253-254, 177
Secured claims | 35, 72, 95, 130
Secured creditors (debt) | 177
Self-fulfilling prophecy | 30, 71, 138
Senior debt | 174
Shadow of the law | 14, 29, 40, 96, 105, 108
Shareholders | 20, 22, 24, 34, 48, 54, 61-67, 83, 125, 136, 138, 173
Silence (peace) | 16, 30-33, 36, 81, 86-87, 90, 93-95, 97, 99, 110-111, 120-124
Skeletons in the cupboard | 17, 62-64, 77, 86, 88, 132, 177
Small and medium-sized businesses (SMEs) | 26, 41, 73, 90, 102, 174-175, 178
Snack | 177, 289
Social and economic | 7, 44, 86, 133, 139-140
Soft-law approach | 35
Solvency | 52, 95, 130, 177
Split-up of a company into viable and nonviable units | 177, 193
Spontaneous financing | 20, 177
SRA | 7-8, 77-80, 87-88, 99, 115, 135, 177
Stabilising phase | 19-20
Staff redundancies | 24, 31, 33, 53, 61, 76-79, 87, 178
Stakeholders | 29, 33, 36, 41, 107, 116, 178
Standard setting agencies | 35-36
Standstill (agreement) | 82, 86, 94-98, 111, 128-129, 175, 178
State-guaranteed loan | 178
Statement of Principles for Informal Reorganisations | 100, 110, 116, 128, 136, 138-139, 172, 174-175, 178
Statutory reorganisation procedures | 134, 139-140
Strategy (strategic) | 12, 14, 21-22, 39, 49-50, 52, 58-59, 66, 96, 99, 108, 131, 133, 171, 176
Sub-definitions of problem definition | 5, 119
Sub-district court | 31
· formula | 24, 85, 133, 178
· judge | 31
Subordinated loan | 22, 51, 60, 172-179
Success factors informal reorganisation, p, 9, 43, 45, 54-58, 65-67
Successful informal reorganisation(s) | 43-67, 122-123, 136-137, 139
· characteristics | 58, 126
Summary | 141
Supervising judge | 15, 18
Suppliers | 12, 22, 30, 56-57, 71, 74, 76, 79, 87, 91, 121
Surety agreements | 136
Surveys | 6-7, 87-88
· Insolad | 75-77, 332-340
· OKB | 73-75, 320-332
· SRA | 77-80, 341-352
· VVCM | 69-72, 311-320
Survival cash-flow | 98

T

Takeover | 25, 47, 49, 51-67, 125-126, 132, 136, 138
Taskforce | 2, 4-5, 100
Tax authorities | 4, 28, 76, 79, 80, 82, 91-95, 99, 111, 115, 127-128, 132, 134-138, 140, 174, 177
Time | 2, 62-66, 76-77, 84, 86, 93, 102, 121-123, 128, 135-136, 139
Third parties, p.15, 23, 28, 46, 50-51, 54, 58-61, 66, 71, 97, 104, 109, 122, 125-126, 137, 177
Topics within reorganisation plan | 21
Trade creditors | 4, 8, 13, 29, 41, 93, 95, 99, 111, 127-128, 131, 136
Trade organisations | 135, 138
Trade union | 8, 85
Transfer of assets following liquidation | 77, 86, 88, 123, 131-132, 139, 176

Transparency | 37, 58, 65, 67, 84, 97, 100, 103, 121-122, 127, 131, 133, 138-139
Trust | 22, 54, 84-85, 94, 99-100, 104, 128, 131, 137, 139-140
Trustee | 16, 48, 54, 61, 75-76, 174, 178
Turnaround | 12, 19, 22-23, 29, 38, 66, 70, 91, 99, 178
Turnaround Finance Group Nederland | 99, 135, 178

U

UEAPME | 101
Upside potential | 83, 178
Unsecured part of a loan (unsecured credit) | 178
Unsecured debt | 70, 178
Unsecured creditors | 32, 125-126, 138, 178
Undisclosed pledge | 28, 174
Underinvestment problem | 54
United Nations Commission on International Trade Law (UNCITRAL) | 35-40, 129

