

2011

Selling a bankrupt company



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University of Twente
7/29/2011

Preface

From March until the end of July, an internship programme has been performed at FBM Mahler BV, located in Amsterdam. FBM Mahler is specialised in guiding merger and acquisition strategies of middle sized firms. During the internship, some opinions about lawyers performing M&A strategies have been shared. It turned out that there is some dissatisfaction about legal bankruptcy trustees executing the selling process for bankrupt companies. It has been argued that since trustees have in most cases a background as a lawyer, they would lack some commercial, strategic and financial skills, essential for making the sale of a company a success. To investigate whether this is really the case or not, this thesis is written. The thesis serves as a final part of the master industrial engineering and management at the University of Twente.

I own a lot of gratitude to ir. Rijpekema and the entire team of FBM Mahler, without them, this thesis would never have been there and to ir. Kroon of the University of Twente, who supervised me writing this thesis.

Table of Contents

Preface.....	1
Abbreviations	4
Translations (EN-NL).....	4
Executive summary	5
1) Introduction and problem statement	7
1.2) Problems experienced by the stakeholders.....	9
1.3) Based on this chapter the current bankruptcy system creates problems	11
2) Cause I – bankruptcy procedures.....	12
2.1) Suspension of payments.....	14
2.2) The bankruptcy statement	15
2.3) Potential financial investors	16
2.3.1) Banks	16
2.3.2) Private equity parties and venture capitalists.....	17
2.3.3) Strategic parties	17
2.4) Predicting bankruptcy	18
2.5) Conclusion – More bankruptcy cases could be prevented	18
3) Cause II – The bankruptcy trustee.....	19
3.1) Applying for a function as trustee.....	19
3.2) The influence of creditors on trustees	20
3.2.1) The Netherlands.....	20
3.2.2) Germany	21
3.2.3) Belgium.....	21
3.2.4) France.....	21
3.3) Conclusion – Dutch creditors only influence trustees in theory.....	22
4) Potential improvement I - The selling process	24
4.1) Selling a company by M&A specialists	24
4.2) Selling with trustees	25
4.3) Conclusion - The performance of the trustee and M&A specialists compared	28
5) Potential improvement II - Corporate valuation	30
5.1) Valuation techniques for in non liquidation situations	30
5.1.1) The Discounted Cash Flow method.....	30
5.1.2) The Comparable Companies Analysis method.....	32
5.1.3) The Comparable Transactions Analysis method	33

5.2) The valuation of bankrupt companies in the Netherlands.....	33
5.3) Conclusion - going concern methods not used in bankruptcy processing.....	35
6) Potential improvements III – Other considerations	37
6.1) Privatising the bankruptcy process	37
6.2) Changes in law.....	37
7) Conclusions – bankruptcy processing could be improved	40
Bibliography.....	42
Appendices	44
I) Suspension of payments	44
II) Bankruptcy procedures	46
III) Employee rights.....	47
IV) Payment structure for trustees and its office employees	48
V) Questionnaire and results.....	49

Abbreviations

CAPEX	CAPital EXpenditures
CCA	Comparable Company Analyses
CF	Corporate Finance
CTA	Comparable Transaction Analyses
DCF	Discounted Cash Flow
EBIT	Earnings Before Interest Taxation
EBITDA	Earnings Before Interest Taxation Depreciation Amortisation
M&A	Mergers and Acquisitions
VAT	Value Added Tax
WACC	Weighted Average Cost of Capital

Translations (EN-NL)

Attorney	Procureur
Company union	Bedrijfsvereniging
Council for the crowd	Openbaar ministerie
Court of appeals	Gerechtshof
District Court	Rechtbank
Estate	Boedel
Estate duties	Boedel verplichtingen
Estate liability	Boedel schuld
Executory debt	Boedelschulden
Gazette	Staatscourrant
Immunity	onschendbaarheid
Incorruptibleness	onomkoopbaarheid
Judge	Rechter
Law on the Bar	Advocatenwet
Letter	Verhuurder
Magistrate	Rechtercommissaris
Magistrate	Rechter commissaris
Priority debt	Preferente schuld
Righteousness	rechtschapenheid
Supreme Court	Hogeraad
Suspension of payments	Surseance
Trustee	Curator
VAT	BTW
Works council	Ondernemingsraad

Executive summary

The credit crisis is on its return, leaving behind an amount of bankrupt companies above average. In order to pay off at least a part of the debt of these companies, trustees are appointed by the Court with the responsibility of selling the company or its assets. However anyone could become a trustee in the Netherlands, this person almost always has a lawyer background in practise. When normal, non-bankrupt, companies are for sale, the selling process is executed by M&A advisors with strong financial and commercial capabilities. It turned out that some stakeholders in the bankruptcy process are dissatisfied with the current procedures. This opinion is underlined by literature and by the interviews that have been taken place with M&A specialists and other stakeholders. In short, trustees are appointed, they get paid a legal minimum salary and sell the company by building up files. The issues mentioned above lead to the general statement:

The current method for bankruptcy processing in the Netherlands is old fashion and only in favour of legal trustees.

Different opinions exists about this statement, there seems to be a large difference between the qualities of different trustees. In this thesis, two main potential causes for the stakeholder dissatisfaction have been appointed:

- The bankruptcy procedures
- The capabilities of bankruptcy trustees

While investigating the first cause, it turned out that the state of suspension of payments is not working as it is suppose to work. Almost all companies go to the state of bankruptcy afterwards although the suspension of payments should have given the company some financial relief for restructuring and survival. Market reactions are a very important factor why suspension of payments is not working properly. For the second cause, it is investigated which criteria the Court uses for the appointment of trustees. This is not clear in literature at all and appointment criteria differ per Court district. Some creditors claim that their influence on the operations performed by trustees could help the process. However cooperation between the creditors is difficult since they have different interests. The tax authority also has an important role in the cooperation since in most cases, it is the largest creditor. Two potential improvements have been investigated

- The selling process
- The valuation process

When trustees sell a bankrupt company, the process is performed in a short time frame and in most cases, no due diligence takes place. Trustees are using valuation by appraisers most of the times whereas M&A advisors use different techniques as DCF, CCA and CTA. These going concern valuations will typically lead to a higher price compared to liquidation values. It is important however to use and compare different techniques in order get a better understanding of the different business items that create value.

After these investigations it could be said that process for bankruptcy processing needs improvement including the suspension of payments procedures. The operations of trustees are different from M&A specialist because the process is more legally driven. However commercial and deal making skills of M&A advisors are crucial in getting the best price for a company, therefore a team of a trustee and M&A specialist good work better for selling bankrupt companies.

Part I - Introduction and statement

Reasons and followings for writing will be explained in this section together with problems considerations. Besides the questions will be answered whether or not the problems in bankruptcy processing stated really exists

1) Introduction and problem statement

In the last couple of years, an amount of companies more than average went bankrupt, up to 8021 in the Netherlands in 2009 (CBS, 2011) alone to be more precise. Figure one shows the large impact of the financial crises on the number of bankruptcies. When the crises hit in 2008, most entrepreneurs could survive for one year until the big wave of bankruptcy events came in 2009 en 2010. This suits as a good reference point to evaluate the bankruptcy proceedings.

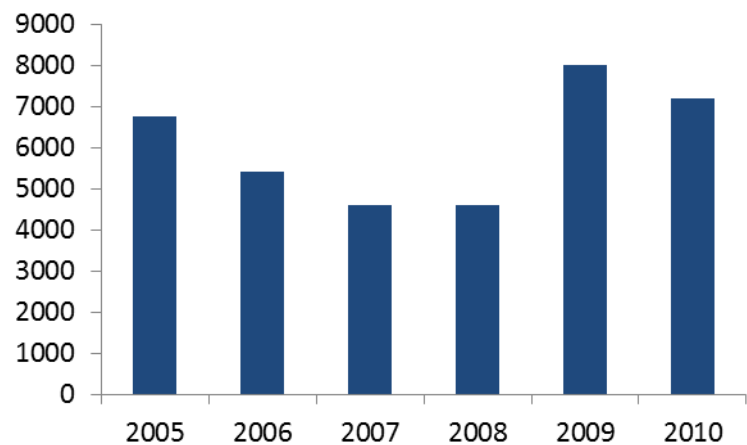


Figure 1 – Total number of bankruptcies per year (CBS, 2011)

It turns out that a lot of entrepreneurs and other stakeholders are very unhappy with the current bankruptcy process¹ In this thesis two possible causes for the dissatisfaction among stakeholders have been investigated:

- The bankruptcy procedures
- The operations performed by a bankruptcy trustee

The way a bankruptcy event is taken care of has been more or less the same for years, although the business climate has changed. Most of the current bankruptcy law is dating from 1893. Although some politicians are today demanding changes in law, only minor changes have been implemented so far. One issue regarding the bankruptcy process is the case of suspension of payments. The purpose of suspension of payments is to give a company with difficulties some breath, in order to improve its performance. In practise however, suspension leads to bankruptcy in most of the cases, see also figure two.

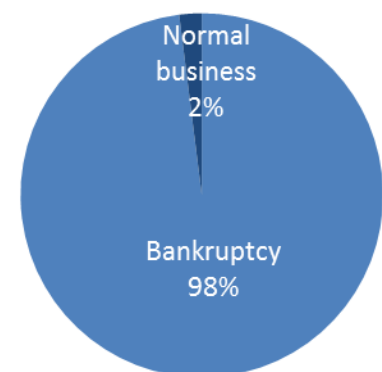


Figure 2 - What happens after suspension of payments (Luyt, 2011)

Some bankrupt companies are liquidated and some continued their operations under a different ownership. When a company goes bankrupt, the judge will appoint a trustee. This trustee will be responsible of managing the assets of the bankrupt company in order to pay off the creditors for which two options are possible:

- Selling the company as going concern
- Selling the individual assets

Selling a company as going concern will, in general, give a higher price however this process is more complicated as well. A value has to be calculated and suitable buyers, willing to take over the activities of the company, have to be found.

¹ See for an exposition of this statement paragraph 1.2

For making suggestions for improvements, the selling process of a bankrupt company has been compared to the selling of non-bankrupt companies.

When shareholders of a non-bankrupt company are willing to sell their firm, they normally consult a corporate finance (cf) specialist (also called merger&acquisitions advisor or dealmaker), who will value the company, search for potential buyers and supports in negotiating and structuring a transaction. A senior cf-specialist has, in general, a lot of experience in approaching potential buyers and knows the deal-making process. The expertise of a senior, seasoned cf-specialist can therefore lead to an optimal value for the shareholders.

In case of a bankruptcy however, dealmakers are often not involved in the selling process. It could be argued whether a trustee, who is in most cases a lawyer, has enough commercial skills, financial/analytical capabilities and deal-making experience or not, for optimizing the deal value.

In The Netherlands only rarely a cf-specialist is involved in the deal making process (Oosthout, 1998). M&A firms, auditor offices or financial experts are often only approached for the theoretical valuation process, not for the execution and deal making. The impression exist that the trustee is only outsourcing the valuation in order to be able to refer to these documents when necessary in case claims are filled. In that case, the trustee cannot be blamed for not generating enough value. A trustee in the Netherlands has to account and discuss his work with the magistrate who might not has specific financial deal making knowledge either. Implicitly, the process is therefore be more legally instead of commercially driven. Another issue is the large amount of power trustees have and because of this, the whole bankruptcy process depends on the quality of a specific trustee. How this is experienced in the market is also investigated in this thesis.

The short introduction above leads to the following statement:

The current method for bankruptcy processing is old fashion and only in favour of legal trustees.

Whether or not this statement is true has been investigated by asking the following questions:

- Is there a problem experienced by bankruptcy stakeholders?
- What are the current legal procedures in case of a bankruptcy event?
- How can a bankruptcy event be avoided?
- What are the characteristics of bankruptcy trustees?
- How are trustees appointed to a case?
- What influence do creditors have on the operations of trustees?
- How is the selling process performed by M&A specialist?
- What are the techniques used for valuation?
- Which suggestions for improvement are already made in literature?

To answer some of these questions, questionnaires have been made and spread amongst legal bankruptcy trustees. In this questionnaire is asked for the qualities of the trustees, their way of doing business and whether or not they are satisfied with the current bankruptcy law and process. Furthermore, interviews have been completed with lawyers, trustees, M&A specialists and private equity firms in which their opinion and experience with the bankruptcy process and legal trustees has been discussed.

1.2) Problems experienced by the stakeholders

Is there really a problem? To answer this question, it is first important to recognise all stakeholders and see which are the most intensively involved in bankruptcy processing. These stakeholders have been identified through discussions with M&A specialists and lawyers. Figure three will give an overview of the stakeholders identified.

