



Restructuring and COVID-19: From threat to opportunity

The impact of the COVID-19 crisis on the economy is undeniable.

The world is trying to revitalize itself and after a few months, the contours of the beginning of the “new normality” are in sight.

In addition to threats, the COVID-19 crisis offers opportunities. Opportunities to remodel business strategies, to restructure the organization, to emerge stronger from this crisis.

Now is the time to seize opportunities to be sustainable ahead of threats.

1 Economic situation

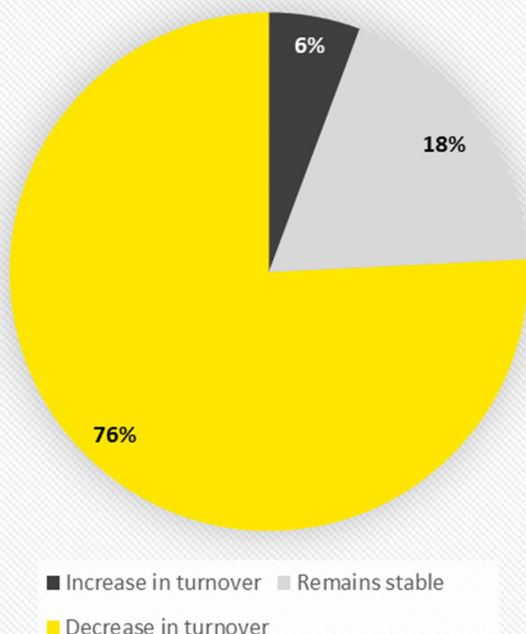
Numbers from Statistics Netherlands show that the Dutch economy has already been hit hard as a result of COVID-19. Some insights from Q1 2020:

- ▶ the Gross Domestic Product decreased by 1.7%
- ▶ consumers spent 1.3% less (household consumption even declined by 6.7% in March)
- ▶ the production of various industries decreased significantly, such as culture, recreation, sport and other services sectors by 7.1% and trade, catering and storage by 3.4% compared to Q4 2019

This negative trend is expected to persist in Q2 2020. Statistics Netherlands' business survey of early Q2 on the impact of the COVID-19 crisis in the next three months shows that:

- ▶ 58.6% of entrepreneurs surveyed expect a decrease in employment
- ▶ 75.8% of the entrepreneurs surveyed expect a loss in turnover in the next three months

Expected effect on turnover of the COVID-19 crisis next three months



2 Short term: recovery

With the Employment and Economy Emergency Package, the Dutch government has already taken various measures to support entrepreneurs during the COVID-19 crisis to facilitate (economic) recovery, including the following:

- ▶ NOW 1.0 and 2.0: compensation for wage costs
- ▶ Tozo: income support and loans for the self-employed
- ▶ TOGS: compensation for small and medium-sized enterprises (SMEs)
- ▶ TVL: compensation for fixed costs SMEs

'Recovery' is priority number one for many entrepreneurs, but it is important to not lose sight of the following two matters.

1. The COVID-19 crisis has changed society, the markets and running a company for the long term, if not permanently. Life before the crisis will not simply return (in short term).
2. This is the moment to define and implement a (mid) long-term business vision. Business transformation is often necessary to be ready for the challenges of the post COVID-19 era.

The short term goal of 'recovery' is of course essential, but this is also the time to think about the (mid) long-term planning and business strategy.

3 (Mid) Long term: restructuring

Restructuring can not only speed up the transition out of the crisis situation, but is also necessary in the context of the strategic, operational and financial challenges of the post COVID-19 era. There are many reasons to restructure, including the following considerations.

► Strategy shift

Some companies and business units will play an increasing role after the crisis, whilst the need for other companies (or business units) will decrease significantly. This forces companies to think about their business strategy and the sustainability thereof. Restructuring can offer a solution. For example, it may be decided to shift the focus from physical locations to digitalization, such as web shops and the (additional) consequences of this, such as the (greater) need for warehousing and distribution centers.

► Operational cost decreases

Due to the (expected) decrease in sales or the introduction of technological innovations, it may also be necessary to reduce operating costs. A major asset of companies is the workforce. In changing times, however, it must be considered whether all assets are still required, or whether optimization and efficiency can be achieved. In that context, companies also look at their workforce. If they fail to take a critical look at operational costs, bankruptcy could be inevitable in the worst case.

► Redesign workforce model

It is imperative to find a good balance between permanent and flexible workers. Permanent workers are usually cheaper, but by using flexible workers the peaks and troughs can be picked up more easily. For an organization it is of great importance to have an optimal distribution between permanent and flexible.

► Redesign work model

Where working from home used to be the exception, this is now the rule for many employees. It seems that working from home will remain an order of the day in the long term. On the one hand, this offers opportunities (e.g. in the context of saving office space and mobility costs), but on the other hand also entails risks, such as complying with the health and safety obligations for homeworkers.

► Redesign tax model

From a tax law perspective, it could be considered to change the corporate structure in order to avoid double taxation and minimize the tax burden.

4 Analysis, planning and preparation

Regardless of the reason(s) for the restructuring: thorough analysis, practical and concrete planning, as well as timely preparation are paramount when implementing and executing innovations. Entrepreneurs are bound by labor law rules, such as:

► Dismissals

It goes without saying that dismissals are experienced as exceptionally drastic by the workforce and the organization. An analysis of the legal feasibility and the effects of the dismissals on the organization is necessary. For example, if the company has applied for a NOW subsidy, this subsidy can be reduced if dismissal applications are submitted to the Dutch Public Employment Service ("UWV") in the short term. For the proper implementation of a reorganization, various requirements must be met, such as requesting the advice of the works council, reporting collective redundancy to the trade unions concerned and the UWV and, for example, concluding a social plan. In doing so, the entrepreneur has to deal with various stakeholders. At the discussion table, it is important that the entrepreneur achieves his goals, which are not necessarily equal to the interests of the other stakeholders (e.g. in the negotiations on a social plan, but also in the discussions with the works council).

► Effects on employees

Innovation and restructuring inevitably have an impact on employees. Employees may be given a new position within the organization as a result of the restructuring, be dismissed, or, for example, be transferred to another employer as a result of a company takeover. Moreover, it is conceivable that a change in salary and other employment conditions will take place, for example, through a change in the position or a harmonization of employment conditions, or through the applicability of a (different) collective labor agreement and pension scheme.

► Communication

Communication with stakeholders, such as employees, trade unions and employee representative bodies, also requires due attention. Above all, it should not be forgotten that large-scale reorganizations can attract media attention and generate bad press. Proper preparation and careful communication are therefore also required to avoid, for example, reputational damage. Clear communication avoids potential discussions and ensures that processes run as smoothly as possible. Stakeholders must be informed in due time in order to meet expectations and legal obligations and avoid delays.

5 Our services

We have many years of experience with extensive and complex national and international restructurings. We combine this experience with excellent expertise and a practical approach for concrete results.

As part of the global EY Law network, we are able to provide multidisciplinary and multi-jurisdictional solutions and quickly offer clients an unequivocal full-service provision.

What HVG Law can do for you

The impact of the COVID-19 crisis on the economy, companies and entrepreneurs is undeniable. Now is the time to seize opportunities to be sustainable ahead of threats.

We would be pleased to discuss possible innovations and restructurings in your organization with you.



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