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Software company, the Netherlands

- Type of restructuring:
(Avoiding) bankruptcy, Internal restructuring
- Employees before restructuring:
10-49
- Employees after restructuring:
0-9
- Nace/Sector:
Information / communication
- Country:
Netherlands
- Date:
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Abstract

This Dutch company provides software services and products for both private and public sector organisations. The restructuring was triggered by a drop in turnover in 2008 which created acute financial problems. When it proved impossible to obtain bank funding, the owners were forced to put their own money into the company. This helped them to survive through tough times and when turnover figures started to increase they were able to get bank credit again.

Organisational profile

Founded in 2003, the company provides software services and products to deliver, process, analyse, and manage geospatial information. The company is a reseller of a software package and delivers related training and support.

The company provides its services in the Benelux countries. About 80% of turnover is generated in the Netherlands and 20% in Belgium with a very small percentage generated in Luxembourg. The company provides services to both private and public sector organisations. Public customers are very diverse, including the Ministry of Education, Ministry of Defence and Ministry of Infrastructure and the Environment.

The company is formally part of a holding company (Company C) whose activities can be divided into two business lines: software (Company A) and data (Company B). Companies A and B operate independently. Company A has six employees and Company B has two employees. The holding company has three owners (stockholders). Two stockholders (and founders) are also directors of one of Companies A and B. Because of the size of the workforce there is no works council.

In 2011, company A moved from Reeuwijk to Capelle a/d IJssel. The main reason for this was to be in easier reach for customers. The new location is close to a highway and a more urban area, with more (potential) customers in the immediate vicinity.

An interview was held with one of the three stockholders, the director of Company A.

Background to restructuring event

The formation of a holding company with two companies under it is the result of the restructuring. Before this, there was only one company (Company D). At start-up Company D had six owners (stockholders), five of whom worked in the company, and comprised three business lines:

1. data
2. software
3. projects

Company D achieved constant turnover and employment growth in 2003 to 2008. They started with three employees in 2003 and by early 2009 were employing 14. Most of the employees are highly educated in the field of geographical science or mathematics.

The main problem Company D had to face in early 2009 was that turnover declined in the last two quarters of 2008 and in the first quarter of 2009. The fourth quarter of 2008 was especially troubling, since this period was normally the best in terms of turnover. This decline was mainly the effect of the (economic) crisis on the sector and it mainly affected the projects department of Company D.

Because of this decline, and the fact that the six stockholders did not agree about (re)financing (for example, getting additional private funds), the company had to file for bankruptcy in 2009. Three of the stockholders made a restart with the company, with only two business lines intact (data and software) as separate companies (A and B) with a central holding company (C). The projects business line was not deemed profitable enough for a restart. The owners did not see enough growth potential in the projects business line which was the weakest link in the three business lines.

Restructuring processes

The company took several actions before Company D went bankrupt at the end of 2009.

First, the company decided to make use of the part-time unemployment benefit scheme. This scheme, documented by [a 2010 Eurofound report \(119kb PDF\)](#) was launched by the Ministry of Social Affairs and Employment to cope with the crisis, making it possible for employers to retain skilled workers in difficult economic times. Under the scheme, employers could reduce employees' work hours (laid down in the working contract) by up to 50%, with employees receiving unemployment benefits for non-working hours. Use of the scheme has to be approved by the 'UWV Werkbedrijf' (administrative office for the Employee Insurance Agency). The company used this measure for three employees during the last quarter of 2008 for a period of six to nine months. The employees that were selected (by the management) for this measure were the ones who had the lowest workload, and were informed in one-to-one talks with the management.

During 2009, it became clear that the company needed increased financial means to survive. The bank would not give them an additional loan, and finding another (private) investor was not an option for all stockholders. This meant they had to refinance Company D on their own, by investing additional (private) funds. The six stockholders were unable to agree on a common solution: half wanted to refinance and half did not. Due to this division, the only possibility was to start a bankruptcy procedure and in November 2009 the company filed for bankruptcy.