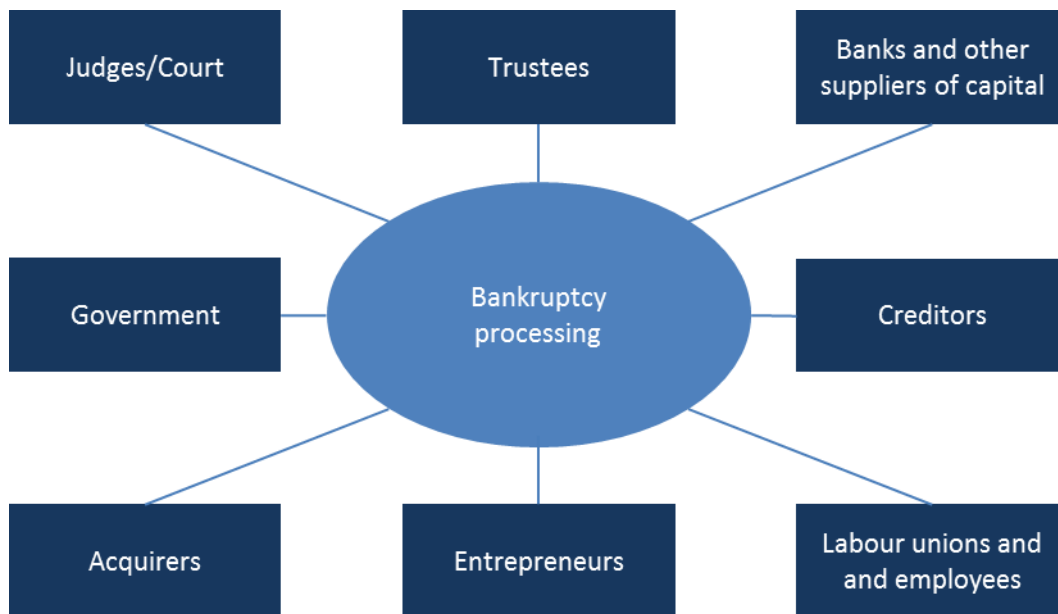


Figure 3 – Stakeholders in bankruptcy processing

Of all the stakeholders, the entrepreneurs are key in the bankruptcy process as they caused in most cases the bankruptcy event in the first place². Secondly, creditors may lose a lot of money by the bankruptcy of a firm from which they still own money. Creditors therefore have good interest in a proper bankruptcy handling including a proper bankruptcy trustee. Unfortunately no register of complaints over trustee is kept according to Hirsch Ballin, minister of justice (2010) and therefore no quantitative analyses about the dissatisfaction can be given. To measure the dissatisfaction, the 'sound' in the market is analysed by news items in different media and interviews. Figure four compares the way trustees see themselves and the opinion of M&A specialist and private equity parties about trustees (stated as others).

² See chapter 2 in which it is shown that mismanagement was in 48.3% of the occasions responsible for the bankruptcy event to happen

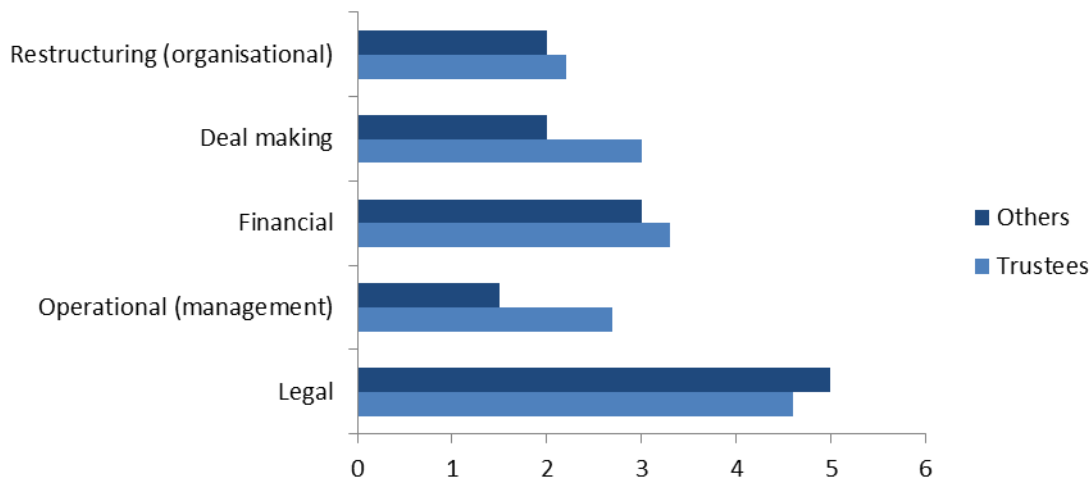


Figure 4 – The opinion about the capabilities of trustees compared

Based upon figure four³ it could be said that in general, trustees are aware of their shortcomings as viewed by other stakeholders. However trustees defend their shortcomings by arguing that legal knowledge is the most important aspect for processing a bankruptcy case as pointed out by Hel, lawyer at Van der Hel advocaten(2011). Based on the performed interviews it could be said that there is a large difference in people's opinions about trustees. Most M&A experts complain that trustees focus too much on the legal aspects instead of the commercial and dealmaking part. Kroeze (2011) of H2 equity partners(private equity) points out that there is a large quality difference amongst trustees, a statement underlined by Hel. Kroeze further points out that, to his opinion, it are mainly the smaller bankruptcy events for which a lot of improvements are needed, for the larger events, very capable trustees are appointed. His statement contradicts to the opinion of all the M&A experts of FBM Mahler (M&A specialists) who believe that even in the large bankruptcy cases, trustees, in general, are not doing a good job at all. Even in a specific bankruptcy case, the opinions of Kroeze and FBM Mahler are contradicting. For judging the statements, it is important to realise that H2 is a specialised private equity firm and has interest in buying firms for the lowest price possible. FBM Mahler however will try to maximize the value when hired by the seller.

In general, a bankruptcy period of a middle-sized company should take about two years (Hirsch Ballin, 2010). This can be longer if some legal prosecution has to be done or shorter when prosecution is not necessary and the bankruptcy statement can be processed relatively easily. However in practise it may happen that relatively normal or even unjustified bankruptcy cases take over 16 years, also cases with only EUR 200,000 debt and estate assets of EUR 180,000 last take long because mistakes are made and trustees are in full control (Smolders, 2010).

Ebbers, (2011) of the organisation VNO-NCW (employers organisation) performed a short research about the practise of company relaunchees and interviewed entrepreneurs who are very dissatisfied with the current bankruptcy law. Ebbers points out cases in which creditors are losing hundreds of thousands of Euros because some entrepreneurs are going bankrupt and doing relaunchees with the same company over and over again. The entrepreneurs dismiss most of the employees after which the trustee concludes there are no valuable assets left and agrees with a relaunche before properly

³ The data of trustees is arising from the questionnaire, the opinion of others from the interviews

investigating the case. Ebbers also refers to a statement made by industry organisation Transport en logistiek Nederland in which it is claimed that from the total number of bankruptcy cases, 20% is not completely legally right and some criminal handling happens behind the scenes. In the Netherlands, is it possible to relaunch a company over and over again, in the same business. Ebbers refers to cases in which an entrepreneur has made three relaunches within five years.

Figure five shows that, in the Netherlands, 1/3 of the of the entrepreneurs who have been declared bankrupt are relaunching their company. In itself this is a good situation, researched showed that entrepreneurs who have gone bankrupt ones, are outperforming their industry competitors when they have got a second change (Ministerie van Economische Zaken, 2001). Therefore in the U.S. the image of

going bankrupt is far less negative compared to the image in the Netherlands. However also a quite some entrepreneurs are using the bankruptcy statement just in order to relieve themselves from their debts and not having to pay back the creditors.

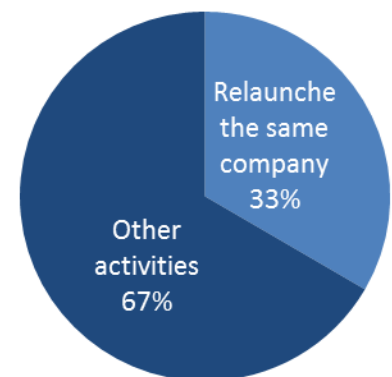


Figure 5 – What happens with bankrupt entrepreneurs (Ministerie van Economische Zaken, 2001)?

1.3) Based on this chapter the current bankruptcy system creates problems

The first question raised, whether or not there is a problem experienced by bankruptcy stakeholders, has now been answered and the characteristics of trustees been described. The market is experiencing serious problems concerning the processing of bankruptcy events. Different opinions about trustees exist amongst different stakeholders, partly influenced by their role in the process. The current law makes it apparently possible for entrepreneurs to abuse the bankrupt state. Facts about the number of relaunches are recognised however no measures are taken. To avoid criminal behaviour, cases in which entrepreneurs are doing more relaunches within for example five years should be investigated by a legal authority.

Summarising the causes identified that lead to dissatisfaction amongst stakeholders:

- The current bankruptcy law
- Suspension of payments
- Skillset of trustees

These causes will be analysed further in the next chapter.

Part II – Causes for dissatisfaction

In this part the causes for the dissatisfaction among the stakeholders as pointed out in chapter 1 will be addressed. Ways to avoid bankruptcy and bankruptcy proceedings will be explained. Furthermore, the operations performed by legal trustees and their qualities will be evaluated.

2) Cause I – bankruptcy procedures

In order to address the causes for dissatisfaction amongst stakeholders, it is first interesting to see which factors actually cause a bankruptcy event to happen in the first place. These causes can be appointed, ranked based on the number of occasions, see figure six.

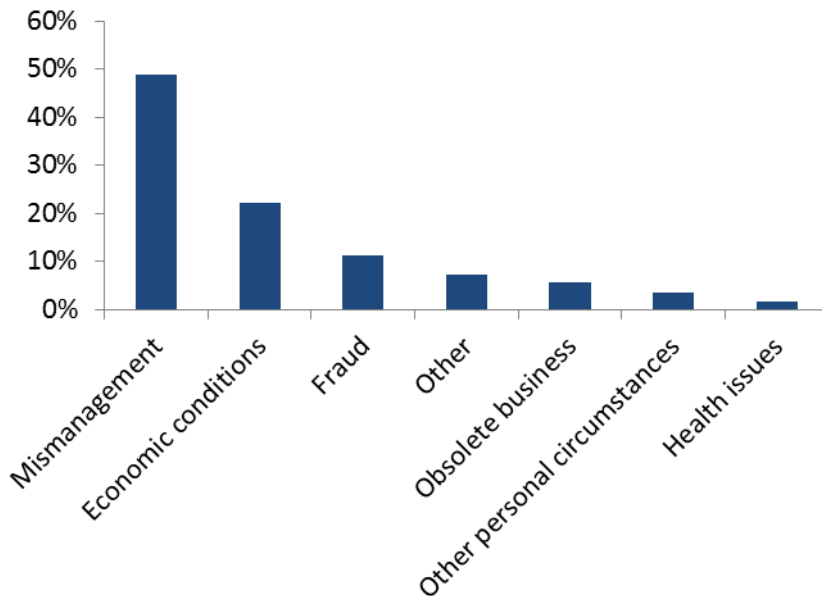


Figure 6 – Causes for bankruptcy (Blom, 1996)

Mismanagement and economical conditions are the most mentioned reasons for a bankruptcy⁴, and refer that even so, 1/3 of the entrepreneurs relaunches the same business. Therefore, suspension of payments is investigated in paragraph 2.1 and bankruptcy law is further explained in paragraph 2.2. For management there are a number of opportunities to prevent a bankruptcy event to happen. Of the entrepreneurs who have been declared bankrupt in the past, most of them, see figure seven, believed the bankruptcy could have been prevented by a more cooperation of the creditors. This would however mean in practice that creditors would not get their money back and is therefore not a very realistic solution. More practical ways for preventing bankruptcy such as alternative financing will be treated in paragraph 2.3. Besides a technique have been developed for predicting a bankruptcy event years before it potentially happens, as will briefly be discussed in paragraph 2.4.

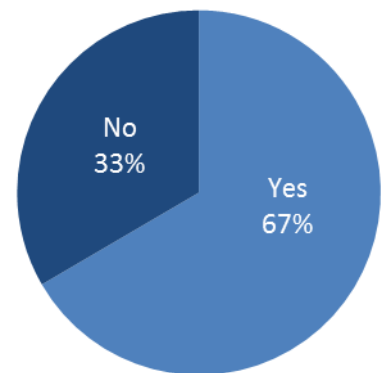


Figure 7 – Could the bankruptcy event have been avoided (Hirsch Ballin, 2010)

⁴ As a remark to these classification it can be said that fraud causes could also be part of mismanagement and the line between economical conditions and mismanagement is very thin. E.g. when a company performed well over 20 years and goes bankrupt afterwards is that mismanagement because no adaption has been made quick enough or are this economical conditions? Blom does not give more guidance in these classifications.

