

ACG

**GREENBERG TRAURIG
AMSTERDAM**

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MEET THE TEAM



Thijs Elseman
Advocaat
Finance & Restructuring



Maarten de Boorder
Advocaat
Corporate M&A



Jelmer Kalisvaart
Advocaat
Corporate M&A

ABOUT GREENBERG TRAUERIG

GT's Amsterdam office is home to more than 65 lawyers, tax advisors, and civil-law notaries. Our lawyers collaborate across borders and disciplines. We bridge diverse legal systems and cultures and develop strategies that are geared to the individual needs of our clients and the requirements of their respective markets. We strive to provide our clients with the highest quality legal work and service at a reasonable cost. For this reason, our lawyers are regularly recommended by leading legal directories.



55+

Founded 55+ years ago



2,650

2,650 attorneys & governmental affairs professionals



45

45 offices in 11 countries around the world



560+

More than 560 lawyer and firm rankings in Chambers and Partners Guides worldwide

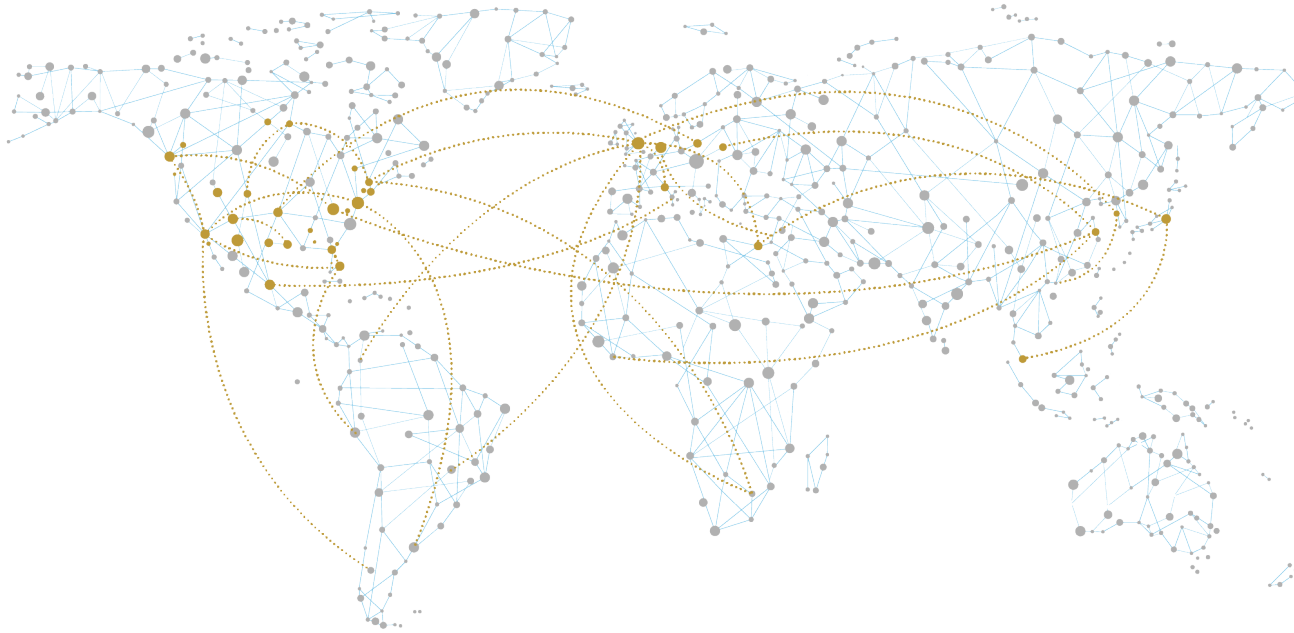


60+

Over 60 practice areas across a wide-range of sectors

GLOBAL PRESENCE

LOCAL EXPERTISE



EUROPE & THE MIDDLE EAST

Amsterdam	New Jersey
Berlin [~]	New York
Kingdom of Saudi Arabia [®]	Northern Virginia
London [~]	Orange County
Milan ^{>>}	Orlando
Tel Aviv [’]	Philadelphia
United Arab Emirates [◁]	Phoenix
Warsaw [~]	Portland
	Sacramento

