



ABOUT ACG
HOLLAND

2023



Driving
Middle-Market
Growth®

The Power of **ACG**[®]

UNLIMITED ACCESS
TO A DIVERSE
MEMBER COMMUNITY



THE COMPLETE GLOBAL DEALMAKING ECO-SYSTEM

Doing business is at the heart of ACG
75% of members report they do business with fellow members



- FOUNDED IN 2005, **175 MEMBERS**

- HOSTS APPROX. 12 NETWORKING EVENTS PER YEAR (SERIOUS AS WELL AS FUN) INCLUDING:

- ANNUAL GROWTH AWARDS
- NEW YEAR DRINKS RECEPTION
- WOMEN'S EVENTS
- WINE TASTING EVENINGS

- ACCESS A GLOBAL NETWORK OF OVER 15,000 MEMBERS FROM ALL AREAS OF MID-MARKET M&A

Individual Membership | €300 + VAT

Corporate Membership | € 750 + VAT
3 named members

Sponsor - Gold | €1.000 + VAT
2 named member. - 1 seat on the Board

Sponsor - Platinum | €2.000 + VAT
5 named members – 1 seat on the Board

Sponsor - Platinum | €3.000 + VAT
10 named members – 1 seat on the Board

Diamond



Platinum

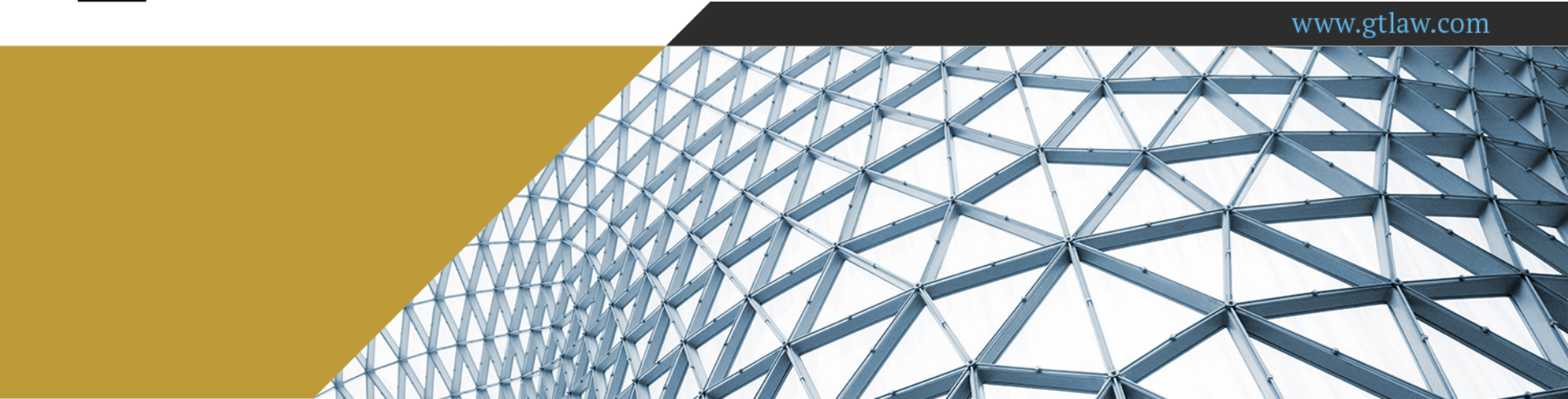


Gold



Insurance | Risk Management | Consulting





Restructuring: will the Dutch Scheme help us through the economic crisis?

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Thijs Elseman | Thijs.Elseman@gtlaw.com | +1 31 6 5186 7068
Lilian Welling-Steffens | Lilian.WellingSteffens@gtlaw.com | +1 31 6 1089 7744

Program Overview

- **I. Short introduction to GT**
- **II. Setting the scene**
 - Economic crisis or economic cycle
 - Dutch Restructuring Framework: Suspension of payments, Bankruptcy, Out-of-court debt restructuring
- **III. Dutch Scheme (*Wet Homologatie Onderhands Akkoord (WHOA)*)**
 - Background
 - Key Characteristics
- **IV. Experience and Outlook**
- **V. Q&A**