2.1) Suspension of payments

According to figure one, stated in the introduction, there must be a large market for trustees and bankruptcy experts; From January till May 2011, 2,705 companies went bankrupt against only 159 suspensions of payment that were set according to the Chamber of Commerce, 2011. These numbers point out as well that suspension of payments does not occur very often. It seems that in practise, companies with large financial difficulties are going into the stage of bankruptcy immediately as pointed out already in chapter one.

Suspension of payments is therefore not a very successful rescue method for Dutch companies. Financial consultancy firm Ernst&Young performed a research in 1996 which shows that the Netherlands are behind compared to other countries considering the prevention of a bankruptcy by suspension of payments.

Looking across borders; in the German system, a legal entity can be forced by law to ask for suspension of payments if there is a risk that it will not be able to pay for its debts. In France, the auditor is obligated to inform the Court if the company is running into financial problems (europeancommission, 2005).

In appendix I, an overview of the regulations concerning suspension of payments is given. One of the considerations is whether the length of the suspension of payments period of maximum 1.5 years is right or not. A too short period will give the entrepreneur no chance to restructure its business and a too long period might lead to even less value for the creditors. Based upon the questionnaire results, most trustees are satisfied with the length of the suspension of payments. Although the legal maximum period is 1.5 years, on average it takes only one or two months until a company is declared bankrupt after a suspension of payments (Hel, 2011).

Reasons why suspension of payments is not working in the Netherlands (Hel, 2011):

- The cause of this is that suspension of payment is started too late
- The largest creditor, the tax authority, is not involved in suspension of payments
- “The insure your own money” reaction of the market
- Banks refuse to finance

The suspension of payments protection is often not requested until problems are already that serious that bankruptcy is the only solution left. The purpose of suspension of payments, to give some financial relief to a company does not have the desirable effect because it only holds for the unsecured creditors. When a company goes bankrupt, often the tax authority is the largest creditor involved. The tax authority however has a premium position which means the debt of the company to the tax authority, is not frozen. Claims still hold and can be executed at any time. Second point is the reaction of the market ones a company announces it is in the state of suspension of payments. This announcement has to be made publically according to the Dutch law. As a reaction, suppliers do not want to deliver any longer unless a payment in cash is made immediately at the time of delivery. On top of that, banks do not want to finance any working capital necessary for this payment. The insure your own money reaction of the market causes large financing problems for the normal daily operations, therefore on average a suspension of payments is lasting only one or two months. Therefore entrepreneurs wait until the very last moment to file for suspension of payments, after which problems are already that serious that bankruptcy is the only option left. This vicious circle of

which the rationale is represented in figure eight, is hard to break through. Auditors could play a key role in this as they have understanding about the company's financial situation on a regular basis.

As already mentioned in chapter one, a trustee can choose whether to continue the operations of the bankruptcy company or to liquidate the business immediately. Which considerations to be taken into account for this decision is treated in the next paragraph.

2.2) The bankruptcy statement

Since bankruptcy is an event relevant to a lot of entrepreneurs and even abused by some, it is pointed out in this paragraph what the bankruptcy statement actually implies.

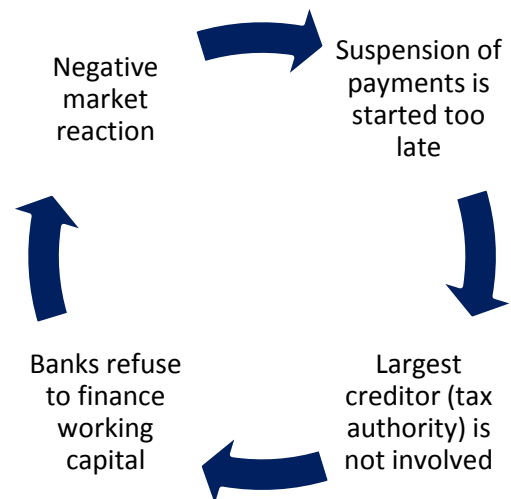


Figure 8 – The vicious circle of suspension of payments

The word bankrupt has a very negative sound, however there are upsides on a bankruptcy event as well. Companies who are willing to acquire a firm in financial distress have to ask themselves when it would be the best time to buy the company; before, or after the bankruptcy statement has been appointed to a company. Table one will give a short overview of the advantages and disadvantages of buying a bankrupt firm/relaunching a firm in order to see why some entrepreneurs are abusing the system.

Advantages	Disadvantages
Start with a clean schedules with no creditor claims remaining	Commercial damage, the confidence of suppliers, financiers and customers is gone.
No costs of employee dismissal ⁵	Renegotiation about certain rights, permits, licenses and rental agreements is necessary.

Table 1 – Acquiring a firm out of bankruptcy

In most cases the commercial damage has a large impact on the future financial performance, how much is however hard to estimate upfront.

Appendix II gives an overview of the different steps in a bankruptcy procedure. In practise it hardly ever occurs that the tax receiver, a company union or the council for the crowd is asking for a bankruptcy statement of a company.

From the moment of the bankruptcy statement, the trustee is responsible for all the assets a company owns and everything it generates during the bankruptcy period. Potential claims, made by creditors as well as by the tax authority, are not valid anymore. The only valid claims are the claims made by privileged creditors. Privileged creditors are for example the owners of a mortgage or the tax authority, for them it is possible to liquidate their rights immediately. During the bankruptcy operation, the trustee has to discuss with the magistrate about important decisions such as the

⁵ See for a more detailed explanation appendix III as well.

termination of the rental agreement, the sale of assets or the continuing/termination of the company's activities.

A bankruptcy state can end by:

- A full payment of all debt
- An agreement with the company and its creditors or
- A lack of income to pay for the further operating costs

About 70% of the bankruptcy cases the Netherlands is ended because of a lack of income (CBS, 2008). In this case there may not even be enough money to pay the costs of the trustee. In order to end the bankruptcy state, the company can also offer an agreement to the creditors in which it offers to repay a part of its debt in exchange for suspension of the rest. This offer can only be made once; if both parties are not reaching an agreement, the Court has to make a decision. When no agreement can be reached or when the Court is not convinced that the agreement will be executed, the insolvency phase will start. In this phase, the trustee will try to sell the assets apart or as a whole in order to pay for all the debt outstanding. The question to continue or not to continue the company depends whether it can meet its estate duties for the coming period or not. To decide upon this, liquidity analyses will have to be made.

2.3) Potential financial investors

All in all, there are more downsides than upsides on a bankruptcy event for 'normal' operating entrepreneurs. In order to prevent a bankruptcy event, an entrepreneur has several options for financing its reorganization and/or restated business plan. Banks (2.3.1), private equity firms/venture capitalists (2.3.2) and strategic parties (2.3.3) can be approached for (re)financing or taking minority/majority stakes in the business.

For these potential investors who are willing to take over the company in order to continue the business, it is important to consider that (Blom, 1996):

- All executor debt has to be paid
- The bank has to be willing to give a executor credit
- There has to be a good relation with the customers
- The advice of the trustee has to be positive
- The magistrate has to give his permission

2.3.1) Banks

Banks, as supplier of capital, have a special position a creditor. Most of the times they possess more rights concerning the repayment compared to other creditors. Bankruptcy trustees believe even that the power of the banks as a creditor is too large in some cases⁶. Banks also have more influence on the policy of the company compared to other creditors. Research performed by Muller (1982) shows that banks are in most cases the initiator of a turnaround of the company. This influence is important since most shareholders are willing to adapt a 100 or nothing strategy, which has a very high potential of destroying value for the debt owners. The actions of the bank protect in this situation the other creditors. The other creditors however are in general dissatisfied with the privileged

⁶ See questionnaire results, present in appendix V

position banks have, their general opinion state that banks want to liquidate too soon, obtain guarantees and neglect the position of other creditors (Alders, 2005)

Companies in financial distress can ask to increase their debt level at a certain bank in order to fund for the reorganisation for example. According to Waterbley (2006), banks are considering the next aspects for the financing decision:

- Economical aspects of the company
 - The capacity of the company to cover the interest payments.
 - The assets that can serve as a guarantee
- Information about the company's business
- Information about the management
- Legal information
- Future expectations for the judgement about the plans and developments in the company's industry.

Banks also play an important role in the suspension of payments phase. An entrepreneur can approach a bank for working capital financing for example. Banks however are not very reluctant putting even more debt into a company which is in the state of suspension of payments⁷.

2.3.2) Private equity parties and venture capitalists

Besides banks, private equity parties can also be approached for acquisitions of shares. Well known examples of Dutch private equity firms are Egeria, Gilde, De Hoge Dennen, ABN AMRO Participaties, H2 Partners, Rabo private equity, and many more.

Investments made by private equity parties have in general high risks. Investments are made in the share capital of the firm, structured as for example backed loans. Of course there is no free lunch here, a higher return on investment is required. In general private equity parties will try to liquidate their investments again after four to seven years. Private equity firms are mainly focused on grown-up companies with a slightly lower risk profile, compared to start-ups which require also a more intensive guidance. This is where venture capitalists, a special category of private equity providers, step in.

The main function of venture capitalists is the supply of high risk investments and the personal guidance of companies. Most venture capitalists have therefore also a background as CEO, a lot of experience in doing business and can help in preventing bankruptcy

2.3.3) Strategic parties

Strategic parties are always very welcome in a selling process since they will in general offer the higher prices. These parties can achieve synergies with the companies they place bids on when they are in the same business. Therefore a company can have a higher value for a strategic party compared to a financial party like a private equity firm. Besides this horizontal expansion, companies can also choose to offer a more extensive product/service portfolio by acquiring firms. In several businesses a trend could be spotted for one-shop-stop principles where single companies are offering complete product and service packages for clients. Other reason for strategic parties to

⁷ Refer to paragraph 2.1

acquire are investing purposes, too much cash on a balance sheet is a bad sign towards investors. If a company does not know what to do with the cash, they should return it to the shareholders.

2.4) Predicting bankruptcy

For avoiding bankruptcy it would be convenient if a bankruptcy event could be predicted in order to start making crucial (restructuring) decisions as early as possible. For this, some models have been developed that are using financial ratios to predict a future bankruptcy event.

In 1960, a model known as the Z-score model was developed by Altman (1983) and used to predict bankruptcy. Altman, a professor at the New York University graduates school of business, developed a model based on American statistics to predict the likelihood that a company would go bankrupt. By combining five ratios, the model gives a Z-value which is the general measure of a company's financial health. Although the model is developed about fifty years ago, it is still be used today and can even predict the bankruptcy of entire countries (Beursvisie, 2010). Besides the Z-score model, more models have been developed by different authors such as Dimitras, Zanakis and Zopounidis (1996) and Pompe and Bilderbeek (2000). For the Netherlands, the model of Pompe and Bilderbeek is particularly useful since it is developed using data of Dutch companies. All the models work with five or more ratios (not independent of each other). Further explanation about these models is however beyond the scope of this thesis.

2.5) Conclusion – More bankruptcy cases could be prevented

In this chapter, the causes for dissatisfaction amongst bankruptcy stakeholders have been further investigated. One of the questions risen in chapter one, how can a bankruptcy event be avoided, has been answered. Suspension of payments is in itself a good method; however this measure is currently not working at all. Legal obligations for announcing the suspension of payments state cause a negative reaction in the market. Banks play an important role in this part of the game as well. Ones banks are not willing to finance working capital, they entrepreneur cannot pay its suppliers upfront and can therefore not operate. Companies should file for suspension of payments earlier, to stimulate this, auditors could play a key role. Auditors should inform legal institutions when companies approaching financial distress after which the entrepreneurs might be forced to undertake certain restructuring measures. The other question that has been answered now is the legal procedures of the bankruptcy event. The bankruptcy event has several advantages however the commercial impact of the event makes is hard for the company to gain trust of the stakeholders back. Therefore it is key to avoid a bankruptcy state, suspension of payments or the expertise of banks and other investors could be helpful with that.

3) Cause II – The bankruptcy trustee

The bankruptcy trustee is probably the most crucial person in handling a bankruptcy case since it is the trustee's responsibility to continue the business, sell it and guide it through the entire bankruptcy process. A trustee's responsibility is to take care of the bankruptcy estate and cover the interest of the creditors and the bankrupt entrepreneur. The trustee should therefore be impartial and independent in order to make sure the firm will be sold as going concern or in parts in order to pay the creditors and get the entrepreneur out of the bankruptcy state.