UNITED STATES

Albany	Salt Lake City
Atlanta	San Diego
Austin	San Francisco
Boston	Silicon Valley
Charlotte	Tallahassee
Chicago	Tampa
Dallas	Washington, D.C.
Delaware	West Palm Beach
Denver	Westchester County

ASIA

Fort Lauderdale	Seoul [®]
Houston	Shanghai
Las Vegas	Singapore [™]
Long Island	Tokyo [®]

LATIN AMERICA

Los Angeles	Mexico City [~]
Miami	
Minneapolis	

UNITED STATES VS. DUTCH M&A



1. Trends & Development



2. Private Markets



3. Public Markets



4. Restructuring

TRENDS & DEVELOPMENT 2023-2024

HEADWINDS

- Geopolitical Tensions
- Difficult Liquidity Environment / Debt and Fund Raising
- Mini-bank Crisis (SVB, First Republic, Signature)
- ESG Polarisation
- Regulatory Pressure PE's
- Other?

TRENDS & DEVELOPMENT 2023-2024

OPPORTUNITIES

- Market picking up end 2023 and more so into 2024
- Declining Inflation / Stabilizing Interest Rates
- Direct Lender Market
- Dry Powder at PE Firms
- Energy Transition / Infrastructure PE
- AI Based Solutions

PRIVATE MARKETS

KEY DIFFERENCES M&A CONTRACTS

	Netherlands	United States
Interpretation	Context & Wording	Wording & Context
Pre-Contractual	Discretionary termination, but beware ...	Discretionary termination
Disclosure	General Data Room Disclosure, Fair Disclosure, Anti-Sandbagging	Specific Disclosures, Disclosure Letter, Pro-Sandbagging
Purchase Price	Locked Box, Completion Balance Sheet, Hybrids	Completion Balance Sheet
Conditions Precedent	Regulatory, Works Council, Other?	Regulatory, MAC / MAE, Material Breach, Breach of Fundamental Warranties, Bring Down
Warranties, Indemnities & Damages	Warranties vs. Indemnities, damage calculation	Warranties on an Indemnity Basis / No Causal Link (in principle), Euro-for-euro
Thresholds, Baskets, Caps	0.1% EV, 1-3% EV, 10-30% PP	0.1% PP – 0.5% - 2% PP, 5-20% PP
Security & Recourse	Escrow, Parent Guarantee / Personal Liability, Keep Well, W&I – residual?	Hold Back, Personal Liability (default), Keep Well, W&I – residual?

PUBLIC MARKET

KEY DIFFERENCES U.S. R&W EUROPEAN W&I

	European W&I Policy (\$)	U.S. R&W Policy (\$\$\$)	Transatlantic Policy (\$\$?)
Transaction agreement disclosure regime	Data room deemed disclosed in the transaction agreement and European W&I policy coverage.	Data room is not deemed disclosed but full disclosure schedules are prepared. R&W policy does not deem the data room as disclosed.	Consideration of whether the data room disclosure can be removed (subject to the DD reports being disclosed).
Due Diligence Reports	W&I coverage deems facts, matters and circumstances 'Disclosed' in the Buyer's DD reports and data room to qualify the coverage of the Insured Warranties.	Omitted from the Policy; however, the No Claims Declaration will include an additional declaration to the effect that the Deal Team Members have read and understood the Due Diligence Materials prior to giving their declaration.	Transatlantic carriers are willing to follow the U.S. R&W position.
Warranty Spreadsheet	European-style coverage includes a warranty spreadsheet with certain warranties being partially covered in accordance with deemed amendments for the purpose of the policy or excluded.	No warranty spreadsheet. Policy still includes deal-specific exclusions.	Transatlantic carriers are willing to follow the U.S. R&W position.
De Minimis	Policies will generally follow the transaction agreement's standard approach, typically containing a de minimis of 0.1% of EV.	No policy de minimis.	Transatlantic carriers are willing to follow the U.S. R&W position.