V

Value Added Tax (VAT) | 212, 226, 304-305
Value destruction | 73, 78, 121, 128, 133
Value maximisation | 36
Value recovery process | 23
Verification meeting | 12, 178
VNO-NCW | 99, 115, 135, 178
Voluntary cooperation, *see cooperation*
Voluntary rescue frameworks | 36, 38-42, 89-90, 97, 99, 115, 129, 138, 178
VVCM | 6-8, 69-72, 99, 115, 128, 179

W

Waiver | 60, 179
Waterfall | 179
WODC | 1, 100, 179
Working capital | 21, 49-51, 55, 58-59, 73, 78, 172-175
Workout (agreement) | 4-6, 18, 24, 26-27, 32-34, 37-41, 43, 51-52, 55-57, 60, 67, 70, 72, 74, 76-77, 79, 82, 84, 86-88, 93-97, 99, 106-108, 111, 113, 115, 119-137, 172-179
Workout department | 26, 137, 174
Works council | 110
World Bank | 35-41, 129
Worst-case scenario | 139

Curriculum vitae

Jan Adriaanse, who was born in Oosterhout, the Netherlands, on 23 October 1972, gained his pre-university education certificate at the Monseigneur Frencken College in Oosterhout in 1991. From 1991 to 1994 he studied Business Administration at Nyenrode University (Bachelor of Business Administration programme). He then went on to study Tax Law at Leiden University. From mid-2000, he has been employed as a lecturer/researcher at the department for Business Economics and Forensic Accountancy of the Faculty of Law at Leiden University, as well as the Centre for Business Studies. He is engaged in the coordination of the 'Law and Business Studies' bachelor programme, and arranges training in the field of strategic entrepreneurship and business restructuring. As a consultant, he is connected to NIVRA-Nyenrode, the accountants training of the Royal Dutch Institute of Chartered Accountants (NIVRA) and Nyenrode University; he is also a member of the study programme of the Dutch trade organisation for credit management (VVCM). Furthermore, he holds a seat on the Kuratorium of the German Verein für Credit Management e.V.

In de boekenreeks van het E.M. Meijers Instituut voor Rechtswetenschappelijk Onderzoek van de Faculteit der Rechtsgeleerdheid, Universiteit Leiden, zijn verschenen:

MI-1 T. Barkhuysen, *Artikel 13 EVRM: effectieve nationale rechtsbescherming bij schending van mensenrechten* (diss. Leiden), Lelystad: Koninklijke Vermande 1998, ISBN 90 5458 530 7

MI-2 E.E.V. Lenos, *Bestuurlijke sanctietoepassing en strafrechtelijke waarborgen in de sociale zekerheid* (diss. Leiden), Lelystad: Koninklijke Vermande 1998, ISBN 90 5458 558 7

MI-3 M.V. Polak (red.), *Geschillenbeslechting naar behoren. Algemene beginselen van behoorlijke geschillenbeslechting in traditionele en alternatieve procesvormen*, Deventer: Kluwer 1998, ISBN 90 2683 298 2

MI-4 C.E. Smith, *Feit en rechtsnorm* (diss. Leiden), Maastricht: Shaker 1998, ISBN 90 4230 045 0

MI-5 S.D. Lindenbergh, *Smartengeld* (diss. Leiden), Deventer: Kluwer 1998, ISBN 90 2683 324 5

MI-6 P.B. Cliteur, G.J.J. Heerma van Voss, H.M.T. Holtmaat & A.H.J. Schmidt (red.), *Sociale cohesie en het recht*, Lelystad: Koninklijke Vermande 1998, ISBN 90 5458 618 4

MI-7 M.H. Elferink, *Verwijzingen in wetgeving. Over de publiekrechtelijke en auteursrechtelijke status van normalisatienormen* (diss. Leiden), Deventer: Kluwer 1998, ISBN 90 2683 352 0

MI-8 P.T.C. van Kampen, *Expert Evidence Compared. Rules and Practices in the Dutch and American Criminal Justice System* (diss. Leiden), Antwerpen/Groningen: Intersentia 1998, ISBN 90 5095 049 3

