

Dag 3: Herstructuring van onderneming: financiële achtergrond en de verschillende stakeholders (18 september 2012)

Inleiding

Deze dag staat in het teken van de onderneming in moeilijkheden. De volgende onderwerpen komen aan de orde:

- Bubbles en Crisis en het effect op de leverage
- Effecten van crisis op (stakeholders van de) onderneming
- De early warning signals van banken
- Oorzaken van teloorgang van ondernemingen
- De Business Cycle van de onderneming
- Hoe om te gaan met Leverage: Liquiditeit en Solvabiliteit
- De verschillende stakeholders bij de onderneming (raad van bestuur, raad van commissarissen, aandeelhouders, achtergestelde crediteuren, concurrente en preferente crediteuren), de leidraad: het vennootschappelijk belang
- De voor- en nadelen van formele en informele insolventieprocedures, de pre-pack

Bronnen

Er is heel veel literatuur en informatie over dit onderwerp beschikbaar. Hierna volgt eerst een overzicht van een beperkt aantal bronnen die als onderdeel van het materiaal worden uitgereikt (“Meegeleverde Bronnen”).

Vervolgens is een overzicht opgenomen van mogelijke achtergrond informatie (“Achtergrond Bronnen”).

Meegeleverde Bronnen

1. Chapter 2, Restructuring in the Shadow of the Law, J.A.A. Adriaanse (2005)
2. Harvey Miller Interview in Secured Lender May 1, 2010,
<http://www.thesecuredlender-digital.com/thesecuredlender/20100506?pg=9#pg30>
3. Need cash? Look Inside Your Company, Kevin Kaiser en S. David Young in Harvard Business Review, 2009, 5, see: <http://hbr.org/hbr-main/resources/pdfs/comm/fmglobal/need-cash-look-inside-company.pdf>
4. Gedwongen medewerking aan een debt for equity swap; een (on)mogelijkheid? Johan Jol in Jaarbundel 2010 Insolad,
[http://www.legalhoudini.nl/images/upload/DES%20artikel%20versie%20concept%2017%20septemberdef\(1\).pdf](http://www.legalhoudini.nl/images/upload/DES%20artikel%20versie%20concept%2017%20septemberdef(1).pdf)
5. Pen Kent in Corporate Workouts- a UK perspective, International Insolvency Review, 1997, vol 6, nr 3, pag. 165-182,

http://www.uam.es/personal_pdi/derecho/nbermejo/Docencia/FacDer/doctorado/materiales%20crisis/workouts3.pdf

6. 2001 Statement of Principles for a Global Approach to Multi-Creditor Workouts, The Insol principles, <http://www.insol.org/pdf/Lenders.pdf>
7. IMF Staff position paper on Approaches to Corporate Debt Restructuring in the Wake of Financial Crisis 2010, <http://www.imf.org/external/pubs/ft/spn/2010/spn1002.pdf>
8. World Bank Study 2012 Out-of-Court Debt Restructuring, <https://openknowledge.worldbank.org/handle/10986/2230>
9. Mr drs N.W.A. Tollenaar, Faillissementsrechtters van Nederland: geef ons de pre-pack!, Tvl 2011/23

Achtergrond Bronnen

General

- World Bank Principle and Guidelines for Effective Insolvency and Creditors Rights Systems, 2001, http://www.worldbank.org/ifa/ipg_eng.pdf
- Uncitral Legislative Guide on Insolvency Law 2005, http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf
- UNCITRAL Legislative Guide on Secured Transactions 2007, http://www.uncitral.org/pdf/english/texts/security-ig/e/09-82670_Ebook-Guide_09-04-10English.pdf
- The financial crisis becomes an economic crisis, Report Financial Crisis Inquiry Commission (2011), <http://fcic.gov/report/conclusions>
- Bubbles occur as a result of collective madness: Geert Noels in Econoshock (2008)
- Naturally occurring Ponzi schemes, the positive feedback loop and negative feedback loop: Robert Shiller in Irrational Exuberance (2nd edition 2005)
- Unstable tower of debt: Charles Morris in the Two Trillion Dollar Meltdown (2009)
- The trigger, the subprime mortgage crisis: Mark Zandi in Financial Shock (2009)

Banks

- Slapped in the Face by the Invisible Hand, Banking and the Panic of 2007, Gary Gorton, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1401882
- Regulating the Shadow Banking System, Gary Gorton and Andrew Metrick, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1676947
- Slapped in the Face by the Invisible Hand, Banking and the Panic of 2007 (2010), Gary Gorton