PUBLIC MARKET

KEY DIFFERENCES U.S. R&W EUROPEAN W&I

Materiality scrape	Not market standard in Europe (without higher premium).	U.S. transaction agreement may include a provision disregarding the materiality qualifications for the purpose of determining breach and loss. U.S. R&W policy would mirror this position.	Transatlantic carriers are willing to follow the U.S. R&W position (subject to the convention prevailing in the transaction agreement itself).
Bring-down call/disclosure	W&I policies expect full bring-down disclosure at closing if warranties are being repeated.	R&W policies only require a buy-side bring-down call with the insured.	Transatlantic carriers are willing to follow the U.S. R&W position (subject to the convention prevailing in the transaction agreement itself).
Definition of Loss	The definition of Loss is often broader in U.S.-style transaction agreements and is mirrored in U.S. R&W policies. The transatlantic policy would delete its standard exclusions for consequential and multiplied damages, assuming the transaction agreement is silent with respect to such damages, diminution in value and lost profits. U.S. R&W policies include an indemnity basis of recovery rather than a European-style damages recovery.		
Deal-specific policy exclusions	There is typically a lengthier list of deal-specific exclusions in European policies which we would seek to pare back as part of any transatlantic coverage, in particular in light of the likely higher retention that you would see in a U.S.-style policy.		
Underwriting approach	Transatlantic carriers are willing to adopt U.S. R&W underwriting approach i.e. no written responses required ahead of the underwriting call and the use of U.S. policy wordings, subject to local law requirements.		

ECM TRENDS & DEVELOPMENTS 2024

SPACs

The US SPAC IPO market seems to have normalized:

- Six SPAC IPOs priced during the first quarter, of which over 30% were from serial sponsors that returned to the market
- These serial sponsors elected to raise larger funds, increasing average SPAC IPO size for Q1 to \$114 million
- 29 completed SPAC deals in Q1, a similar amount to the previous quarter and above the quarterly average for the last two years
- 15 liquidations occurred, a decrease of 63% from the previous quarter and down from the average of 49 per quarter in 2023

We believe the market has now self-corrected as SPAC IPOs have normalized, SPAC liquidations have taken excess capital out of the market and more sponsor teams are working creatively to try to get deals done.

A large company with an established shareholder base can unlock value through a SPAC process. A partnership with the right sponsor brings new capital, talent and shareholders that can remove existing constraints in the previously combined corporate structure. These advantages, plus the continued support of the previous parent company/founder, may be drivers of the better post-merger stock performance of spin-offs and carveouts.

For EU business with a US angle a SPAC merger is still something to consider.

P2P

LEGAL FRAMEWORK



Offer on US listed Dutch Target

- US rules & regulations govern the offer
 - Tender offer rules
 - Process and time line
 - Securities law
 - Market abuse and disclosure requirements
 - NYSE/NASDAQ rules
- NV is subject to Dutch corporate law
 - Dutch Civil Code (Book 2)
 - Dutch corporate law
 - Dutch Corporate Governance Code
 - Guidelines for effective cooperation and management
 - Articles of Association and By-laws
 - Provisions on NV's governance and decision making process
 - Works Council Act /SER Merger Code
 - Consultation of and disclosure obligations to the trade unions and works council of NV



Offer on Euronext listed Target

- Dutch rules & regulations govern the offer
 - Tender offer rules
 - Act on Financial Supervision (*Wet op het financieel toezicht*)
 - Supplemented by the Public Offer Decree (*Besluit openbare biedingen Wft*)
 - Provide for set of rules on process and time line
 - Securities law
 - Act on Financial Supervision
 - Public Offer Decree
 - Market Abuse Regulation
 - Provide for set of rules on market abuse and disclosure requirements
 - Euronext listing rules
- NV is subject to Dutch corporate law
 - Reference is made to the column on the left side

RESTRUCTURING

DIFFERENCES BUT CONVERGING TRENDS

- The stigma of a bankruptcy in the Netherlands vs. a sign of entrepreneurship in the US
 - *“Declaring bankruptcy isn’t admitting defeat. It’s a business strategy. It’s a chance to right wrongs, take a breath, and reorient your direction.”*
- Not only an attitude, but also based on the restructuring toolbox (historically) available in the US (Chapter 11), but the Netherlands (and the rest of the EU / world) are catching up (WHOA / Dutch Scheme), even introducing the US terminology: in-the-money creditor, cross-class cram down, best-interest-of-creditor test, absolute priority test
- What can we expect?
 - Dry powder at distressed debt funds (and not only the real estate usual suspects (Cerberus, LoneStar, Fortress))
 - Creditor on creditor violence? Drop-downs or “trap doors” and up-tiering
 - but Rhineland model vs Anglo-Saxon model
 - European market not as covenant light
 - Parallel procedures: DieboldNixdorf, Mercon Coffee

QUESTIONS?