3.1) Applying for a function as trustee

Trustees are appointed by the Court but literature gives no clear facts on the criteria a judge uses for appointing a trustee. Therefore an interview has taken place with mr. Roessingh, a lawyer connected with the district Almelo. Roessingh points out that the criteria somewhat differ per district. A Court in for example Amsterdam can select on different criteria compared to a Court in Almelo. Roessingh point out that the Court in his district evaluates the bankruptcy case, judges what kind of knowledge would be most desirable, e.g. financially very complicated or not, and selects based upon this. In the example of a financially complicated case, the Court will select a trustee if there is at least one person available with a sufficient financial background at the trustee's office. Secondly the Court selects based upon experience. A trend could be spotted in the appointment as well; it used to be that almost anyone could be appointed however today a more detailed analysis of the trustee and the connected office is made. Thirdly also a lot of the appointment process is based on personal preferences, a judge with good experiences with a certain trustee will elect this trustee for sure next time again (Roessingh, 2011).

A bankruptcy trustee does not necessary has to be a lawyer, an expert can, at least by law, also very well guide the company through the bankruptcy procedures. In order to ensure trustees are righteous, the Court provides the enrolment of the trustee. In theory everybody could become a trustee. However in practise only lawyers are appointed. Lawyers have to comply with statutory requirements which should ensure, to a certain extend, the righteousness of trustees, also since lawyers have to comply with the Law on the Bar.

Some authors, such as Blom (1996), point out also that a lawyer can drop his other tasks more easily in order to focus fully on the bankrupt company. A person engaged in another business sector would not as likely be in the position to drop is tasks, as they point out. However a M&A specialists guiding the sale of a company can also be working fully on the sale of one company at a time. Another argument often pointed out is that trustees are in practise always lawyers because there is a large amount of legal knowledge necessary to process a bankruptcy event. This is certainly true, trustees should know how to deal with for example; reservation clauses and the government who has the feeling to be the most powerful and therefore has the tendency to 'take it all' which is in not always legally right (Roessingh, 2011).

A trustee should be able to work completely impartial. Therefore, in case a trustee needs external help for handling the bankruptcy case, this cannot be done by the same law firm. In that case the impression might be created that liquidation of the assets is less important than the generation of revenue for the trustee's office. Especially in the cases of mergers and acquisitions, it is important that the adviser is independent in order to judge the offers and the interests of the different parties on an equal basis.

For further checking the general operations of trustees, most Courts organise evaluation meetings between the trustees' office and the Court every two years (Hirsch Ballin, 2010).

Lawyers work in general on an hourly basis in which each worked hour is calculated towards the client. The standard salary of trustees is each year determined by law. In 2010 the hourly salary amounted 194 Euro (Recofa, 2010), a detailed description of the determination of the salary can be found in appendix IV. In the Netherlands, it is for lawyers not aloud to work on a basis of "no cure no pay". In countries like the United States some lawyers only get paid ones the case has been won. By setting up this restriction, the situation of lawyers refusing a case because of lack of payments or the possibility that lawyers will agree with an arrangement too early, should be eliminated (Advocaten, 2011). Now, since trustees work on an hourly basis, does that imply that they are trying to lengthen the process as much a possible in order to get paid the most? This question will be answered later, in paragraph 4.2. First it is interesting to see the influence creditors have on the operations performed by trustees in order to judge on their impartiality.

3.2) The influence of creditors on trustees

A trustee should act with integrity; according to the Van Dale Dutch dictionary integrity means righteousness and incorruptibleness. This implies for a righteous trustee not be improperly influence able nor act improperly himself, besides the trustee must be careful not to confuse his own interest with the interests that is entrusted to him (interest of the creditors and other stakeholders). Broadly speaking, legal approaches to bankruptcy resolution may be classified as either pro-creditor or pro-debtor. Countries such as the U.S., Spain, most of Latin America, Africa, most of the Middle East and to a certain extend also the Netherlands are generally pro debtor. Countries like Canada and France have developed hybrid systems. Most Anglo-Saxon countries and Germany, Italy, China and Japan have pro-creditor systems (Bliss, 2003). In the next sub paragraphs some countries, close to the Netherlands and within the European union will be discussed. It turns that there are large differences between the different countries of one European Union. Countries that will be discussed are the Netherlands (3.3.1), Germany (3.3.2), Belgium (3.3.3) and France (3.3.4).

3.2.1) The Netherlands

In the Netherlands, trustees are seen as if they have full control, full power. If this is true, trustees are vulnerable for unrighteous behaviour. The general opinion is off course that trustees should be righteous. Creditors can suffer from unrighteous behaviour of the trustee, however creditors may also benefit from such acts. Trustees using their power righteous, effects the debtors and creditors but is also required from a societal perspective. The general public must be able to rely on the trustee without any hesitation.

The clerk of the Court is responsible for the insurance that there is no conflict of interest for the trustee. If there is none, and other criteria are satisfied, the trustee will be appointed to the case. Creditors are not involved at all in the process of electing a trustee, not even if the creditors have asked to file a firm for bankruptcy. From the moment a trustee has started his activities, a creditor can approach the relevant magistrate for any complains about the trustee. Creditors can ask the magistrate prohibiting certain actions with respect to the management of the estate by the trustee.

Furthermore a commission of creditors can be established. The commission can force the trustee to make certain decisions. In practice however the establishment of such a commission hardly ever occurs in practice (Hel, 2011). Different creditors have very different interests and do not very easily

cooperate. Often the tax payer has the largest debt at the company and its interest is to get its money back as soon as possible whereas for suppliers it might be beneficial that the company continues its business as usual. Because this commission does not work very well, there is not much influence of creditors on the operations performed by a trustee in the Netherlands. All in all, trustees are in general satisfied with the bankruptcy law as it currently is, based upon the questionnaire, see figure nine as well.

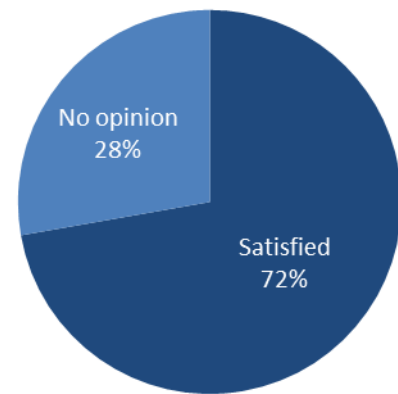


Figure 9 – The opinion of trustees about the Dutch bankruptcy system

3.2.2) Germany

In Germany a trustee also does not necessary has to be a lawyer as well, a business man, auditor or tax advisor can also legally perform this role. The German bankruptcy law furthermore provides a important power to the creditors. At all times it is provided by law; a meeting of creditors (Gläubigerversammlung) and a board of creditors (Gläubigerausschuss) which is comparable with a board of directors in a normal operating company. Responsibilities of this board of creditors are (europeancommission, 2005):

- The eventual election of a different trustee
- The review of the trustee
- The approval for certain important decisions
- The cooperation and execution of an insolvency plan

3.2.3) Belgium

In Belgium, trustees are elected from a list of eligible persons. The list has been filled by the commercial Court; only persons that are admitted to the bar of lawyers may be placed on the list and only after special training and demonstration of their competence with regard to bankruptcy proceedings. The law in Belgium does not have any provision for the involvement of creditors for the appointment of the trustee (europeancommission, 2005).

3.2.4) France

In France, a Country that has developed a hybrid system, much more stages prior to insolvency exist. An auditor has an important responsibility for preventing insolvency. Ones the auditors believe the firm will enter into difficulties for going concern, a conversation with the president of the company will be arranged, however if then, no satisfying answer can be given, the auditor has the duty to set up a meeting with the board members and to notify the president of the trade Court. This procedure is called the *procédure d’alerte* and its purpose is to prevent insolvency and suspension of payments. The Court can appoint an interim manager in order to improve the performance of the company.

For processing the bankruptcy event in France four persons can be appointed by the Court; for large companies (>50 employees and > EUR 3.1m revenues) an (1) administrateur judiciaire who works together with management and sells the company, a representative of the (2) creditors who discusses in name of the creditors the debt agreements with the (3) magistrate and in case of a liquidation, a (4) liquidation judiciaire who liquidates the company. All the legal persons have to be selected from a special list by the Court, creditors are not particularly involved the appointment of the different roles (europeancommission, 2005).

3.3) Conclusion – Dutch creditors only influence trustees in theory

In chapter three, it is showed that the appointment process of trustees is very unclear to outsiders. Furthermore the influence creditors have on the operations performed by trustees is outlined.

Country	Background of trustee	Influence of creditors on election process	Influence of creditors on operations
The Netherlands	Lawyer	-	+/-
Germany	Lawyer/auditor	++	++
Belgium	Lawyer	-	-
France	Lawyer	-	+

Table 2 – Creditor's influence per country overview

As the previous paragraphs, and table 2 are showing, in most countries, except for Germany, no big influence of creditors could be seen in the appointment of a trustee and the question rises if this will be necessary. In most cases when a debtor cannot pay its creditors, it is likely that these creditors will have some insights in the activities of the debtors. Therefore they might be the most appropriate party to elect a trustee and check its operations, besides the trustee's core role is to represent the interest of the creditors. Choosing a bad trustee means the creditors will get back less money. In Germany the number of relaunches by the ex-owners is very limited (Ebbbers, 2011). This because of the creditors meeting, a creditor can guide the trustee more through the process and the system is therefore better capable of preventing abuse of the bankruptcy statement by entrepreneur. Furthermore it is most desirable that the election process of trustees by the Court becomes more transparent. Unclear to relevant parties are the points tested by the Court for the election of a trustee.

Part III – Potential improvements

Part III will compare the selling process performed by M&A specialist with the process of done by trustees in order to make recommendations for improvement of the bankruptcy process and selling bankrupt companies. For evaluating the right options during the selling process a proper valuation method is crucial. This part will therefore also address the different valuation methods for non liquidation situations and bankrupt companies.

4) Potential improvement I - The selling process

In non-liquidation situations M&A specialists are advising in the sale process of companies. Therefore in paragraph 4.1 a overview of the selling process performed by M&A specialist is given for comparison with the selling process performed by legal trustees as explained in 4.2.

4.1) Selling a company by M&A specialists

The M&A process basically consist of four categories of steps which are pointed out in figure ten. This figured is established based on experience gathered during the internship programme performed at FBM Mahler.

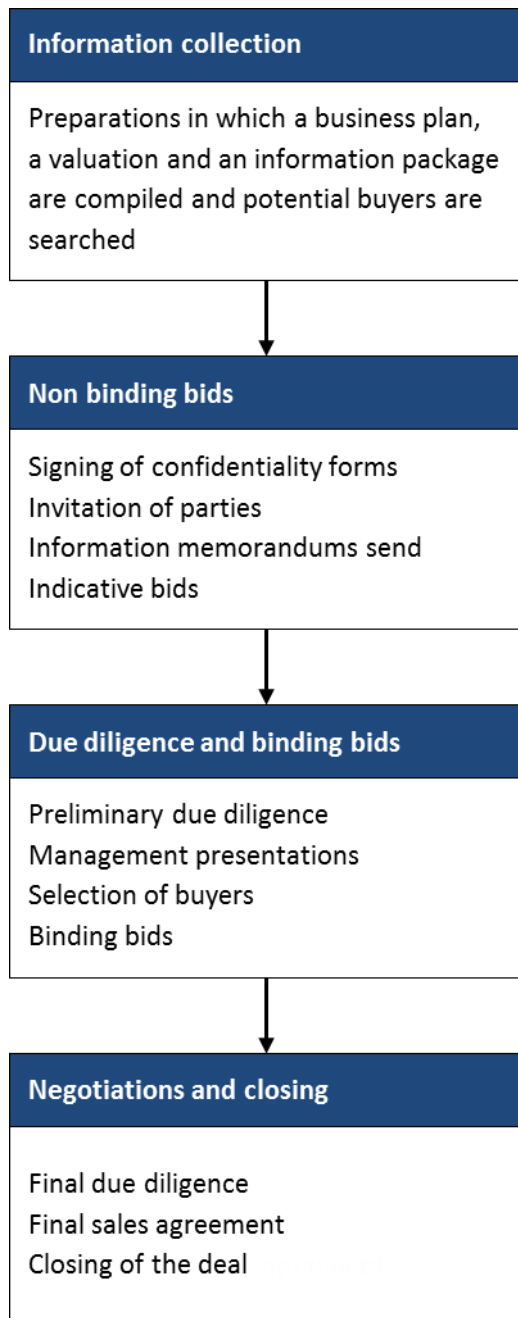


Figure 10 –Steps in the M&A process

The time length of the whole process as described in figure ten will in general take about nine months although this differs somewhat per project.