Warning signals business performance

- Loan Workouts and Debt for Equity Swaps (2001), Subhrendu Chatterji and Paul Hedges, Chapter 4, p. 39 to and including p. 50
- Corporate Turnaround (1999), Stuart Slatter & David Lovett, Chapter 2, p. 13 to and including p. 32
- Corporate Insolvency Law (2009), Vanessa Finch, p. 151- p. 177

Business cycles

- The success story of an SMME in Khayelitsha, South Africa, Silulo Ulutho Technologies (<http://www.silulo.co.za/>) (2009), Talisa Jane McMillan, http://talisajane.files.wordpress.com/2009/11/talisa_mcmillan_honors_thesis.pdf
- The Value of Responsible Withdrawing of the Market (2007), Peter Harris, http://www.japaninc.com/mgz_sep-oct_2007_issue_exit-strategy
- Turnaround Management (2006), Dr. Mr. J.A.A. Adriaanse, Praktijkboek Insolventierecht, nr. 14
- Succesfactoren informele reorganisatie: samenwerking, transparantie en stilte, Jan Adriaanse en Hans Kuijl, MAB June 2005, p. 303 e.v.

Debt Overhang

- The Drawing Board : Debt Overhang's Effect on Business Investment and Economy, <http://www.youtube.com/watch?v=b5bvHk1iEfM&feature=related> and http://www.clevelandfed.org/research/commentary/2010/2010-7.cfm?WT.oss=Filippo&WT.oss_r=166

Valuation issues

- the Valuation of Distressed Companies, a conceptual framework, Michael Crystal QC and Rizwaan Jameel Mokal in International Corporate Rescue 2006, issue 2 and 3
- Distressed Valuation, EW (Sandy) Purcell in International Corporate Rescue 2009, issue 1
- An update on current restructuring issues and trends in Europe, Alain le Berre in International Corporate Rescue 2009, issue 6
- Valuation Disputes in Restructuring, Barney Whiter, in International Corporate Rescue 2010, issue 1
- The Courts Speak on valuation in restructurings: IMO Car Wash, SAS, Wind Hellas Lessons, Sandy Purcell and Alex Boyce, International Corporate Rescue 2010, issue 2

Dealing with liquidity and solvency issues

- Succesfactoren informele reorganisatie: samenwerking, transparantie en stilte, Jan Adriaanse en Hans Kuijl, MAB June 2005, p. 303 e.v.
- Options for alleviating financial distress: the company's perspective, Stephen G. Moyer, CFA in Distressed Debt Analysis (2005)

Informal proceedings versus formal proceedings

- IMF Staff position paper on Approaches to Corporate Debt Restructuring in the Wake of Financial Crisis 2010, <http://www.imf.org/external/pubs/ft/spn/2010/spn1002.pdf>
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- The restructuring Dilemma: out-of-court versus in-court; the middle-of-the-road alternative, Esteban C. Buljevich in Cross-Border Restructurings (2005)
- Legislative Guide on Insolvency Law Uncitral 2005, p. 21 to and including 25 and p. 238 to and including 248, http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf
- Stuart C. Gilson. Managing Default; Some evidence on how firms choose between workouts and chapter 11, in Corporate Bankruptcy, Economic and Legal Perspective, Edited by Jagdeep S. Bhandari en Lawrence A. Weiss, p. 308 (1996)
- Edard I. Altman, Corporate Financial Distress and Bankruptcy (2005), Chapter 4
- Martin J. Whitman en Fernando Diz, Distress Investing (2009), p. 53 e.f.
- Robert Gray, Collective Action Clauses, The Way Forward (2004), http://www.law.georgetown.edu/international/documents/Gray_000.pdf
- The trust indenture act and international debt restructurings, George W. Shuster, jr., in ABI-Law Review Vol 14: 43, http://www.wilmerhale.com/files/Publication/e79aec06-3ebb-46c4ba7aea110014e388/Presentation/PublicationAttachment/22f88569-bbaa-4ed5-8a25-ba4fda705123/shuster_trustindentureact_debtrestructurings.pdf
- Pen Kent in Corporate Workouts- a UK perspective, International Insolvency Review, 1997, vol 6, nr 3, pag. 165-182, http://www.uam.es/personal_pdi/derecho/nbermejo/Docencia/FacDer/doctorado/materiales%20crisis/workouts3.pdf
- Norm in private insolvency procedures; the "London Approach" to the resolution of Financial Distress, John Armour and Simon Deakin, <http://www.cbr.cam.ac.uk/pdf/wp173.pdf>
- Richard J. Cooper en Dalman Garcia in Holdouts in syndicated loan rescheduling, in Global Financial Crisis (2009) p. 321 e.f.
- 2001 Statement of Principles for a Global Approach to Multi-Creditor Workouts, The Insol 2001 principles, <http://www.insol.org/pdf/Lenders.pdf>