MI-9 N.C. van Steijn, *Mobil Oil III, een uitvinding of een ontdekking? Een onderzoek naar de gevolgen van de Mobil Oil III-beschikking van het Europees Octrooi Bureau van Nederland,* Den Haag: Jongbloed 1999, ISBN 90 7006 221 6

MI-10 R.A. Lawson, *Het EVRM en de Europese Gemeenschappen; bouwstenen voor een aansprakelijkheidsregime voor het optreden van internationale organisaties* (diss. Leiden), Deventer: Kluwer 1999, ISBN 90 2683 463 2

MI-11 J. Junger-Tas & J.N. van Kesteren, *Bullying and Delinquency in a Dutch School Population*, New York: Kugler Publications 1999 (or PB 97747, 2509 GC Den Haag), ISBN 90 6299 171 8

MI-12 T. Hartlief & C.J.J.M. Stolker (red.), *Contractvrijheid*, Deventer: Kluwer 1999, ISBN 90 2683 511 6

MI-13 P.W. Brouwer, M.M. Henket, A.M. Hol & H. Kloosterhuis (red.), *Drie dimensies van recht: rechtstheorie, rechtsgeleerdheid, rechtspraktijk,* Den Haag: Boom Juridische uitgevers 1999, ISBN 90 5454 026 5

MI-14 T. Hartlief, *De vrijheid beschermd*, Deventer: Kluwer 1999, ISBN 90 2683 567 1

MI-15 H.B. Krans, *Schadevergoeding bij wanprestatie,* Deventer: Kluwer 1999, ISBN 90 2683 557 4

MI-16 H.I. Sagel-Grande & M.V. Polak (eds.), *Models of conflict resolution,* Antwerpen: Maklu 1999, ISBN 90 6215 651 7

MI-17 H.J.Th.M. van Roosmalen, *The King can do no wrong. Overheidsaansprakelijkheid naar Engels recht onder invloed van de jurisprudentie van het Hof van Justitie van de Europese Gemeenschappen,* Den Haag: Jongbloed 2000, ISBN 90 7006 223 2

MI-18 R.A. Lawson & E. Myjer, *50 jaar EVRM,* Leiden: Stichting NJCM-Boekerij 2000, ISBN 90 6750 038 0

MI-19 C.B. van der Net, *Grenzen stellen op het Internet. Aansprakelijkheid van Internet-providers en rechtsmacht,* Deventer: Gouda Quint 2000, ISBN 90 2683 622 8

MI-20 R.P. Raas, *Het Benelux Merkenrecht en de Eerste Merkenrichtlijn: overeenstemming over verwarring?,* Den Haag: Boom Juridische uitgevers 2000, ISBN 90 5454 028 1

MI-21 R.H. Haveman, P. Ölçer, Th.A. de Roos & A.L.J. van Strien (red.), *Seks, zeden en strafrecht,* Deventer: Gouda Quint 2000, ISBN 90 3870 798 3

MI-22 W.J. Zwalve, *Qui solvit alii. Beschouwingen over betaling aan inningsonbevoegden,* Den Haag: Boom Juridische uitgevers 2000, ISBN 90 5454 033 8

MI-23 Hans Krabbendam & Hans Martien ten Napel (eds.), *Regulating Morality. A Comparison of the Role of the State in Mastering the Mores in the Netherlands and the United States,* Antwerpen: Maklu 2000, ISBN 90 6215 736 x

MI-24 Jan-Peter Loof, Hendrik Ploeger & Arine van der Steur, *The right to property. The influence of Article 1 Protocol no. 1 ECHR on several fields of domestic law,* Maastricht: Shaker Publishing 2000, ISBN 90 4230 103 1

MI-25 D.L.M.T. Dankers-Hagenaars, *Op het spoor van de concessie. Een onderzoek naar het rechtskarakter van de concessie in Nederland en in Frankrijk*, Den Haag: Boom Juridische uitgevers 2000, ISBN 90 5454 042 7

MI-26 T. Hartlief & M.M. Mendel (red.), *Verzekering en maatschappij. Juridische beschouwingen over de maatschappelijke rol van verzekeringen en verzekeringsmaatschappijen*, Deventer: Kluwer 2000, ISBN 90 2683 713 5