For selling the company it is important to consider, at the beginning, the type of process that will be run. A one to one, a competitive or an auction method can be chosen depending on the situation. In table three, the pros and cons of each method is further explained.

Method	Pro	Con
One to one	<ul style="list-style-type: none"> ▪ High possible rate of confidentiality ▪ Fastest method to realise a transaction ▪ Least amount of distraction for the company 	<ul style="list-style-type: none"> ▪ Risk of not obtaining the maximum value and/or optimal scenario
Competitive	<ul style="list-style-type: none"> ▪ High change on maximum price ▪ Confidentiality guaranteed ▪ Pressure on the buying companies 	<ul style="list-style-type: none"> ▪ Risk of losing a good relation after a tense process
Auction	<ul style="list-style-type: none"> ▪ High competition between buyers ▪ Good chance on high transaction value with high synergy 	<ul style="list-style-type: none"> ▪ No exclusivity amongst buying parties ▪ Less confidentiality ▪ Time consuming process ▪ Only works with a large amount of potential buyers

Table 3 - Selling processes, based on experience gathered during the internship programme at FBM Mahler

Whatever selling process is chosen, a potential buyer has the choice between a stock transaction or an assets/liability transaction.

In a stock transaction the legal entity will be sold. This transaction process is the easiest form since all the possessions, liabilities, client lists and contracts will be sold the buyer. Besides, this transaction is tax exempted ones the shareholder is a holding company.

In an Asset transaction the employees are, by law, going together with the assets to the new company as well⁸. Further the buyer can choose which assets to buy and which not to buy. Potential procedures or claims will remain at the legal entity which is not been sold. The tax authority will charge tax on this kind of transaction.

4.2) Selling with trustees

As pointed out before, it is the task of the trustees to sell a bankrupt company as going concern or as individual assets. However trustees have in most cases legal background and only little education in financial



Figure 11 – How value is created from a bankrupt company (Roessingh, 2011)

⁸ Remark that this does not hold for bankruptcy companies in the Netherlands

processes⁹. This leads to the question whether legal trustees are the best persons to sell a company. Note that in the UK for example, trustees often do not have a legal background, there trustees are mostly auditors.

In most cases the trustees sells the individual asset, which is also reflected in figure eleven and twelve. Figure twelve shows the background of all sellers in all M&A deals. Most are strategic parties and individual shareholders. Trustees only account for 6% of the deals with as main reason that trustees most of the time sell the individual assets instead of the entire company as going concern.

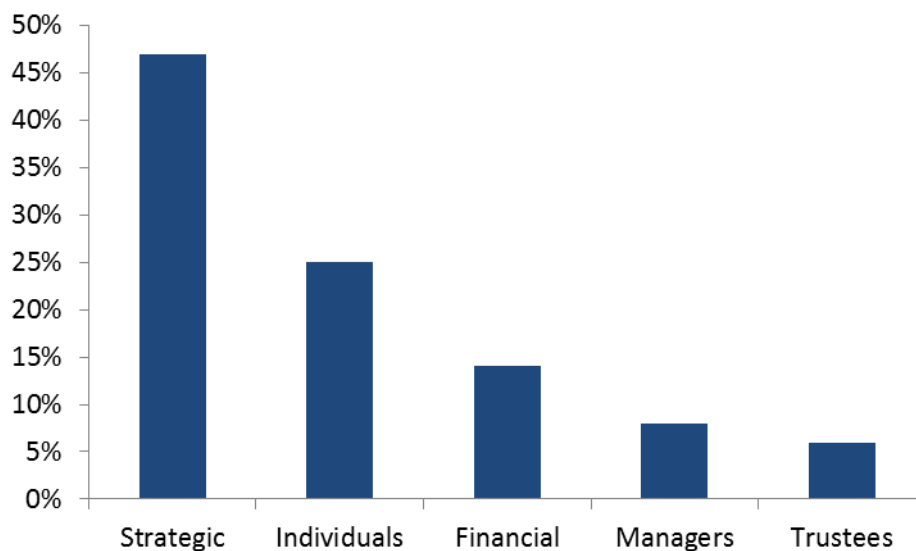


Figure 12 – Background of sellers (CMS, 2011)

This fact cause large difference in the selling process since in the most cases the shares are not bought, only the assets. By doing so, the takeover eliminates the risk of potential claims since the legal ownership is not transferred. As a consequence of this, no due diligence is necessary for the takeover which eliminates important steps from the normal process. This results as well in a much quicker process, which is also necessary. Although bankruptcy states last on average about two years, the timeframe until the moment of sale is often only three months (Hel, 2011). The remaining time is used to handle for example claims and to run prosecutions processes. Compared to the time it takes to sell a normal company this is much shorter. Implicitly, this also means that no much time is spend on the commercial selling aspects. The question rises whether this has negative influence on the price.

Hel, as a trustee with a relevant amount of years in handling large bankruptcy events, points out that there is a balance between running a careful process and not selling to late. Bankrupt companies that are continuing their business under the authority of a trustee experience a lot of difficulties with their normal operations. Clients walk away, suppliers do not want to deliver unless a payment

⁹ INSOLAD, a union of trustees, offers a special programme at the Erasmus University of Rotterdam for trustees in order to improve their financial knowledge (INSOLAD, 2011). This programme is however no obligation for becoming a trustee. Recall that in theory every capable person could become a trustee.

upfront is made and essential employees are in doubt and might consider a job at a competitor¹⁰. This situation with a lot of uncertainties cannot last for too long. Therefore the selling process has to be done relatively quickly. Also potential buyers have often more power and are more in a position of setting an ultimatum before their offer expires.

If the company cannot meet its estate duties for the period after bankruptcy, the activities will be terminated immediately. In this case, a relaunch will be more difficult, especially when more and more time passes. As a result, the value of goodwill will drop significantly. In this situation it is even more important that a company can be sold as quickly as possible.

This balance is also influenced by the payment structure. Trustees are getting paid on an hourly basis¹¹, however have to be careful with lengthening the process too long. Especially in small bankruptcy cases, trustees experiencing the risk of not generating enough value from the estate in order to pay for their own salaries. Therefore trustees engage a certain risk when stretching the process, even if they might be able to generate more value. So the generation of more value by working more hours on a certain bankruptcy event is overshadowed by the risk of not getting paid their full hours when there is no money in the estate left. Therefore it is experienced that trustees are selling the company as soon as they get the chance in order to secure their own salaries (Roessingh, 2011). In this case the trustee gets paid and maybe even the tax authority will receive some. However because of this given, eventual illegal cases will remain covered. To give the trustee more possibilities to investigate, the government has set up a guarantee fund which pays the trustee in order to investigate the bankruptcy event further. However this fund only pays out when the trustee is expecting certain revenues from the estate. A trustee who has no expectation of future revenues will not fill requests for the fund for further investigation (Ebbers, 2011). All these factors cause the trustee to sell the company as soon it can be sold. It does not directly stimulate the value for which it will be sold. The payment structure could change to stimulate that by for example lowering the legal fixed amount per hour and add an variable post based on the generated value. Another issue is that some lawyers refuse the appointment as trustee because of lack of income and the risk not getting paid their full hours. Therefore it can be said that the argument given for no cure no pay in paragraph 3.1 does not hold completely.

Because of the potential risk for trustees of not getting paid and an of the time pressure, trustees only very rarely spend time on setting up a proper information memorandum and putting the company in the spotlights on the market. The memorandum does not consist of much more than a pile of documents with annual reports, salary expenses, order books, etc. As a result, bankrupt companies are very often sold to the former shareholders or management according to Jonk (2011), M&A attorney at law at CMS. These parties can come up with a better offer since they are better capable of estimating the risks and chances. These parties also have more preparation time since they can start investigating already before the bankruptcy period whereas other potential buyers will not start after they have been approached by the trustee. Besides, even if other third parties have been approached by the trustee, they are often not able to put in a good offer based on the

¹⁰ It even happens that salaries are increased during a bankruptcy event in order to keep some of the essential staff (Hel, 2011)

¹¹ How much is pointed out already in paragraph 3.1

information memorandum. As a result, former management and shareholders put in higher bids.

Furthermore, in practice it turns out that trustees are willing to give discounts to the continuing entrepreneur in order to maintain employment. Currently the Supreme Court tends to agree with this approach instead of the approach of creating the most value for the creditors. This approach of the Supreme Court was first shown in the case of Sigmacon BV (Aa, 2007). In this case some creditors claimed that they could have received a higher amount from the trustee however the Supreme Court decided that the trustee is allowed to take other issues into consideration, in this case employment, and therefore the claim of the creditors was rejected.

When selling the assets of a company in an irresponsible way, trustees can be accounted for this by creditors, the entrepreneur and other parties. This causes the trustee to build up files in order to prevent this potential claim. The trustee also has the obligation to obtain an insurance policy for such potential claims.

4.3) Conclusion - The performance of the trustee and M&A specialists compared

In chapter four the question about the selling process performed by M&A specialists has been answered. For further analysis the process is compared with the selling process performed by trustees. Non bankrupt and bankrupt selling processes differ a lot from each other, mainly because trustees are often involved in asset deals whereas M&A advisors do mostly share deals. Also the time frame is very different due to the circumstances of financial distress. This can be seen in the amount of time before the selling is completed which is far more, approximately the double, in the case of a normal M&A process. Nevertheless, differences in capabilities and background knowledge also have a relevant impact.

Since M&A specialist are better in selling companies and lawyers have essential legal knowledge, the best solution might be an expert and a lawyer cooperating as a bankruptcy team, which is also legally possible. This solution will increase the cost of bankruptcy process however could also increase price paid for the company. Upfront it is however hard to calculate the balance between extra costs and potential extra earnings. Especially with small bankruptcy cases it seems therefore not practical using such a team for selling a bankrupt company. On the other hand, for small bankruptcy processing it is imaginable that not very extensive legal knowledge is necessary and that basic legal knowledge of M&A specialists is sufficient. The M&A specialist will then be able to generate the maximum amount of value and process the legal issues well. Currently, only in large bankruptcy events a team of a legal trustee and another person with more financial background is set up. This second person is however in most cases an auditor whereas a M&A specialist might do a better job considering its commercial and strategic skills. Figure thirteen will give an overview of the result from the questionnaire about the capabilities of the trustees compared to those of M&A specialists. Note that the performances of the trustee are the same as given in figure four, present in paragraph 1.2.

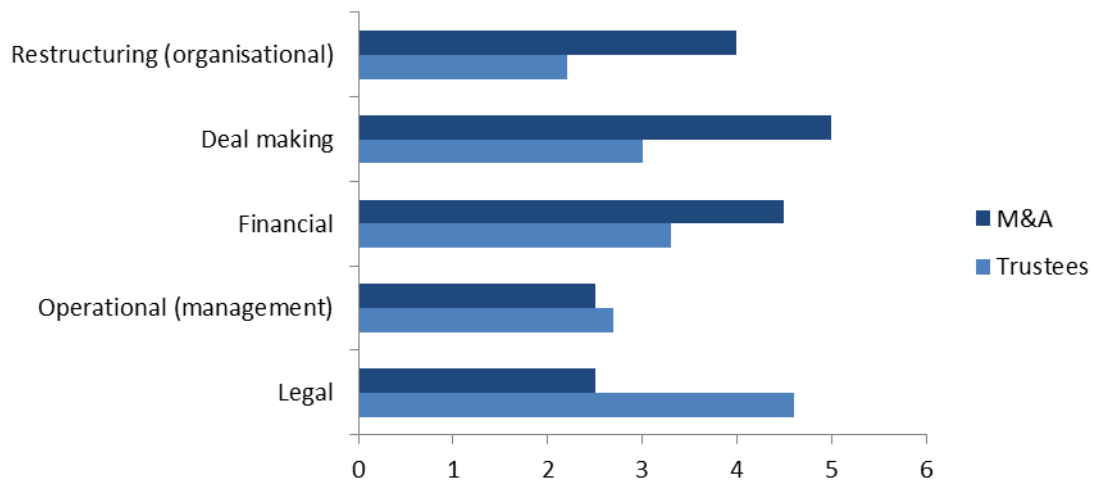


Figure 13 – Capabilities of legal trustees and M&A specialists based on the questionnaire and interviews

When cooperating as a team, the next question will rise automatically: Who will have the leading position? Since the M&A specialist is better in the negotiation, and strategic reasoning behind the process it would be recommendable to appoint this person as number one. However, close cooperation with a legal specialist is a must. Important decisions could be made by an M&A specialist too quickly without considering legal consequences. Situations in which creditors execute their right of retention could then for example have a large impact on the operations. For the day to day operations, a legal trustee could therefore perform better in operating the business.

