

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

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Background

- Should there be an option to reject onerous contracts or modify future claims arising from executory contracts?
 - (i) **Question of fairness:** Why should creditors be treated favourably in as far as they have not performed their obligation under the contract?
 - (ii) **Question of efficiency:** Is a debtor burdened with onerous contracts worth to be rescued or an investable target? Focus of today's presentation.
- Starting point: differentiation between **financial restructuring** and **operational reorganization**.
- Directive on preventive restructuring frameworks: no clear guidance, different national practices.
 - Germany: last minute deletion of debtor's right to terminate (but option to reject executory contracts in insolvency).
 - Netherlands: termination right and modification of compensation claim for early termination.
 - Non-EU comparative cases:
 - UK: Company Voluntary Arrangement (e.g. to modify retail leases).
 - US: rejection of onerous contracts

Business model (e)valuation

- **Operational reorganization**
 - After the financial restructuring: **evaluation of business model and viability.**
 - Business model: Is the business model **fit for purpose?**
- **Valuation challenges**
 - Financial metrics and stress testing.
 - Reference point for valuation: liquidation vs going concern.
 - Transparency on **contractual obligations: fit for future?**
 - Hard and soft facts.

Business model transformation

- **Business model: refinement & transformation**
 - Future business opportunities: Thinking from the future!
 - Digitalization
 - Data
- **Strategic implementation**
 - Barriers: Vision, Management, Resources, People
 - Execution

Conclusion: Business Reorganization and Bargaining Situation

- **Business reorganisation** requires new business strategy (outsourcing, new/different production lines, etc.)
 - New business strategy requires new contracts; resources must be applied according to new business concept.
- Especially **macro crises**, such as the corona pandemic, bring about structural lasting developments.
- **Obstacle for rescue and restructuring negotiations:**
 - No option to restructure future liabilities from executory contracts at all: liquidation or asset sale may become preferred option.
 - Different treatment under insolvency and restructuring law: insolvency may become preferred option for financial creditors.