Short introduction to GT

A HISTORY OF GROWTH

FIRM FOUNDED
IN MIAMI
3 ATTORNEYS

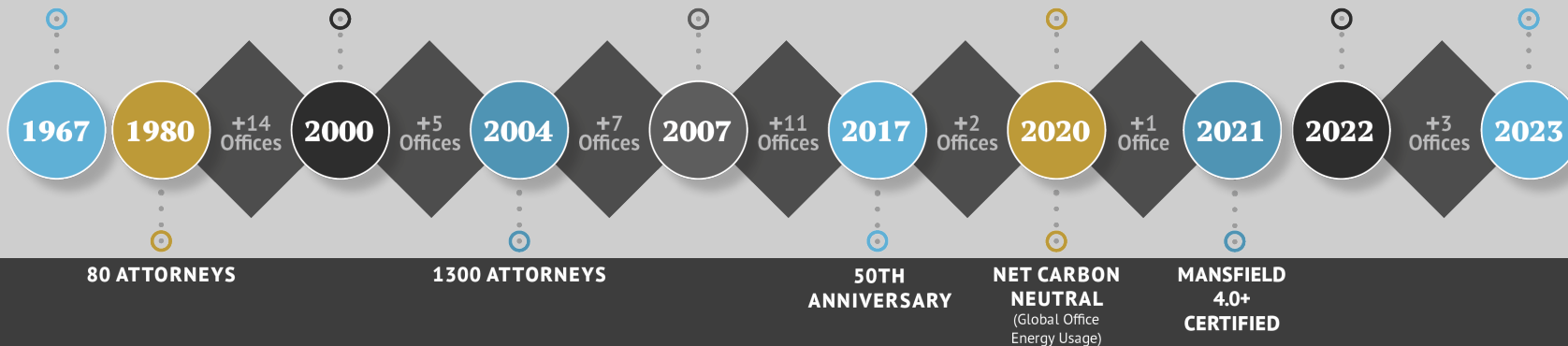
750 ATTORNEYS

FIRM NAMED USA
LAW FIRM OF THE YEAR
1750 ATTORNEYS

MANSFIELD
3.0
CERTIFIED

MANSFIELD
5.0+
CERTIFIED

2500 ATTORNEYS
43 LOCATIONS
3 CONTINENTS

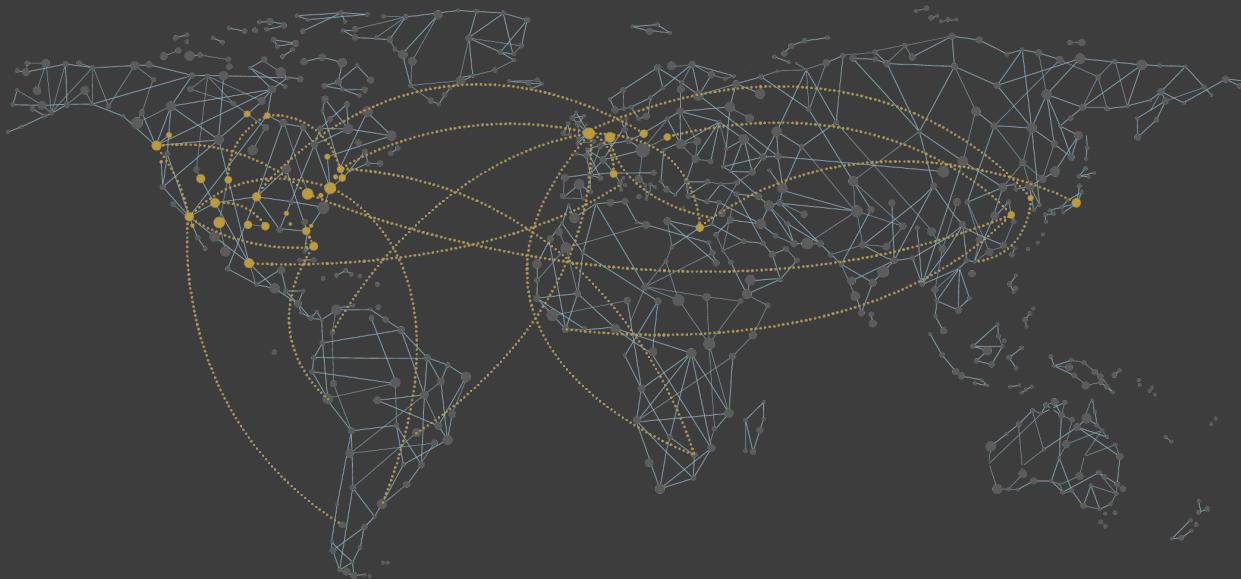


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50+	2,500	560+	60+
Founded in 1967	Attorneys & governmental professionals	Lawyer and firm rankings in Chambers and Partners Guides worldwide	Practice areas across a wide-range of sectors

OUR GLOBAL FOOTPRINT

43 LOCATIONS | 11 COUNTRIES



Symbols refer to GT's office structure, which is detailed at <https://www.gtlaw.com/en/general/footer/main-disclosure-page>.

Europe	Northern Virginia
Amsterdam	Orange County
Berlin*	Orlando
London*	Philadelphia
Milan**	Phoenix
Warsaw*	Portland
	Sacramento
United States	Salt Lake City
Albany	San Francisco
Atlanta	Silicon Valley
Austin	Tallahassee
Boston	Tampa
Charlotte	Washington, D.C.
Chicago	West Palm Beach
Dallas	Westchester County
Delaware	
Denver	Asia
Fort Lauderdale	Seoul*
Houston	Shanghai
Las Vegas	Tokyo*
Long Island	
Los Angeles	Latin America
Miami	Mexico City*
Minneapolis	
New Jersey	Middle East
New York	Tel Aviv*

Contact Us



Thijs Elseman
Thijs.Elseman@gtlaw.com
+31 20 301 7406



Lilian Welling-Steffens
Lilian.Wellingsteffens@gtlaw.com
+31 20 301 7384



I. Setting the Scene

Setting the Scene

- Economic crisis or economic cycle
 - Bankruptcies 2022: 2144 (Cf. 2013: 9431)
 - Trend is up (or down, depending on your perspective)
 - End of government support
 - Repayment of unjustified received government support (NOW)
 - Repayment of deferred taxes as of October 2022 (in 60 months)
 - Macro-economic trends
- Restructuring does not necessarily coincide with economic cycles