MI-27 J.E.M. Polak, *Effectieve bestuursrechtspraak. Enkele beschouwingen over het vermogen van de bestuursrechtspraak geschillen materieel te beslechten* (oratie Leiden), Deventer: Kluwer 2000, ISBN 90 2715 268 3

MI-28 H.F. Munneke, *Recht en samenleving in de Nederlandse Antillen, Aruba en Suriname. Opstellen over recht en sociale cohesie*, Nijmegen: Wolf Legal Productions 2001, ISBN 90 5850 011 x

MI-29 C.P.M. Cleiren, *Geding buiten geding. Een confrontatie van het geding voor de strafrechter met strafrechtelijke ADR-vormen en mediation* (oratie Leiden), Deventer: Kluwer 2001, ISBN 90 3870 833 5

MI-30 W.M. Visser 't Hooft, *Japanese Contract and Anti-Trust Law. A Sociological and Comparative Study,* Richmond: Curzon Press 2001

MI-31 M.H. Wissink, *Richtlijnconforme interpretatie van burgerlijk recht*, Deventer: Kluwer 2001, ISBN 90 2683 763 1

MI-32 X.E. Kramer, *Het kort geding in internationaal perspectief. Een rechtsvergelijkende studie naar de voorlopige voorziening in het internationaal privaatrecht,* Deventer: Kluwer 2001, ISBN 90 2683 784 4

MI-33 P.B. Cliteur & V. Van Den Eeckhout, *Multiculturalisme, cultuurrelativisme en sociale cohesie,* Den Haag: Boom Juridische uitgevers 2001, ISBN 90 5454 093 1

MI-34 C.P.M. Cleiren & G.K. Schoep (red.), *Rechterlijke samenwerking*, Deventer: Gouda Quint 2001, ISBN 90 3870 848 3

MI-35 A.C. 't Hart, *Hier gelden wetten! Over strafrecht, openbaar ministerie en multiculturalisme,* Deventer: Gouda Quint 2001, ISBN 90 3870 847 5

MI-36 U. Drobnig, H.I. Sagel-Grande & H.J. Snijders, *Neue Entwicklungen im deutschen und niederländischen Insolvenzrecht sowie Kreditsicherheiten an Mobilien,* Amsterdam: Rozenberg Publishers 2001, ISBN 90 6170 546 8

MI-37 E.R. Muller & C.J.J.M. Stolker, *Ramp en recht. Beschouwingen over rampen, verantwoordelijkheid en aansprakelijkheid,* Den Haag: Boom Juridische uitgevers 2001, ISBN 90 5454 113 x

MI-38 P.B. Cliteur, H.J. van den Herik, N.J.H. Huls & A.H.J. Schmidt (red.), *It ain't necessarily so,* Deventer: Kluwer 2001, ISBN 90 2683 854 9

MI-39 E.R. Muller, *Conflictbeslechting: Kruisbestuiving van rechtswetenschap en bestuurskunde* (oratie Leiden), Alphen aan den Rijn: Kluwer 2001, ISBN 90 1408 204 5

MI-40 H.C. Wiersinga, *Nuance in benadering. Culturele factoren in het strafproces* (diss. Leiden), Den Haag: Boom Juridische uitgevers 2002, ISBN 90 5454 155 5

MI-41 W. den Ouden, *De subsidieverplichting; wie betaalt bepaalt? Een onderzoek naar de rechtmatigheid van subsidieverplichtingen,* Deventer: Kluwer 2002, ISBN 90 2683 887 5

MI-42 I. Sagel-Grande, *In the best interest of the child. Conflict resolution for and by children and Juveniles,* Amsterdam: Rozenberg Publishers 2001, ISBN 90 5170 572 7

MI-43 W.M. Visser 't Hooft, *Japanese Contract and Anti-Trust Law. Sociological and Comparative Study,* Richmond Surrey: Curzon Press 2002, ISBN 07 0071 577 0

MI-44 M. Dekker, *Het water meester. Het recht rond de overheidszorg voor de beveiliging tegen overstroming,* Den Haag: Boom Juridische uitgevers 2002, ISBN 90 5454 188 1