5) Potential improvement II - Corporate valuation

In bankruptcy proceedings, two possible errors may occur (Eger, 2000):

- The firm is reorganised although the value is smaller than the liquidation value
- The firm is liquidated although this value is smaller than the value of the reorganised firm

Because of the possible errors mentioned above, it is crucial that value is properly measured before making a decision how to proceed with the bankruptcy event.

Value takes into account long-term interest of all the stakeholders in a company and is therefore a helpful measure of performance. Competition among value-focused companies helps to ensure that natural resources, human capital and capital in terms of money are used efficiently within the company. Value is a key measurement in a market economy. The aspects of how to measure value and how companies can be valued, are therefore important a market economy (McKinsey & Company, 2010).

Value can be created by making acquisitions however they should, irrelevant the state of the company, always be made with one of the following reasons:

- Improve the performance of the target company
- Consolidate to remove excess capacity from an industry
- Create market access for the target's products
- Acquire skill or technologies more quickly or cheaper
- Pick winners early and help them to develop their business

If an acquisition is made without one of these reasons it is unlikely that it will create value (McKinsey & Company, 2010).

In order to improve the valuation process paragraph 5.1 gives an overview of the valuation methods in non-liquidation situation for comparison with the methods used for bankrupt companies in paragraph 5.2.

5.1) Valuation techniques for non liquidation situations

In practise, cf-specialists use three main methods for valuating companies:

- Discounted Cash flow method (5.1.1)
- Comparable Company Analysis (5.1.2)
- Comparable Transaction Analysis (5.1.3)

Of course these techniques are just serving as a starting point to get to a broad value range, after which negotiations and due diligence will take place and the price, potential acquirers are willing to pay, is negotiated.

5.1.1) The Discounted Cash Flow method

In the discounted cash flow method, free cash flows are discounted to their current value. The Weighted Average Costs of Capital (WACC) serves as discount rate. The free cash flow method is an objective measurement approach since this amount cannot be influenced by audit policies. It is the

cash flow generated by the core operations of the business after deducting investments in new capital. For obtaining the free cash flow:

Earnings Before Interest and Taxation
 + Depreciation
-Cash taxes +
 Cash profit after tax
 -CAPEX
-Net working capital investments +
 Free cash flow

In order to discount the free cash flow properly, the WACC is the expected rate of return investors. The formula for calculating the WACC is as follows:

$$WACC = \text{cost of equity} * \frac{\text{equity}}{\text{equity} + \text{debt}} + \text{cost of debt} * \frac{\text{debt}}{\text{equity} + \text{debt}} * (1 - \text{tax rate})$$

This formula includes the adjustment for the marginal corporate income tax because the interest rate on debt can be deducted from the taxable income and lowers the total tax burden of a company

The cost of equity is most of the times¹² calculated with the use of the capital asset pricing model (CAPM).

$$E(R_i) = r_f + \beta_i [E(R_m) - r_f]$$

In which:

$E(R_i)$ = expected return of security i

r_f = risk-free rate (in general, ten year government bonds can be seen as risk free)

β_i = stock's sensitivity to the market (the extent to which the stock covaries with the aggregate stock market)

$E(R_m)$ = expected return of the market

The cost of debt is the interest rate a bank will charge to the specific company which is dependent on its risk profile.

The WACC value will be used as a discount rate to discount the series of free cash flows and the continuing value. The continuing value (also called terminal value) is the value of the company after the period for which estimates have been made. This value can be estimated by using a perpetuity (continuing value = yearly income / discount rate). When for example the free cash flows every year are 100 and the discount rate 10%, the continuing value in year five will be $100/0.1 = 1000$.

Then all values have to be discounted to present values using:

$$PV = \sum_{t=0}^{t=n} \left[\frac{FCF_t}{(1+r)^t} \right] + \frac{\text{continuing value}}{(1+r)^t}$$

In which:

PV is the present value, n the number of explicit forecasted years, FCF_t is the free cash flow in year t and r the discount rate.

¹² Alternative methods for the CAPM are for example the fama-french three factor model or the arbitrage pricing theory.

Back to the basic example used for the perpetuity; with a FCF of 100 each year, an initial investment of 900 and a explicit forecasted period of 4 years, will lead to a present value of:

$$PV = \sum_{t=0}^{t=4} \left[\frac{FCF_t}{(1+0.1)^t} \right] + \frac{1000}{(1+0.1)^5} = 37.9$$

In order to calculate the equity value, the net debt has to be withdrawn from this amount.

Furthermore, a sensitivity analyses can be performed by, amongst others, changing the leverage ratio which will give different WACC values and a value range for the company.

5.1.2) The Comparable Companies Analysis method

In order to come quickly to a reasonable price range for a company, the comparable company analysis is widely used in practice. By comparing the enterprise value of a number of listed companies with their EBIT, EBITDA, revenues etc., multipliers for the company that has to be valued can be generated. Table four gives an overview of the different ratios used in practise including their advantages and disadvantages. More ratios could be used however, as experienced during the internship programme, the four given are the most commonly used.

Ratio	Pro	Con
Enterprise value/Sales	More reliable compared to profit based multiples if the margins are negative or inconsistent	Very wide range since the costs structure is not taken care of at all
Enterprise value/EBITDA	Independent of the depreciation policy and financing structure	Differences in depreciation could have a large influence
Enterprise value/EBIT	Independent of financing structure	Depreciation should be representative for future CAPEX expenditures
Price/Earnings	The current financing structure is taken care of because the result is after taxation	It is influenced by the current financing structure

Table 4 – CCA ratios

Of course, only ratios of listed companies can be generated since only then the enterprise values are given by the market capitalisation (number of shares times the share price). Besides, future ratios for listed companies can be generated since estimates are made by analysts. Once all the ratios are known, the median for each multiple will be calculated in order not to take extremes into account too much.

Privately owned companies usually have a different debt structure and risk profile compared to listed companies. Since the ratios are generated from listed entities an adjustment has to be made. This is called a small company or illiquidity discount (since the shares of a private company cannot be traded as easily as the shares of a listed company and are therefore illiquid). The rate of adjustment is dependent on several factors, such as the size of the company, and ranges from 0 to 25%.

5.1.3) The Comparable Transactions Analysis method

For the comparable transaction method, comparable companies that have recently been acquired are searched and put onto a list for comparison. Several criteria could be used to judge for comparison:

- The same or comparable products or services offered by both companies
- The same geographical attendance
- Comparable transaction sizes

The same multiples as used in the CCA analysis are compared, for the different transactions applied to the relevant company. Again, in order to eliminate extremes, the median is used for application of the valuation instead of the mean.

In contradiction to the CCA analysis, the CTA model always backward looking however the multipliers can be calculated with private company data as well and include takeover premiums.

5.2) The valuation of bankrupt companies in the Netherlands

For valuing bankruptcy or non bankrupt firms, the methods described in the previous paragraph can and are used in practise. However problems that immediately arise while using these methods for bankrupt firms are for example:

- Availability of comparable transactions
- The assumption that the WACC will remain the same over time
- Tax losses carry forwards involved in the terminal value
- A limited amount of analyst forecasts

The DCF method and CCA are most suitable, the CTA model is not often used because of the very limited amount of comparable available transactions. A normal transaction cannot easily be compared since the amount of goodwill for a bankruptcy company will be far less and therefore the multiples can expected to be much lower.

While using the DCF method for valuation, the assumption is made that the capital structure of the firm, the amount of debt, will remain the same over time. However one could ask if this is reasonable. Research showed however that the debt ratios generally do not change in the years after a bankruptcy event has occurred (Gilson, Hotchkiss, & Ruback, 2000). Since this ratio has the largest influence on the WACC rate, the assumption can of an equal WACC rate over time is sustained.

Another issue in the DCF method is the terminal value. This is calculated using a perpetuity which assumes that the cash flows will keep growing at a fixed rate. However most firms that has been involved in a bankruptcy event recently, have unused operating loss carry forwards at the end of the prediction period. These losses are, by definition, not taken into account for calculation of the terminal value by using the standard method. In the Netherlands tax losses may be carried forward for nine years, which means that loses made nine years ago can be sett off against today's profits. Normally off course this will not be the case since a company will set off these losses much earlier or will not survive nine years without any profits. Besides the Dutch government also set up some restrictions regarding losses carry forwards and the change of ownership.

The losses cannot be carry forward if (Dijstelbloem, 2010):

- There is a change of interest in the company of more than 30%
- The activities have shrunk to less than 30% of the original activities in the year the loss occurred
- The investments in the year the losses occurred and the year in which they have to be offset consist of investment for 9 months or more

Based on the above restrictions, it has been made difficult for takeovers to acquire a firm and uses its tax losses. However, if the above restriction does not hold in a specific case, the valuation method has to be adjusted. Gilson, Hotchkiss, & Ruback, 2000 made therefore the following suggestions:

The terminal value calculation could be spread out into two different parts.

In the first part, the projected period is extended with an amount of periods enough to use all losses.

The free cash flows for these periods are calculated as explained in paragraph 5.1.1. Then in the second part, the terminal value is calculated as normal. Especially in firms emerging from bankruptcy one has to be careful with the terminal value. This value does have a larger influence on the value since cash flow projections during the projected period are typically below steady state levels.

Therefore changing the growth rate will have large impact on the value estimates. Therefore, calculating the terminal value by using the liquidation value might be more appropriate. This approach sets the continuing value equal to the estimate proceeds from the sale of the assets, after paying off liabilities at the end of the explicit forecast period. Liquidation value is often far different from the value of the company as going concern. In a growing profitable industry, a company's liquidation value is probably well below the going-concern value whereas in a dying industry this value may exceed the going concern value. This method is not recommendable unless liquidation is likely at the end of the forecast period, such as in bankruptcy scenarios.

For the valuation using a CCA method, the EBITDA is important. However the EBITDA could be temporarily low and even negative for firms emerging from bankruptcy. Since negative EBITDA multiples are not meaningful, the first positive projected EBITDA is used.

Since the EBITDA values typically will be low, the chances are that the value of the company will be underestimated, especially when the company is just recovering from financial problems and the multiple is based on the current year.

Furthermore a problem that holds for both methods, the DCF and the CCA, is the limited amount of forecast made by analysts. Figure fourteen shows the amount of analyst following a firm in the periods around a bankruptcy event based on nelson's directory of investment research.

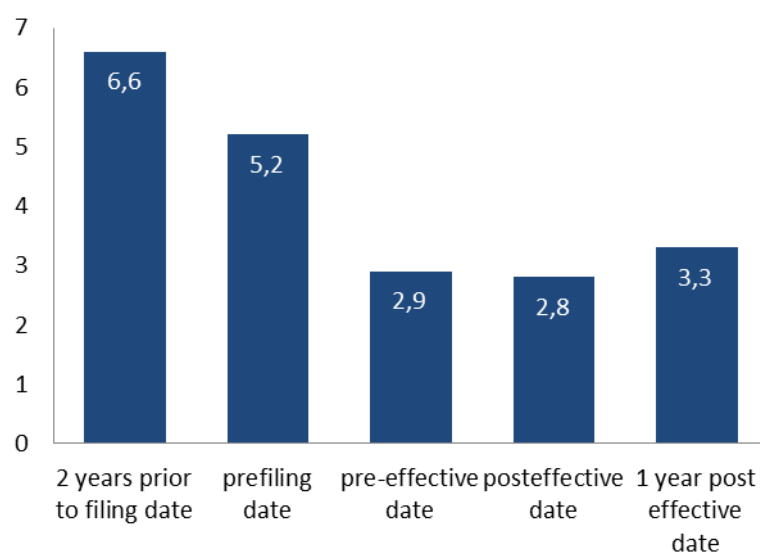


Figure 14 – Average number of analysts following a firm (Gilson, Hotchkiss, & Ruback, 2000)

Because of this limited amount of analysts, the forecasts made, if available, are less reliable. Therefore more and larger valuation errors will occur regardless what method to use. Forecasts are also made by management however these are always biased. Often management also owns shares of a company and is therefore incentive to see the future a bit more bright.

If the company will be liquidated, the value is calculated by using an external expert who will value each item separately and sums the total. Experts as Troostwijk (appraisers) are able to appoint values to items as client databases and other intellectual property such as brand names and patents. This liquidation value will generally be less, compared to DCF methods which assumes the company as going concern. Besides, intangible assets such as goodwill are difficult to value when not recognised on the balance sheet.