- Dutch Restructuring Framework: Dutch Scheme filling the gap
 - Suspension of payments
 - Bankruptcy (incl. pre-pack)
 - Out-of-court restructuring



II. Dutch Scheme

Dutch Scheme - Introduction

- The Dutch Scheme or WHOA introduced an out of court restructuring plan procedure for the first time in the Netherlands
- Based on Chapter 11 (US) and Scheme of Arrangement (UK) (but also typically Dutch)
- Implemented in the Dutch Bankruptcy Act (art. 369 *et seq.*)
- Entered into force on 1 January 2021
- Amended on 1 January 2023 to ensure compliance with the EU Restructuring Directive (EU 2019/1023) – part of the business rescue culture

Dutch Scheme – key characteristics

Flexible and efficient tool for both domestic and cross-border restructurings

- A majority can bind a minority within each class (cram down)
- The court has the power to impose the plan on dissenting classes (cross-class cram down)
- Outside of formal insolvency proceedings ('light' insolvency test & no value destruction)
- Debtor remains in possession
- Can bind all creditors (including secured and preferred creditors) and shareholders but may also be limited to a certain group of creditors and/or shareholders
- Option to choose between a public plan procedure and a private plan procedure
- Minimal court involvement: efficient and expeditious

Dutch Scheme – when and who

Eligibility

- In the event it can be reasonably assumed that the debtor will not be able to continue paying its debts as they fall due (this may be as long as 12 months ahead)
- COMI must be in Netherlands for 'public' version to achieve automatic recognition under the Insolvency Regulation
- COMI can be outside of the Netherlands for the 'private' version provided there is a sufficient connection with the Netherlands (very broad)

Who can initiate?

