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Hermes Advisory is a Dutch consultancy firm specialised in Corporate Finance, Valuation and Dispute Resolution.

The transaction market for small to mid sized companies is still depressed and the market outlook remains bleak. The valuation market on the other hand is very active. Over the last year we have seen a significant increase in valuation work for disputes and for distressed companies. The disputes vary from professional large scale corporate litigation to quarrels on the valuation of a company in a divorce procedure.

Commenting why this increase is happening, Mr van Prooijen comments that developments of the dispute resolution and forensic valuation market are more favorable than the transaction services as a result of more conflicts (for instance related to earn out structures) and awareness of parties to substantiate the level of their claim by valuation experts.

Furthermore, corporate litigators, mediators, divorce lawyers and judges are aware of the necessity to look at earning capacity rather than old fashion book values. We expect this progress to continue further and see a larger role for certified valuers (Register Valuators) in the Netherlands. Currently only 148 people in the Netherlands are qualified as certified valuator. This group will likely grow over the coming years and with it the importance of the role of the certified valuers in disputes.

We also expect valuation activities to increase in the restructuring and recovery business. Currently, discussions are taking place to incorporate a prepack procedure in the Dutch bankruptcy code. Most of the times the curator (comparable with the receiver in UK Law) is specialised in law. We expect valuation skills to be needed before a take over of the distressed activities can be realized. It will also not surprise us if a clause will be included in syndicated loan documentation which states that in case a party wants to execute the pledge of shares a binding valuation needs to be performed by a certified valuator. We have seen cases whereby the

value broke in the middle of the capital structure. The unsecured lender claimed the value was higher than the lenders with secured pledge claimed and lawsuits followed. In distressed cases parties want clarity and speed to handle.



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The use of dispute boards for the avoidance and expedient resolution of disputes on major projects

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The construction and engineering industry has, over many years, given the impression of being beset with disputes. The size and complexity of projects, the numbers of both corporate and individual participants, the use of detailed standard and non-standard contracts and what has historically been a confrontational approach to corporate relationships have all conspired to generate disagreements between parties. These factors, coupled with the essentially highly competitive environment in which projects have traditionally been procured, have caused parties to expect disputes to arise.

The resolution of these disputes has, over the years relied heavily upon non-court processes, increasingly in recent years. But the costs incurred by the parties involved can be considerable, with relationships between them also being put at risk. The focus has switched in more recent times from binding resolution by tribunal decision imposed upon

parties, to a more co-operative and non-confrontational approach. Processes such as mediation, negotiation and expert determination have tended to remove the heat from disputes and to preserve the relationships between parties.

The complexity of contract terms reflects the magnitude and variety of risks that parties consider themselves subject to, but also introduce further risks of obligation and liability. By dividing the risks, if effectively drafted, contract terms might be said to assist the resolution of disputes.

The use of dispute boards has grown globally in recent and provides a cost-effective adjunct to the effective management of projects, by reducing the risk of disputes and by resolving them quickly and inexpensively.

A dispute board can comprise of one or three members, selected by agreement of the parties and either put in place at the start of a project or convened once a dispute has arisen. The benefit of early appointment is that the board monitors

the project and can assist, from an independent standpoint, in the avoidance and resolution of actual or potential disputes. They have been spectacularly successful around the world in assisting the achievement of project temporal and financial objectives, but also assist in preserving party relationships.

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