

PUBLIC LIQUIDATION REPORT (under Section 73(a) Dutch Bankruptcy Act)

Report date: 16 January 2017

Report number: 11

Debtors:	ETAM GROEP RETAIL B.V. ETAM GROEP HOLDING B.V. Oostweg 2 (Etam Groepleaan) 2723 RH ZOETERMEER The insolvent companies are hereinafter referred to as “Retail” and “Holding” respectively or jointly as “Etam Group”.
Insolvency numbers:	Moratorium: S.09.15.12 (Retail) Moratorium: S.09.15.13 (Holding) Bankruptcy: F.09.15.233 (Retail) Bankruptcy: F.09.15.234 (Holding)
Date of decisions:	Moratorium: Thursday 9 April 2015 Liquidation: Tuesday 21 April 2015
Trustees (until 21 April 2015 administrators):	M.J.H. Vermeeren LL.M F.Th.P. van Voorst LL.M
Delegated judge:	R. Cats LL.M

Company activities:	Ladies fashion (retail)
Sales data:	The financial year of the insolvent companies runs from 1 August up to and including 31 July. The following consolidated net turnover is reported in the annual accounts of the insolvent companies: - 2014/2015: € 94,331,000 (six months) - 2013/2014: € 199,086,000 - 2012/2013: € 218,793,000 - 2011/2012: € 231,016,000 - 2010/2011: € 238,016,000 - 2009/2010: € 233,585,000 NB. up to and including the financial year 2012/2013 the records include the consolidated accounts of the parent company Sintra Investments B.V.

	<p>On 31 December 2013 a takeover was established and legal merger was entered into with an economic and tax effective date of 1 August 2013 (see under 1.1). From this date (financial year 2013/2014) the accounts included the consolidated figures of the Holding Company.</p>
<p>Average number of personnel:</p>	<p>2000</p>
<p>Balance at the end of the reporting period:</p>	<p><u>Report 1</u> € 167,446.79. In addition there are still quantities of money in a trust account and in the bank account of the company in liquidation.</p> <p><u>Report 2</u> € 9,048,400.73. In addition there are still quantities of money in a trust account and in the bank account of the company in liquidation.</p> <p><u>Report 3:</u> € 26.574.205,- The trustee need to settle various obligations with the banks and the restarter chargeable to this balance. We expect these obligations to amount to approximately € 11 -12 million, so the actual assets are substantially lower than the balance mentioned above.</p> <p><u>Report 4:</u> € 24.802.618,- The trustees need to settle various obligations with the banks and the restarter chargeable to this balance. We expect these obligations to amount to approximately € 11 -12 million, so the actual assets are substantially lower than the balance mentioned above.</p> <p><u>Report 5:</u> € 24,566,511 The liquidation assets must still be settled with various obligations with the banks and the restarter, which are to be debited from this balance.</p> <p>The expectation is that the value of the obligations is approximately € 11 million, so that the actual assets and effects are substantially less than the balance referred to.</p>

	<p><u>Report 6:</u> € 22,528.949 From this balance about € 8,272,417 is to be paid to the banks and the restarter, resulting in a total remaining amount of the estate of € 14,256,532.</p> <p><u>Report 7:</u> € 14,547,502. From this balance about € 250,000 is to be paid to the restarter, so the actual assets are lower than the balance mentioned above.</p> <p><u>Report 8:</u> € 13.714.728 The payment to the restarter mentioned in the previous reports has been received (see below under 6.3 and further as well as the interim financial report).</p> <p><u>Report 9:</u> € 13.651.725</p> <p><u>Report 10:</u> €13.639.713,97.</p> <p><u>Report 11:</u> € 13.567.836,82</p>
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Reporting period:	October 1st 2017 – December 31st 2017
Hours spent during the reporting period:	<p><u>Report 1:</u> 1671.95 hours <u>Report 2:</u> 976.35 hours <u>Report 3:</u> 504,00 hours <u>Report 4:</u> 459.35 hours <u>Report 5:</u> 418.65 hours <u>Report 6:</u> 356.7 hours <u>Report 7:</u> 258.25 hours <u>Report 8:</u> 189.10 hours <u>Report 9:</u> 120.00 hours <u>Report 10:</u> 131.85 hours <u>Report 11:</u> 128.10 hours</p>
Total hours spent:	<u>Report 11:</u> 4899.45 hours

Introduction

This public liquidation report is partially based on information and statements acquired from the directors, employees and involved third parties, as well as on the financial information that has been verified to a limited extent. The trustees cannot guarantee the accuracy and completeness of the information received.

Additional information could result in the emergence of new facts or a different understanding of events. This also means that the (financial) data included in this report can be adjusted at any time. As from the second report the parts that have not been settled will be exclusively stated.