- The debtor itself – submitting a commencement statement (*startverklaring*)
 - The Dutch Scheme does not apply to natural persons who do not practice an independent profession or business, nor to insurance companies or financial institutions.
- Any (1) creditor, (2) shareholder or (3) employees' works council or representation can request the court to appoint a restructuring expert
- The debtor can also request the court to appoint a restructuring expert

Dutch Scheme – new roles

Restucturing Expert

- Prepares a proposal for a restructuring plan
- Will set the wheels in motion for the confirmation of the plan by the court
- Will perform his duties in an effective, impartial and independent manner
- Must primarily take the interests of the collective creditors into account
- Debtor is obligated to cooperate and provide information
- The debtor remains in full control of the ordinary course of business throughout the process (i.e. the debtor continues to be in possession also in the event a restructuring expert is appointed)

Observer

- Appointed upon request of debtor or ex officio (but only if no restructuring expert is appointed)
- Supervise the preparation of a restructuring plan and consider the interests of the collective creditors

Dutch Scheme – court involvement

- No opening or convening hearing before the Dutch court is required for the plan proceeding to start
- From the date of commencement statement, the provisions of the Dutch Scheme come into effect for the debtor and the debtor may involve the court for interim decisions or bespoke measures.
- The confirmation of the plan could be the only court involvement in the whole proceedings of the Dutch Scheme.
- Decision is final and cannot be appealed
 - Possibility for the Court to ask prejudicial questions to the Dutch Supreme Court (*Hoge Raad*)

Dutch Scheme – timetable process

- Possibility of electronic voting at least 8 days (but not more than 14 days) after plan has been proposed
- Confirmation hearing before the court takes place within two weeks after the vote on the plan has taken place
- Confirmation decision by the court as soon as possible thereafter (within one or two weeks)
- There is no possibility of appeal
- In theory the entire procedure from the proposal of the plan to confirmation can be finalized within 3 – 5 weeks.

Dutch Scheme – deal certainty

- Moratorium: no enforcement and suspension bankruptcy /SoP request
 - Not an automatic stay, but upon request
 - Tailored individual or general moratorium
 - 4 months plus extension up to max. 8 months
- Rescue finance
 - Not super senior, but protection of security for new financing
- Invalidation of *ipso facto* clauses
 - No amending, suspending or termination b/c of Dutch Scheme

Dutch Scheme – the Plan

- Framework to facilitate the drafting, negotiation, adoption and confirmation of a plan
- Restructuring plan and liquidation plan
- Restructure (specific) obligations of a debtor
 - Debt claims (deferring payment obligations, capitalizing interest, (partial) haircut)
 - Including guarantee claims on group members
 - Equity claims ('out' if out-of-the-money'; dilution as a result of debt-for-equity swap)
 - Individual provisions of contracts among multiple parties and contracts entered into on identical terms with multiple parties (intercreditor agreements, bonds)
 - Executory contracts – amend consensually or terminate (and restructure the damage claim)
 - Not: employee rights (incl. pension entitlement claimed by pension funds)

Dutch Scheme – the Plan – UWV & Belastingdienst

- Tax authorities are cooperative (according to their guidelines):
 - Not two times the percentage of the ordinary creditors (until 1/10/2023)
 - Especially relevant in view of 20% minimum for SME creditors
 - No need to involve all creditors
 - Debt-for-equity swaps permitted (as long as tax authorities do not swap)
 - Also outside a formal WHOA procedure
- UWV also cooperative (according to their guidelines):
 - ... but only through a formal WHOA procedure

Dutch Scheme – the Plan – information

- The plan must contain all information that the creditors and shareholders that are entitled to vote need to, prior to their vote on the plan, come to an informed opinion on the plan.
- This information should allow those creditors and shareholders to:
 - (i) assess what the effect of the plan is on their financial position, which must set forth a comparative calculation between the reorganization value as a result of the plan and the liquidation value in a bankruptcy
 - (ii) assess whether the plan is required in order to prevent bankruptcy of the company and whether the plan is reasonable
 - (iii) confirm how they can obtain further information on the plan and what the procedure and timing of the voting on the plan is
 - (iv) confirm whether the works council or workplace representation has been or will be correctly involved to render its advice