MI-45 M. Lurks, W. Den Ouden, J.E.M. Polak & A.E. Schilder, *De grootste gemene deler. Opstellen aangeboden aan prof. mr. Th.G. Drupsteen ter gelegenheid van zijn afscheid van de Universiteit Leiden op 31 mei 2002*, Deventer: Kluwer 2002, ISBN 90 2684 004 7

MI-46 S.C. Huisjes, *Over dode lijnen en een heuvel recht. De privaatrechtelijke aansprakelijkheid voor schade als gevolg van falende telecommunicatiedienstverlening*, Deventer: Kluwer 2002, ISBN 90 2684 003 9

MI-47 M. Hallers, C. Joubert & J. Sjöcrona (eds.), *The Position of the Defence at the International Criminal Court and the Role of the Netherlands as the Host State*, Amsterdam: Rozenberg Publishers 2002, ISBN 90 5170 625 1

MI-48 K. Teuben, *Rechtersregelingen als 'recht' in de zin van art. 79 Wet RO*, Den Haag: Jongbloed 2002, ISBN 90 7006 231 3

MI-49 M. Hallers, A.J. Mauritz, E.R. Muller & C.J.J.M. Stolker, *Beginselen van behoorlijk rampen-onderzoek*, Den Haag: Boom Juridische uitgevers 2002, ISBN 90 5454 251 9

MI-50 J.C. van der Steur, *Grenzen van rechtsobjecten. Een onderzoek naar de grenzen van objecten van eigendomsrechten en intellectuele eigendomsrechten*, Deventer: Kluwer 2003, ISBN 90 268 4117 5

MI-51 Y.L.L.A.M. Delfos-Roy, C. de Groot, P.A.C.E. van der Kooij, S.J.A. Mulder (red.), *Zekerheidshalve. Opstellen aangeboden aan prof. mr. M.M. Mendel*, Deventer: Kluwer 2003, ISBN 90 268 4083 7

MI-52 B. Barentsen, *Arbeidsongeschiktheid. Aansprakelijkheid, bescherming en compensatie*, Deventer: Kluwer ISBN 90G 0000 61X

MI-53 A.F.M. Brenninkmeijer, M. Hallers, A.T. Marseille, N.M. Mulder & G.K. Schoep (red.), *De taakopvatting van de rechter*, Den Haag: Boom Juridische uitgevers 2003, ISBN 90 5454 279 9

MI-54 H. Snijders & S. Weatherill, *E-commerce Law. National and transnational topics and perspectives*, Londen: Kluwer International 2003

MI-55 F.B. Ronkes Agerbeek, *Zeg ik dat goed? EU-ambtenaren en hun vrijheid van meningsuiting*, Den Haag: Jongbloed 2003, ISBN 90 7006 2 33 x

MI-56 A.C. Damsteegt, *De aansluiting van de Werkloosheidswet op het ontslagrecht*, Den Haag: Boom Juridische uitgevers 2003, ISBN 90 5454 312 4

MI-57 P. Vos, *Kredietopvraging en Insolventierisico. Overlevingskansen van bedrijven in financiële moeilijkheden en de Faillissementswet*, Deventer: Kluwer 2003, ISBN 90 13 00580 2

MI-58 P.B. Cliteur & H.-M.Th.D. ten Napel (red.), *Rechten, plichten, deugden*, Nijmegen: Ars Aequi Libri 2003, ISBN 90 6916 485 X

MI-59 F.J.M. Feldbrugge (red.), *Law's beginnings*, Leiden/Boston: Martinus Nijhoff Publishers 2003, ISBN 90 0413 705X

MI-60 A.F.M. Brenninkmeijer, *Effectieve conflictoplossing bij individuele arbeidsconflicten*, en L.C.J. Sprengers, *Collectieve belangen – uiteenlopende geschillen* (oraties Leiden), Den Haag: Sdu 2003

MI-61 A.H. Scheltema, *De goederenrechtelijke werking van de ontbindende voorwaarde*, Deventer: Kluwer 2003, ISBN 90 13 00744 9

MI-62 W.H. Pokorný-Versteeg, *Milieu-effectrapportage in Nederland en de direct aangrenzende EU-lidstaten. Een rechtsvergelijkend onderzoek*, Deventer: Kluwer 2003, ISBN 90 13 00946 8