During 2009, two employees left the company at their own initiative. Both worked in the projects department, and recognised that their workload was declining. Their employer helped them search for new work via managers' networks. The management assisted them because they felt responsible for their employees, and because formal dismissals would cost a lot more time and money.

In addition, the workforce was downsized further by:

1. not extending the contract of a temporary employee;
2. offering two employees a settlement.

The settlement meant contracts were voluntarily dissolved in return for financial compensation. These two employees had the least amount of work within the company at the time. They received a compensation which the company could just about financially bear, in light of their financial problems.

One administrative employee was not given a job with the new organisation after the bankruptcy, because this position was no longer necessary.

There was no formal plan setting out these activities.

One stockholder wanted financial compensation for leaving the company. It was not possible to come to an agreement and the case was settled in court, with no financial compensation to be paid.

The company filed for bankruptcy in November 2009, and a trustee was appointed by the court. Early in the bankruptcy process (still in 2009) the interviewed stockholder took the decision to restart, together with two other stockholders. The interviewed stockholder was asked by the trustee if he wanted to make a restart. He decided that he would like to continue with company activities (he still had a passion for his work and company) and asked two other stockholders to join him, and they agreed.

In order to restart, the (potential) new owners had to write a business plan for the trustee describing the plan to organise the restart (financial and organisational). Most work for the plan was done during November 2009. They eventually got the green light from the trustee to restart. But the

total process took a long time, finishing in January 2012. In this process they decided that working with a holding company (Company C) and two separate companies for the data and software business lines (A and B) was the best option. By having only one person responsible for one business line there was more clarity of responsibility (instead of six stockholders who all had a say in the entire company). They decided to drop the projects business line because it was the least profitable. The three stockholders also had to invest additional private money in the company, because they were unable to get additional funding from a bank. During the restart process, a lot of time and energy went in setting up the new structure, deciding the size of the workforce, coupled with the additional administrative burden regarding the bankruptcy and restart.

At the start of the bankruptcy process, a potential buyer came forward, and one of the other stockholders (besides the three that joined together, as mentioned above) also made an attempt to take over the company. The trustee eventually chose the restart plan of the interviewed stockholder.

Challenges and constraints of restructuring

An important challenge was how, and what, to tell employees about the problems experienced during 2009. What information do you want to tell the employees, and what information do you want to hold back? Because it is a small company, it was no secret that times were difficult. The interviewed stockholder updated the situation for employees every Monday morning.

It was very difficult for the six stockholders to achieve a consensus, even with the help of a mediator. This process took a lot of time and energy away from trying to save the company in a decisive manner.

In the spring of 2009 (before the bankruptcy process) it was possible to obtain additional bank funds and the company was able to postpone payment (including a payment arrangement) to the Dutch Tax Office (*Belastingdienst*). This helped the company to survive a little longer. But most loans were too large for the company to repay on their own, encouraging the stockholders to refinance the company later in 2009. This meant that they had to put additional (private) funds in the company. Because this failed, the company had to file for bankruptcy. A big challenge for the restart was to acquire additional bank funding. Because there were fewer potential financiers (stockholders), additional bank funding was preferred. But the bank refused, feeling it too risky to invest in a bankrupt/restarting company. However, the three owners/stockholders felt the company would be able to exploit the growing market, even with the reduced work force, and keep on working without bank credit. By working on a monthly basis, they were able to keep the company running with their own limited financial resources. When the company was able to show increasing turnover figures, they were able to obtain bank credit.

Restructuring advice and support

During the restructuring process and bankruptcy, several parties played a role. These were:

- the *UWV Werkbedrijf*;
- a commissioner of the supervisory board (of CompanyD);
- the accountant of the company;
- a private legal office specialised in humanresources;
- a private mediator;
- a trustee.

The *UWV Werkbedrijf* (administrative office for the Employee Insurance Agency) is responsible for the part-time unemployment benefit scheme. It took the company more paperwork than expected to get the employees in such a scheme. But the office was very quick in responding to questions the company had about the application and duration of the benefit.