A legal change which has influenced the value of bankrupt companies has to do with the employees of the company¹³. If the buying party also takes over the staff, it is obligated to offer the same sort of contract to the former employees. When for example an employee used to be working under the terms of a fixed contract, it cannot be hired under the terms of a temporary contract. In the past this was not the case and therefore buyers took all the staff, offered them temporary contracts and fired them later if necessary. Today a general trend could be spotted buyers only takeover half of the staff and eventually hire more new personnel if necessary. By doing so, they avoid expensive and time consuming dismissal procedures. In Germany however, in an asset deal, a buyer is forced by law to take over all the personnel as well. The value of the company will therefore be lower since the cost level is much higher and implicitly profits lower (Hel, 2011).

5.3) Conclusion - going concern methods not used in bankruptcy processing

In chapter five, the question “what are the techniques used for valuation?” has been answered.

When there is only a limited amount of data available, the DCF method does not work, therefore the CCA and CTA methods will give valuation ranges relatively easy and quickly. For more accuracy, DCF valuation is however necessary. Table five will summarise the pros and cons of the different methods.

Method	Pro	Con
DCF	Company specific estimates Different scenario's and sensitivity analysis possible	Detailed financial data is necessary for good reliability
CCA	Valuation range quickly available Future estimates included	No transaction premia included Dependent on listed companies Does not include specific characteristics of the relevant company
CTA	Transaction premia included Valuation range quickly available	Sometimes only a limited amount of transaction and deal values are available Backward looking

Table 5 – Different valuation methods compared

¹³ Refer also to appendix three

For the valuation of bankrupt companies, the DCF methods can be used with some minor adjustments. However trustees use in practise almost always liquidation values calculated by appraisers. The basic point of the method used by appraisers is liquidation whereas DCF methods believe in going concern if the terminal value is calculated by a liquidation approach. The reason why liquidation values are more used in practice is because of other problems arising in DCF and CCA valuation. Forecasts are less reliable due to a limited amount of analysts following the company. Besides, multiples are often negative and therefore not meaningful. Comparing the output of multiple valuation methods is therefore key in establishing a reliable value of a company.

6) Potential improvements III – Other considerations

Besides the two recommendations made in chapter four and five, changing the selling process and using more valuation techniques, some other considerations have been discussed with the persons interviewed (mr. Hel for example) and are found in literature. These recommendations are not explained in every detail however are useful in the thinking process on bankrupt companies and the bankruptcy law. Besides paragraph 6.1 answers the question about which suggestions for improvement have already been made in literature.

6.1) Privatising the bankruptcy process

One alternative proposal could be the privatization of the bankruptcy procedure by giving the creditors the option to retain a fraction of the shares of the company

The key though is to transform the company in an all equity company, distribute the shares of this company to the creditors and leave them free to decide upon the policy of this company. Now the creditors are in control, they will make sure to maximize the value of the company in order to earn their investment, or more, back. The biggest problem occurs when the company's shares will be owned by many different creditors. Some creditors will try to free ride on the efforts of the others. The same reason why a commission of creditors does not occurs very often in practice as mentioned in paragraph 3.3.1 might hold here. Creditors have very different interests and will therefore enter into difficulties while cooperating. The principle of such a system could only work if there becomes a representative body which has control of the company on behalf of all the creditors. Creditors will then have voting rights, based on the amount of shares they obtained. Also in this situation, the tax authority will play an important role since it will become the largest shareholder in most cases. In order the process to work, the tax authority must then change its strategy of getting its money back as soon as possible towards a strategy that tries to continue to business

Another issue is the lack of control by legal authorities and therefore the lack of control on illegal issues. However the current systems also cannot prevent abuse of the bankruptcy statement, at least a certain legal control is experienced by entrepreneurs.

6.2) Changes in law

In paragraph 2.1 it is pointed out that suspension of payments does not have the desirable effect in the Netherlands. For companies it is forced by law to make public the state of suspension of payments. Doing so leads to the market reaction as mentioned. A possible solution to this problem could be a so called quiet suspension of payments. One's clients do not know a company is in the state of suspension of payments, orders and revenue will keep coming in order to pay off obligations.

This change will lead to more recoveries compared to the current situation. The disadvantage will be however once the company does go bankrupt afterwards, the creditors would feel fooled. If they would have known upfront that a company was in suspension of payments, they would not have placed that order. Eliminating the risk of creditors not placing large, crucial, orders would need cooperation of the banks. If a bank would guarantee the financial risks a certain important creditor is vulnerable to, this creditor might be willing to place the order. However of course, it would be very hard to convince a bank to invest even more in a company with financial distress. It has to be made very clear to a bank that only with that getting that large order the company would survive on the long run and be able to pay the rest of its debt back as well.

When the suspension of payments system of the Netherlands is compared with the chapter 11 system of the United States, it could be argued that U.S. based companies are much better in surviving a suspension of payment state. In the U.S, companies file for chapter 11 much earlier compared to Dutch companies filling for suspension of payments. This because the protection under chapter 11 is much larger (Declerck, 2009), for example:

- Suppliers are obliged to deliver
- The statutes of employees can be modified relatively easy
- Some contracts can be cancelled
- Court cases can be stopped

Because of these possibilities, the American suspension of payments system does have the desirable effect, companies will in general create more value going into chapter 11 compared to the value of immediate liquidation.

Furthermore a trend could be spotted in the U.S. about the sizes of chapter 11 cases. Whereas before 2000, the total assets when Texaco went bankrupt “only” amounted to USD 68bn (Texaco), after 2000, Lehman Brothers (USD 639bn), Washington Mutual (USD 328bn), Worldcom and Enron bankruptcy cases had much higher asset values (Declerck, 2009).

Therefore the American system is not perfect either; U.S. companies often speculate on chapter 11 en put to less effort in restructuring earlier because of the attractive protections under chapter 11. Besides, the suppliers sometimes have the disadvantage of loosing more money.

Part IV – Conclusions

In part IV the final conclusion as at total summary of all the finding will be provided.

7) Conclusions – bankruptcy processing could be improved

In this thesis, problems for bankruptcy processing existing amongst stakeholders have been recognised, causes for these problems have been addressed and potential improvements have been suggested. It is therefore time to refer back to the main statement, recall: The current method for bankruptcy processing is old fashion and only in favour of legal trustees.

The first part of this statement refers to the fact that most of the bankruptcy law is more than a century old. Creditors demand for a change in law as they want more influence on the operations performed by trustees. However the problem which will then occur is the cooperation between the different creditors who all have different interests in the company. A possibility to form a board of creditors is already provided by law but never used in practise. In the current system, a legal trustee ensures that the interests of all the different shareholders are represented. This approach, where creditors do not have to cooperate intensively with each other, could work fine.

The point where the law should change is the suspension of payments arrangement. It has been made clear that this process is currently not working at all.

The second part of the statement relates to the capabilities of trustees and the way they operate. Trustees get paid based on a minimum hourly salary determined by law, however this does not mean that trustees are certain of their salary. In small bankruptcy cases, trustees are experiencing the risk of not getting paid all the hours worked which is one of the reasons legal trustees try to sell a company as quickly as possible. For larger bankruptcy cases, this is however not an issue but still trustees cannot lengthen a process too long. Here the process is much quicker compared to a normal M&A process because no due diligence is taken place in most cases and the time pressure for selling is much higher. Waiting too long to sell might cause clients and employees to walk away from the company. Besides trustees argue that buyers are in a more luxurious position and can put in higher demands.

In this last issue, the deal making capabilities of the trustees are important. Legal trustees recognize that they lack some commercial and financial characteristics. Therefore a team with a legal trustee and a M&A advisor is recommendable. In this team, the M&A advisor should have the lead until the moment the company is sold. However the trustee might be best capable of operating the business on a day to day basis since a lot of legal knowledge is required for protecting the company against, for example, suppliers sustaining their retention right. Today such a team is almost never formed. At large bankruptcy events a team of an auditor and a lawyer is established. This however does not solve the problem since auditors do not have specific deal making and commercial experience either. Letting M&A specialist do the selling part will lead to more professional information memorandums and a selling process which generates a higher value. Besides they are able to make company valuations themselves for comparison with liquidations values made by appraisers. The standard valuation techniques however have to be adjusted and not all are suitable for bankrupt companies. Still they do serve as a good reference point since goodwill and not recognised intangible assets are difficult to value.

Table six summarises the most important factors and suggested improvements made in this thesis.

Factor	Current situation	Suggested situation
Suspension of payments	Started too late, not all parties involved	Company should be assisted earlier and tax authority must be included in the suspension of payments
Relaunches of companies by the same entrepreneurs	Entrepreneurs can make relaunches an unlimited number of times	Cases in which entrepreneurs are making more than two relaunches should be further investigated
Valuation	By appraisers based on liquidation value	Comparison of liquidation value with going concern calculations
Salary of trustees	Legal minimum	Lower minimum plus a variable part based on the value created
Trustees	Legal background	Team of legal trustee and commercial, deal making M&A specialist

Table 6 – Summary of suggested improvements

All the improvements suggested could be implemented simultaneously. Some however must be arranged by law, others such as the team M&A specialists and trustee should be arranged by the market itself. To break through the negative vicious circle in the suspension of payments system, it works probably best to start with the tax authority. Once the tax authority will be included under the terms of the suspension of payments as well, the management will be more capable of restructuring its business. Secondly, arrangements should be made to stimulate entrepreneurs to file for suspension of payments earlier. If these first measures have been implemented, more financial relief will be there, a reason for banks to be more willing to finance working capital which eventually breaks the negative market spirit.

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Appendices

I) Suspension of payments

Request

The entrepreneur can ask for suspension of payments only by himself. The entrepreneur has to send a request to the judge, signed by him and his attorney. Whether the judge will appoint suspension of payments or not, depends on the future expectations of the company. If the entrepreneur cannot point out clearly that creditors can and will be paid back later, the request will be denied. Compulsory to the request, a overview of expenditures and debts have to be handed in.

Grant

When the request confirms with the legal obligations, suspension of payments is granted immediately. After the grant, the Court will go on with the procedure in which creditors will be heard. Since this procedure requires some time, which the entrepreneur does not have, suspension of payments is given immediately as long as legal requirements are met. When preliminary suspension of payments is granted, the Court will appoint at least one administrator. Appointing a magistrates is possible however not necessary. A magistrate only has advisory tasks, contradicting to a bankruptcy event where the trustee has to report his actions to the magistrate. In practice, a magistrate will only be appointed when it concerns a large company or very complicated situation. The Court furthermore has the possibility to appoint an expert who will give advice about the suspension of payments request. After creditors have given their opinion and the Court has generated a rapport, a meeting about the final grant of suspension of payments will take place.

The meeting

During the meeting and discussion between the Court, magistrate, entrepreneur, expert and creditors, the final decision for suspension of payments is made. When more then one third of the creditors does not agree with the suspension of payments or when more then one fourth of the out standing debt, which is represented, votes against the grant, the Court has to deny the request. When there is no change that the entrepreneur will be able to pay its debt in the future, the suspension of payments request will be rejected as well.

When the Court does not agree with the request, bankruptcy can be declared immediately afterwards.

Time frame

The Court can grant suspension of payment for a maximum of 1.5 years. After this term, the suspension can be renewed for more periods, each maximum 1.5 years.

In case suspension of payments is denied, the entrepreneur can appeal against the decision and eventually go to the Supreme Court. When suspension of payments has been granted, creditors can appeal and eventually go the Supreme Court.

After the decision has been made, it has to be published in the gazette and the papers in which the announcement of the preliminary suspension has been made.

Dealing with suspension of payments

When an entrepreneur is in the state of suspension of payments, the entrepreneur cannot make legal decision on its own anymore, the administrator and the entrepreneur will have to make

decisions together. Both parties are not allowed to undertake important steps without any discussion. When an entrepreneur is acting only by itself, suspension of payments can be withdrawn after which a bankruptcy statement will follow or the administrator will get full power. Furthermore, the Court and administrator can give an obligation to act to the entrepreneur, when in favour of the assets.

