"*Have more than thou showest*": Business model transformation after corporate restructuring

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The discussions around the national implementations of the EU Directive on Preventive Restructuring Frameworks (PRD) were insprired by a common understanding that a business can be economically viable but financially distressed and, therefore, worthy of a second chance through the restructuring of unbearable amounts of debt. A fresh start, however, often does not only require a financial restructuring but also a subtantial operational reorganisation. Especially a crisis like the COVID-19 pandemic often causes structural changes, even once the crisis will be over and, thus, has a transformative force and a lasting effect. A strong trend towards hybrid or remote working arrangements or online shopping has for instance been facilitated by the COVID-19 pandemic. Debtors will have to re-think and often reorganise their business.

An operational reorgansation brings along various challenges, e.g. business model adequancy, operational transformation considering the requirements for sustainability accounting and finance, and for humans involved dealing with the emotions and trauma of being part of the crisis. Most of these aspects have not been dealt with in detail during the reform discussion around the PRD enactment and its national implementations. A strong focus has been on financial restructuring instead.

Our paper will take a view ahead and focus on business reorganisation and how a restructuring framework can assist structural changes of the business whereas a key aspect of business reorganisation is that the debtor has to re-assess the value of its business parts and, for instance, re-assess the value of its on-site operations, may this be office buildings, shops, or service centers across different locations. The evaluation may result in certain parts of the business being viable, while other parts operate at a constant loss and eventually burden the business with an unbearable (future) liability. The debtor, thus, needs to be able to disentangle its viable business parts from such liabilities, e.g., from lease agreements for on-site properties that would be rationalized in a business reorganisation or from contracts for the supply of goods and services that do not anymore form part of a realigned business strategy or future organizational development.

We will discuss this issue and relate to comparative examples to showcase our findings of how a restructuring mechanism can enable substantial business transformation. The German restructuring procedure unlike the insolvency procedure, for instance, does not provide a tool for the (extraordinary) termination of exectury contracts by the debtor and explicitly prohibits the restructuring of (future) liabilities arising from such contracts (without unanimous consent of the counterparty), which puts the procedure at a distinct disadvantage for business reorganisations. The Dutch restructuring procedure instead provides debtors with a tool to terminate executory contracts and to restructure future liabilities from such contracts . In the UK (as a non-EU country), the CVA has been used prominently to restructure obligations from property lease agreements in the retail sector; a reorganisational strategythat became necessary with a dramatic shift in the business of on-site shopping.