The commissioner of the supervisory board helped the interviewed stockholder by giving him advice and support. The accountant advised on the financial aspects. Both helped the interviewed stockholder to get a better handle on the situation during 2009. Furthermore, a private legal office specialising in human resources was hired to handle personnel issues during 2009.

Stockholder disagreement regarding refinancing led to a mediator being hired at the beginning of 2009, to facilitate discussions. Stockholders hoped that the mediator would help them come to an agreement. However, this was not the case, and the bankruptcy went ahead at the end of 2009.

When a company files for bankruptcy, a trustee is appointed by the court to manage the assets of an individual or a corporate entity. The trustee is responsible for the interest of the creditors of the bankrupt's estate, for liquidating the estate and for making payment arrangements with creditors. In the first weeks of the bankruptcy process, the trustee suggested that the interviewed stockholder might restart the company, and helped him in the bankruptcy and restart process, by giving practical advice and helping with the necessary paperwork.

The interviewed stockholder is generally happy with the help received from the private advisors mentioned above. He sees no need for public advisors, even though they might charge less than private advisors. He said:

When you need help, especially in challenging times, you want a good advisor and that will cost the company some money.

However, the interviewed stockholder underestimated the administrative burden of a bankruptcy followed by a new start-up and was very satisfied

with all of the support he got, with one exception: the duration of the bankruptcy process. This started in November 2009 and ended in January 2012. The interviewed stockholder felt the trustee took longer than was needed, in his opinion to declare more time (and get more money) for the process.

Outcomes of restructuring

The outcomes of the restructuring event (reorganisation/bankruptcy) were that:

- the business line 'projects' was dropped;
- the total number of employees decreased from 14 to 8;
- there are now three stockholders instead of six;
- Company D was transferred to a holding company (C) covering two separate companies (A and B).

Most employees made redundant found new work quickly. Employees were very cooperative in accepting a settlement. Only one stockholder wanted financial compensation, which ultimately led to a legal process.

Current forecasts (spring 2012) for the company are good. After a turbulent year in 2009, the market is stable at the moment, and some slight growth is expected.

Commentary

The interviewed stockholder says that, looking back, little attention has been paid to employees. Those still working for the company are glad they are working, but the process was undoubtedly chaotic for them. The problems in the organisation meant that the owners have a lot to deal with, and human resource management is not as high on the priority list as it could be. Creditors are their most pressing problem, and the threat of bailiffs is a more acute problem than possibly dissatisfied employees. It is also hard to keep looking at the 'bigger picture' during difficult times.

This problem is also because small company owners perform many different roles, being responsible for:

- human resources management;
- ensuring an adequate workload for the employees;
- the financial position of the company.

There are no different specialised departments as there are in larger companies.

Another important lesson learnt was that it is very difficult to manage a company with six shareholders, especially when they disagree during difficult times.

The interviewed stockholder has also learned a lot on a personal level during the process of reorganisation and bankruptcy.

We are used to prosperity and there was always work to do. But when times get tough you notice that you have taken a lot of these things for granted. You also realise that the concept of being an employer is often seen as an abstract thing. Employees look to the owner for their job, they depend on you. But as an owner you know that it is your money that is really invested in the company, and it is at risk if the company is unprofitable. Employees don't see it that way.

Another important thing to mention is that 'as a part owner of a company you use your own network to find people that can help you'. The interviewed stockholder found the mediator that helped in the talks between the six stockholders this way. He is a member of a soccer club, and via one of his teammates he found the mediator.

The interviewed stockholder is also disappointed by the level of bank commitment to finance entrepreneurs. Banks are looking only for safety and follow internal regulations, which is understandable but which can stifle entrepreneurship with its associated risk.

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Information sources

Interview

One stockholder/owner

Secondary sources

Information from the website of the company

- [European Monitoring Centre on Change - EMCC](#)
 - [About EMCC](#)
 - [European Restructuring Monitor](#)
 - [About the European Restructuring Monitor](#)
 - [Restructuring events database](#)
 - [Restructuring support instruments](#)
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