MI-63 A.P.A. Broeders, *Op zoek naar de bron. Over de grondslagen van de criminalistiek en de waardering van het forensisch bewijs*, Deventer: Kluwer 2003, ISBN 90 13 00964 6

MI-64 C.L.J. Caminada & K.P. Goudswaard, *Verdeelde zekerheid. De verdeling van baten en lasten van sociale zekerheid en pensioenen*, Den Haag: Sdu 2003, ISBN 90 1210 006 2

MI-65 B.T.M. van der Wiel, *De rechtsverhouding tussen procespartijen*, Deventer: Kluwer 2004

MI-66 A.J. Mauritz, *Liability of the operators and owners of aircraft for damage inflicted to persons and property on the surface*, Maastricht: Shaker 2003, ISBN 90 423 0234 8

MI-67 T. Hartlief, Jac. Hijma & L. Reurich (red.), *Coherente instrumenten in het contractenrecht*, Deventer: Kluwer 2003 ISBN 90 13 0092 47

MI-68 E.I. Helsloot, E.R. Muller, R. Pieterman & W.J.M. Voermans (red.), *Vervoer gevaarlijke stoffen in perspectief. Evaluatie van de Wet vervoer gevaarlijke stoffen 1996-2002*, Den Haag: Boom Juridische uitgevers 2003, ISBN 90 5454 420 1

MI-69 W.J.M. Voermans, *Toedeling van bevoegdheid* (oratie Leiden), Den Haag: Boom Juridische uitgevers 2004, ISBN 90 5454 433 3

MI-70 M.C. Zwanenburg, *Accountability under International Humanitarian Law for UN and NATO Peace Support Operations* (diss. Leiden), 2004

MI-71 M. Kuijer, *The Blindfold of Lady Justice. Judicial Independence and Impartiality in Light of the Requirements of Article 6 ECHR*, Nijmegen: Wolf Legal Productions 2004, ISBN 90 5850 074 8

MI-72 V.J.A. Sütő, *Nieuw Vermogensrecht en rechtsvergelijking – reconstructie van een wetgevingsproces (1947-1961),* Den Haag: Boom Juridische uitgevers 2004, ISBN 90 5454 467 8

MI-73 Paul Cliteur, Hans Franken & Wim Voermans (red.), *Naar een Europese Grondwet*, Den Haag: Boom Juridische uitgevers 2004, ISBN 90 5454 471 6

MI-74 S.L. Kuipers, *Cast in Concrete? The Institutional Dynamics of Belgian and Dutch Social Policy Reform*, Delft: Eburon Academic Publishers 2004, ISBN 90 5972 028 8

MI-75 J. Heinsius, *Collectief ontslagrecht. Enkele voorstellen betreffende een betere regelgeving*, Den Haag: Boom Juridische uitgevers 2004, ISBN 90 5454 502 x

MI-76 N. Djebali, *Procedures ter beslechting van interstatelijke verrekenprijsgeschillen*, Den Haag: Jongbloed 2004, ISBN 90 70062 36 4

MI-77 M.M. Groothuis, *Beschikken en digitaliseren. Over normering van de elektronische overheid*, Den Haag: Sdu 2004, ISBN 90 5409 448 6

MI-78 K. Teuben, *Rechtersregelingen in het burgerlijk (proces)recht* (diss. Leiden), Deventer: Kluwer 2004, ISBN 90 1302 144 1

MI-79 K.P. Goudswaard, C.L.J. Caminada & H. Vording, *Naar een transparanter loonstrookje?*, Den Haag: Boom Juridische uitgevers 2004, ISBN 90 5454 521 6

MI-80 P.J. Slot & M. Bulterman (eds.), *Globalisation and Jurisdiction,* Den Haag: Kluwer Law International 2004, ISBN 90 411 2307 5

MI-81 R. Holtmaat, *Grenzen aan gelijkheid* (oratie Leiden), Den Haag: Boom Juridische uitgevers 2004, ISBN 90 5454 523 2

MI-82 J. van der Leun & L. Vervoorn, *Slavernij-achtige uitbuiting in Nederland*, Den Haag: Boom Juridische uitgevers 2004, ISBN 90 5454 534 8