Not all debts

Suspension of payments does not concern all debt, only the current liabilities. These creditors cannot force the entrepreneur to pay during while the suspension of payments is active. The suspension does not concern:

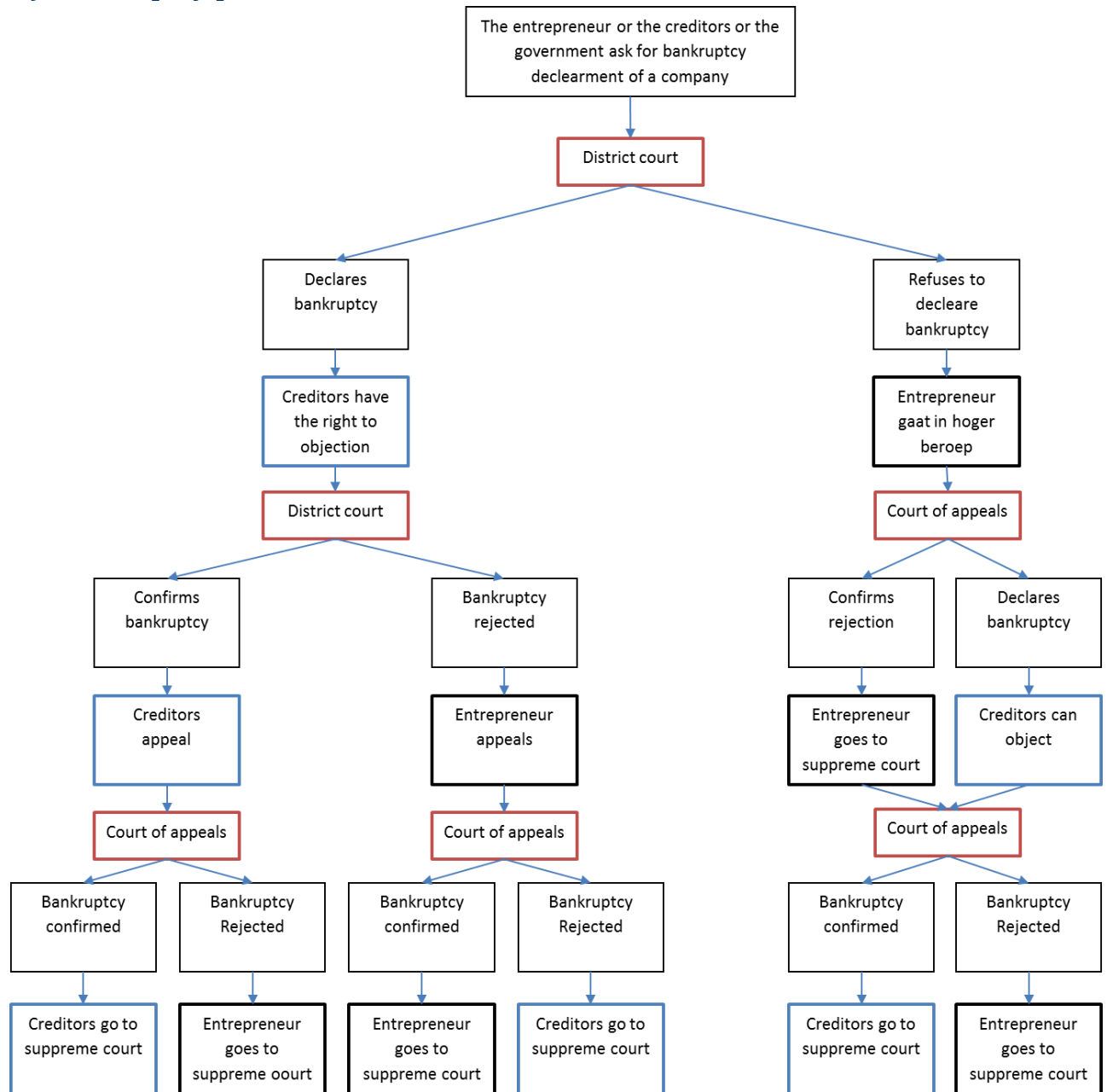
- Legal payment obligations
- Maintenance costs
- Priority debt
- Terms of rent-buy agreements (the letter remains its rights until the last term has been paid)

Estate liabilities may occur during the time of the suspension, this can only occur after approval of the administrator, the estate liability is not part of the suspension.

Ending the suspension of payments

Suspension of payments will end when the term has ended, an agreement with the creditors have been agreed (and approved by the Court) or when the final suspension of payment is not granted after the preliminary and off course after all the creditors are fully paid off. When a bankruptcy state follows after a suspension of payments, the administrator will generally become the trustee.

II) Bankruptcy procedures



Source: (Blom, 1996)

III) Employee rights

When a company continues its business within the same legal entity, the usual rules of dismissal are applied. This means that an insolvent employer can only dismiss its employees in two ways; either the local director of employment or the judge has to agree with ending the contract. In practice this means that the management has to come up with annual reports and other relevant documents to convince the judge or employment director that the dismissal is necessary because of economical reasons.

In general, the approval of this request by the director will not take place within 2 months after submission. Dismissal of an employee through the judge will take about six weeks and there is no dismissal term necessary.

Collective dismissal is the term used when an employer has intention to dismiss more than twenty employees within three months. For approval of this, the employer will have to inform the labour unions, the labour unions will then discuss the proposition with their. Besides this, the works council has to be asked for advice. After a positive advice from the council, the employer can send its proposal to the local director of employment who can start working on the procedures after one month. After approval the employer has to come up with a social plan.

When buying a company as going concern, all the employees have to be taken over and their salaries including a dismissal fee have to be paid.

All the rules mentioned in this appendix are not applicable if the company is taken over after the bankruptcy is determined. The decision of the trustee to dismiss or not to dismiss the employees depends whether the company can meet its estate duties. When not, the company's business association will be responsible for the paying out the salaries until thirteen weeks after bankruptcy. The continuing entrepreneur will be free of any costs or reorganization and costs of a social plan when continuing after bankruptcy. However when the takeover want to takeover the staff as well, the same sort of contracts have to be offered and the change rule (fourth renewal of a temporary contract is automatically a fixed contract) still holds. This implies that dismissal processes are more costly and time consuming compared to temporary contracts.

For some employers the bankruptcy even may sound as a cheap alternative to dismiss employees. However when it can be proven that the company could have paid for the costs of reorganization and a social plan, the old employees can claim for a reappointment.

IV) Payment structure for trustees and its office employees

The salary of trustees is arranged by law, the Recofa guidelines setting up a minimum salary each year. The total salary of a trustee is then calculated as (Franken, 2008):

The basic hourly salary

The number of worked hours

Weight factors x

Total salary

The weight factors are based upon and multiplication of the number of years of experience and the estate factor (Franken, 2008).

Experience factor:

- 0.6 for lawyers with less than 4 years of experience
- 0.8 for lawyers with experience between 4 and 8 years
- for lawyers with experience between 8 and 12 years
- 1.3 for lawyers with more than 12 years of experience

The estate factor:

- 1.0 when the estate is less than EUR 25,000
- 1.1 when the estate between EUR 25,000 and EUR 50,000
- 1.2 when the estate is more than EUR 50,000

For employees at the trustees' office, who are not lawyer, the payment is dependent of the relevant experience of the employee. Three factors can be used as a ratio to the basic salary:

- 0.4 for employees with experience until 4 years
- 0.5 for employees with experience from 5 until 9 years
- 0.6 for employees with 10 or more years experience

V) Questionnaire and results

Enquete verstuurd naar 100 curatoren, de resultaten zijn op basis van 22 respondenten, allen curator en meester in de rechten.

In enkele gevallen somt het totaal niet op tot 22, in die gevallen is er geen antwoord gegeven op de vraag. Van de gesloten vragen en meerkeuze antwoorden zijn de gemiddelde resultaten gegeven.

1.	
Hoeveel jaar ervaring als jurist heeft u?	24
2.	
Hoeveel jaar ervaring als curator heeft u?	17
3.	
Hoeveel aandelen transacties heeft u reeds voltooid in de rol van curator?	73
4.	
Hoeveel activa transacties heeft u reeds voltooid in de rol van curator?	11
5.	
Kunt u uw mate van specialisatie/kennis aangeven op elk van de volgende criteria op een schaal van 1 tot vijf?	
Juridische	4.6
Operationeel management	2.7
Financiële	3.3
Deal making	2.7
Restructuring (organisatorisch)	2.2

Vragen naar aanleiding van het door u laatst afgeronde faillissement:

6.	
Wie heeft het faillissement aangevraagd?	
De ondernemer	20
De crediteuren	0
De overheid	0
Anders namelijk	0

7.

Tot welke categorie behoorde de omzet (in miljoenen Euro), van het door u begeleide bedrijf, in het jaar voorafgaand aan het faillissement

<5	1
5-20	3
20-50	9
50-100	7
>100	0

8.

Wie heeft de uiteindelijke koper geïdentificeerd?

U als curator	7
Het management	6
De aandeelhouder	6
Een extern deskundige	2

9.

Was de uiteindelijke koper voorafgaand aan het faillissement reeds met het management in gesprek?

Ja	18
Nee	2
Weet niet	1

Verkoopopbrengst van het door u laatst afgeronde faillissement

10.

Had de uiteindelijke koper reeds een rol in het failliete bedrijf?

Ja	12
Nee	9

11.

Hoeveel, vooraf onbekende, potentiële kopers voor het bedrijf als "going concern" zijn in het proces actief benaderd?

4.4

12.

Wie heeft de belangrijkste bijdrage geleverd aan het opstellen van het informatie memorandum?

U als curator danwel uw kantoor	12
Het management	8

Een accountant	0
Een M&A specialist	0
Anders namelijk	0

13.

Welke partij heeft met name de onderhandelingen gevoerd?

De curator	22
Het management	0
Een extern adviseur	0

Wetgeving en algemen vragen

14.

Is er een dealteam samengesteld voor de verkoop van het bedrijf en zo ja, uit welke partijen bestond dit team? (meerdere antwoorden mogelijk)

De curator	4
Het management	1
Een extern, niet door de rechtbank benoemde deskundige	4
Nee, er is geen team samengesteld	14
Anders, namelijk	0

15.

Is er een waardering gemaakt en zo ja, wie heeft hier de belangrijkste bijdrage aan geleverd?

Ja, het management	0
Ja, een accountant	7
Ja, een taxateur	15
Ja, een andere partij namelijk	0
Ja, het advocatenkantoor	0
Nee, er is geen waardering gemaakt	0

16.

Welke bedrijfs waarderingsmethode voor de "going concern" verkoop is toegepast? (meerdere antwoorden mogelijk)

De contante waarde methode waarbij toekomstige kasstromen zijn verdisconteerd	7
De multiplier methode waarbij op basis van een peer analyse verschillende multipliers zijn gebruikt	3
Een andere methode namelijk	0

Niet van toepassing want	0
Taxatie door extern taxateur	17

17.

Was de uiteindelijke opbrengst hoger of lager dan de waardering?

Hoger	11
Lager	5
Gelijk	0
Niet van toepassing	0

18.

Bent u tevreden met de huidige faillissementswet? (meerder antwoorden mogelijk)

Ja, in Nederland is het beter geregeld dan in het buitenland 13

Nee, Nederland kan een voorbeeld nemen aan het Verenigd Koninkrijk

Nee, Nederland kan een voorbeeld nemen aan Duitsland

Nee, Nederland kan een voorbeeld nemen aan België

Nee, Nederland kan een voorbeeld nemen aan Frankrijk

Nee, Nederland kan een voorbeeld nemen aan de Verenigde Staten

Andere mening namelijk

Geen mening 5

19.

Wat vindt u van de rol die banken hebben tijdens een faillissement afhandeling?

Banken hebben te veel macht, want 5

Banken hebben terecht een bevoordeelde positie, want 5

Andere mening namelijk 12

20.

Wat vindt u van de rol die de fiscus heeft in de huidige faillissement praktijk?

Over het algemeen bevoordeelde positie, doch cooperatief

21.

Wat vindt u van de rol die overige crediteuren hebben tijdens een faillissement afhandeling?	
Crediteuren hebben te weinig macht, want	2
Crediteuren hebben te veel macht, want	0
Andere mening namelijk	

22.

In het algemeen, wat vindt u van de duur van de surseance periode?

Te kort, momenteel leidt surseance bijna altijd tot faillissement en daar is het niet voor bedoeld

Goed, het bedrijf verkeert slechts enkele weken in onzekerheid waardoor het beter verkoopbaar is

22

Te lang, surseance is een overbodige fase die onnodig geld kost aangezien bijna elk bedrijf na surseance alsnog failliet gaat

Andere mening namelijk

23.

Wat weegt voor u zwaarder, behoud van werkgelegenheid of een verkoopopbrengst die EUR 50,000 hoger ligt maar ook een reductie van 10 werkplaatsen impliceert?

Een hogere opbrengst

15

Werkgelegenheid

24.

Kunt u uw afweging aangeven met betrekking tot het verkoop resultaat? (0=eerste keuze, 1 is tweede keuze)

Hoge opbrengst of garantie voor continuïteit

0.4

Hoge opbrengst of snelle afhandeling

0.3

Tot slot

25.

Kunt u aangeven welke kwaliteiten u belangrijk vindt in het ideale "faillissement afwikkeling" team? (schaal 1 tot vijf)

Juridische

5

Operationeel management

3.6

Financiële

4.3

Deal making

3.2

Restructuring (organisatorisch)

3.0

26.

Heeft u aanvullingen of feedback naar aanleiding
van deze vragenlijst of dit onderwerp?

Nee