Dutch Scheme – the Plan – class formation, voting & confirmation

Class formation

- Different classes if the rights in a liquidation of the debtor's assets in bankruptcy or the rights offered under the plan are so different that there is no comparable position
- In principle, distinction between secured creditors, creditors with RoT, preferential creditors (e.g. tax authority), ordinary unsecured creditors, subordinated creditors, shareholders
- Separate class(es) for SME's with trade or tort receivables (who should receive at least 20% of the value of their original claim)
- Bifurcation of secured claims
- Where legal title is split from beneficial ownership, the beneficial owner is entitled to vote

Dutch Scheme – the Plan – class formation, voting & confirmation

Voting

- No set voting procedure
- Creditors and shareholders whose rights are amended under the plan are entitled to vote
- A class of creditors has accepted the plan if a group of creditors that together represent two-thirds of the total amount of the claims of the creditors who cast a vote in that class has voted in favour
- A class of shareholders has accepted the plan if a group of shareholders that together represent two-thirds of the total amount of the issued capital of the shareholders who cast a vote in that class has voted in favour
- No head count

Dutch Scheme – the Plan – class formation, voting & confirmation

Court confirmation

- At least one ‘in the money’ class approved the plan
- Court confirmation, unless... (i) general grounds and (ii) additional grounds
- Deal certainty: you snooze, you lose
- General grounds: sound decision making process
 - Pre-insolvency test no longer satisfied
 - Insufficient information, time limits
 - Incorrect class formation
 - Performance of plan not sufficiently guaranteed
 - New finance detrimental to collective creditors
 - Deceit, preferential treatment or other unfair means

Dutch Scheme – the Plan – class formation, voting & confirmation

Court confirmation (cont'd)

- Additional grounds: substantive fairness of the plan
- Protection of dissenting creditors (b/c (cross class) cram down):
 - No creditor worse off or best interest of creditors-test: liquidation value vs. restructuring value
 - Absolute Priority Rule with exceptions
 - SME's should receive at least 20%
 - Reasonable ground to do so and affected creditors or shareholders are not harmed in their interest
 - Cash-out option for creditors other than secured lenders
 - Secured lenders must have the right to opt for a distribution in a different form than equity, but they do not have a right to a cash-out option

Dutch Scheme – cross-border recognition

- Public procedure under the Dutch Scheme is listed on Annex A of the Insolvency Regulation this means:
 - Dutch court only has jurisdiction in main proceedings if the COMI of the debtor is located in the Netherlands or the debtor has an establishment in the Netherlands in case of secondary proceedings;
 - choice of law provisions of the Insolvency Regulation apply; and
 - all decisions and orders made by the Dutch Court are automatically recognized and enforced in the other EU member states (other than Denmark).
 - Note, however, that art. 8 Insolvency Regulation may pose a problem to a restructuring if secured creditors are involved and the collateral is located outside the Netherlands.
- Private procedure under the Dutch Scheme is not listed on Annex A Insolvency Regulation, this means that according to the Dutch legislator:
 - applicable law is Dutch law;
 - jurisdiction of the Dutch court is determined by art. 3 DCCP; and
 - recognition of decisions of the Dutch court is determined by national private international law rules, HOWEVER
- Debate in literature whether the private procedure falls within the scope of the Brussels I Regulation (recast) and jurisdiction and recognition and enforcement are determined by the provisions of the Brussels I Regulation (recast)



II. Experiences and Outlook

Experience and Outlook

- Successful (unexpectedly by some) for SMEs:
 - More than 120 published decisions, including 10 confirmed plans
 - In total: more than 100 cases (but predominantly private plan procedures)
- Plan B or ‘stick’ function not to be underestimated
- Cross-border: who wants to be the guinea pig? (and the Gibbs-rule)
- Potential for Covid-debt restructurings if tax authorities and UWW cooperate



IV. Q&A

7 FEBRUARY – DEAL TALK: DO's and DON'TS
(hosted by Virtual Vaults & IBS Capital Allies)

9 MARCH – WOMEN'S EVENT
An evening with the founders of CLOSET CIRCLE

**4 APRIL – ESG: FIND THE RIGHT BALANCE & MAKE THE RIGHT MOVES
TO SUSTAINABILITY**
(hosted by Legadex & TAUW)

8 – 10 MAY 2023 – DEALMAX (LAS VEGAS)

20 JUNE 2023 – ACG HOLLAND GROWTH AWARDS