MI-83 B.C. Labuschagne (red.), *Religie als bron van sociale cohesie in de democratische rechtsstaat?,* Nijmegen: Ars Aequi Libri 2004, ISBN 90 6916 526 0

MI-84 J.H. Crijns, P.P.J. van der Meij & G.K. Schoep (red.), *De taak van de strafrechtswetenschap,* Den Haag: Boom Juridische uitgevers 2005, ISBN 90 5454 554 2

MI-85 G.K. Schoep & P.M. Schuyt, *Instrumenten ter ondersteuning van de rechter bij straftoemeting,* Nijmegen: Wolf Legal Publishers 2005, ISBN 90 5850 107 8

MI-86 M.E. Koppenol-Laforce (red.), *De Europese vennootschap (SE) in de praktijk,* Deventer: Kluwer, ISBN 90 13023 22 3

MI-87 A.P.A. Broeders, *Ontwikkelingen in de criminalistiek. Van vingerspoor tot DNA-profiel – van zekerheid naar waarschijnlijkheid*, Den Haag: Boom Juridische uitgevers 2005, ISBN 90 5454 576 3

MI-88 I.S.J. Houben, *Contractdwang* (diss. Leiden), Deventer: Kluwer 2005, ISBN 90 1302 715 6

MI-89 T. Barkhuysen, W. den Ouden & J.E.M. Polak (red.), *Recht realiseren. Bijdragen rond het thema adequate naleving van rechtsregels,* Deventer: Kluwer 2005, ISBN 90 130 2811 X

MI-90a L. Reurich, *De articulatie van gedragsnormen. Deel I: normen van vaagheid,* Deventer: Kluwer 2005

MI-90b L. Reurich, *De articulatie van gedragsnormen. Deel II: vaagheid van normen* (diss. Leiden), Kluwer: Deventer 2005, ISBN 90 1302 776 8

MI-91 R. Haveman & H. Wiersinga, *Langs de randen van het strafrecht,* Nijmegen: Wolf Legal Publishers 2005, ISBN 90 5850 116 7

MI-92 P.C. van Es, *De actio negatoria. Een studie naar de rechtsvorderlijke zijde van het eigendomsrecht,* (diss. Leiden), Nijmegen: Wolf Legal Publishers 2005, ISBN 90 5850 131 0.

MI-93 R.W.M. Giard, *Aansprakelijkheid van artsen. Juridische theorie en medische praktijk*, Den Haag: Boom Juridische uitgevers 2005, ISBN 90 5454 633 6

MI-94 W. den Ouden (red.), *Staatssteun en de Nederlandse rechter,* Deventer: Kluwer 2005, ISBN 90 1303 063 7

MI-95 F. Hamburg, *Een computermodel voor het ondersteunen van euthanasiebeslissingen,* (diss. Leiden), Antwerpen: Maklu 2005, ISBN 90 4660 020 3

MI-96 J.P. Loof, *Mensenrechten en staatsveiligheid: verenigbare grootheden?*, (diss. Leiden), Nijmegen: Wolf Legal Productions 2005, ISBN 90 5850 147 7

MI-97 J.A.A. Adriaanse, *Restructuring in the shadow of the law. Informal reorganisation in the Netherlands*, (diss. Leiden), Deventer: Kluwer ISBN 90 1303 156 0

Overige publicaties van het E.M. Meijers Instituut:

H.D. Ploeger, *Privaatrechtelijke aspecten van de aanleg van boortunnels,* Kluwer Rechtswetenschappelijke publicaties, Deventer: Kluwer 1997, ISBN 90 2683 122 6

T. Heukels, N. Blokker & M. Brus (eds.), *The European Union after Amsterdam; A Legal Analysis*, The Hague: Kluwer Law International 1998, ISBN 90 411 1131 x
(together with the Europa Instituut, Universiteit Leiden)

T. Barkhuysen, M.L. van Emmerik & P.H.P.H.M.C. van Kempen (eds.), *The Execution of Strasbourg and Geneva Human Rights Decisions in the National Legal Order*, The Hague: Kluwer Law International 1999, ISBN 90 411 1152 2
(together with Van Asbeck Centrum, Universiteit Leiden)

H. Peter van Fenema, *The International Trade in Launch Services, The Effects of US Laws, Policies and Practices on its Development,* Leiden 1999, ISBN 90 901 3064 0
(together with International Institute of Air and Space Law)

E.C. Nieuwenhuys & M.M.T.A. Brus, *Multilateral Regulation of Investment,* Den Haag: Kluwer Law International 2001, ISBN 90 411 9844 x

E. Nieuwenhuys, A. Toussaint & M. Valstar, *Verslag van het symposium Internationale Dimensies van Maatschappelijk Verantwoord Ondernemen,* Leiden: E.M. Meijers Instituut 2002, ISBN 90 9016 080 9

E.R. Muller & J.P. Coenen, *Parlementair onderzoek in Nederland,* Den Haag: Sdu Uitgevers 2002, ISBN 90 1209 700 2

E.R. Muller, D. Starink, J.M.J. Bosch & I.M. de Jong, *Krijgsmacht. Studies over de organisatie en het optreden*, Alphen aan den Rijn: Kluwer 2004, ISBN 90 1301 130 6

E.R. Muller, *Veiligheid. Studies over inhoud, organisatie en maatregelen,* Alphen aan den Rijn: Kluwer 2004, ISBN 90 1301 129 2

Stellingen behorende bij het proefschrift

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

van Jan Adriaanse

1. Versoepelde wetgeving betreffende surseance van betaling zal niet tot minder faillissementen leiden. Het tegenovergestelde ligt eerder voor de hand.

2. Een gedragscode voor informele reorganisaties – met fundamentele spelregels voor betrokken partijen – zal het draagvlak voor, en daardoor de slagingskansen van saneringsoperaties aanmerkelijk vergroten.

3. Sanering is noch een juridisch noch een fiscaal probleem. Sterker nog, het heeft ook niks met winst te maken. Het draait puur en alleen om visie, communicatie, actie en vertrouwen. Met andere woorden, het gaat om ondernemerschap en boerenverstand.

4. Banken trekken nooit de stekker eruit. Dat doen de overige partijen zelf wel.

5. Bij een kwijtscheldingsakkoord is het ondernemersrisico volledig naar de schuldeisers verlegd. Enige betrokkenheid bij de reorganisatie is dan ook het minste dat hen kan worden geboden.

6. *Reorganisatie-mediators* dienen te worden betrokken in conflicten tussen management en banken, vakbonden, leveranciers en andere belanghebbenden van bedrijven in financiële moeilijkheden. Zij moeten ondernemend en pragmatisch van aard zijn.

7. Waar niets is, verliest zelfs de keizer zijn recht. Aandeelhouders en managers mogen niet te halsstarrig zijn als het gaat om inmenging door banken en investeerders bij een in haar continuïteit bedreigde onderneming. Anders hadden ze zelf maar met nieuwe financiering over de brug moeten komen.

8. Het woordje *credit* in het axioma *out of cash + out of credit = out of business* dient vooral figuurlijk te worden opgevat. Krediet betekent immers letterlijk vertrouwen.

9. Ondernemers die pro-actief en op analytische wijze aan cashmanagement doen, hebben de grootste kans op herstel bij financiële moeilijkheden. Sterker nog, zij zullen er niet eens in terechtkomen.

10. Bedrijven die in een staat van opperste gezondheid strategisch heroriënteren en waar nodig saneren, lopen amper risico failliet te gaan. Voor af te vloeien werknemers is dit werkelijk een zegen, er is dan immers voldoende geld om een sociaal plan te financieren.

11. De bestuurder van een bedrijf mag zich pas ondernemer noemen wanneer hij/zij direct risico loopt, kortom een deel dan wel de gehele onderneming bezit. Ieder ander is slechts werknemer.

12. Een proefschrift wordt efficiënter en sneller geschreven wanneer een externe opdrachtgever deadlines stelt en regelmatig poolshoogte neemt. Hetzelfde geldt voor een goede promotor.

13. Een ieder die in staat is 36 of 38 uur per week te werken, zal bij 40 echt niet dood neervallen.