1. Overview

1.1 Board of directors and organisation

Up to and including 31 December 2013 the group which the insolvent companies formed part of comprised of the following companies:

- Sintra Investments B.V. (*at the time called Etam Group B.V.*), which was director and (except for one share) sole shareholder of:
 - Etam Group Holding B.V. (*at the time called Etam Holding B.V.*), which was director and sole shareholder of:
 - Etam Group Retail B.V. (*at the time called Miss Etam B.V.*)
 - Promiss Holding B.V., which was director and sole shareholder of:
 - Promiss B.V.
 - Etam Retail Services B.V.
 - Etam Group Direct B.V.

On 31 December 2013 Sintra Investments B.V. transferred its shares in Promiss Holding B.V., Etam Retail Services B.V. and Etam Group Direct B.V. to Etam Group Holding B.V.

Immediately following this a legal merger took place between Etam Group Retail B.V. as acquiring company and Promiss Holding B.V., Promiss B.V., Etam Retail Services B.V. and Etam Group Direct as disappearing companies. The transaction and merger took place as from the economic and tax effective date 1 August 2013. The nature and background of the transaction and merger will be further inspected.

As from 31 December 2013 the legal structure was therefore as follows:

- Sintra Investments B.V., which (except for one share) is the sole shareholder of:
 - Etam Group Holding B.V., which is sole director and sole shareholder of:
 - Etam Group Retail B.V.

The shares in Sintra Investments B.V. are held by the Korijn family. This family has been the owner of the Etam Group since its foundation in 1923. The family was also represented in the board of directors up to and including 31 December 2013.

A new board of directors and a new supervisory board of the Holding Company were appointed on 1 January 2014. Mr F.H. van Peski has been the sole director of the Holding Company since 1 January 2015. The management team comprises of six persons. There is one supervisory director, namely Mr J.J. Becker.

Report 2

Nature and background of the transaction and merger as at 31 December 2013 are subject of the cause and regularity audit.

1.2 Profit and loss

Report 1:

The financial year of the insolvent companies runs from 1 August up to and including 31 July.

The following consolidated net results are evident from the administrative records of the insolvent companies:

- 2014/2015: - € 8,957,000(six months)
- 2013/2014: - € 7,266,000
- 2012/2013: - € 5,667,000
- 2011/2012: € 132,000
- 2010/2011: - € 3,330,000
- 2009/2010: € 4,315,000

NB: up to and including the financial year 2012/2013 this concerns the consolidated figures of parent company Sintra Investments B.V. On 31 December 2013 a takeover and legal merger took place with an economic and tax effective date of 1 August 2013 (see under 1.1). From this date (financial year 2013/2014) it concerns the consolidated figures of the Holding Company.

Report 2:

The financial administration is a subject of the cause and regularity audit.

1.3 Balance sheet total

Report 1:

The following consolidated balance sheet totals are evident from the administrative records of the insolvent companies:

- 31 January 2015 € 31,088,000
- 31 July 2014: € 33,740,000
- 31 July 2013: € 30,920,000
- 31 July 2012: € 34,490,000
- 31 July 2011: € 35,176,000
- 31 July 2010: € 34,021,000

NB: up to and including the financial year 2012/2013 it concerns the consolidated figures of parent company Sintra Investments B.V. On 31 December 2013 a takeover and legal merger took place with an economic and tax effective date of 1 August 2013 (see under 1.1). From this date (financial year 2013/2014) it concerns the consolidated figures of the Holding Company.

Report 2:

The financial administration is a subject of the cause and regularity audit.

1.4 Ongoing proceedings

Report 1:

At the time of the moratorium five employment law proceedings were ongoing. A court order was issued in one of these prior to the date of the liquidation. Two hearings have been adjourned during the moratorium until further notice on request from both parties. This concerns proceedings that have been brought by Etam Group Retail B.V. If the defendant(s) requests/request that the trustees take over the proceedings, the trustees have the intention not to respond to this request. This is because it concerns the setting aside of employment contracts, whereas these contracts have been terminated due to the liquidation on 21 April 2015.

There were furthermore application proceedings, before the Lelystad District Court, Subdistrict Sector, in which Etam and one of its lessors had made an application for permission for a derogating letting clause. This application has been withdrawn on behalf of both applicants due to the liquidation.

1.5 Insurances

Report 1:

The insolvent companies have the usual insurances. Now that the restart is a fact, the trustees will cancel all insurances - apart from the BCA policy - and if possible request a refund of the premiums paid in advance.

Report 2:

The insolvent companies have the usual insurances. The trustees have terminated all insurances - with the exception of the managing and supervisory directors' liability insurance policy - as at 1 May 2015 (effective date restart) and requested the insurers to refund any advance premium. The refunds have so far amounted to € 61,860.35.

Report 3:

The insolvent companies have the usual insurances. The trustees have terminated all insurances - with the exception of the managing and supervisory directors' liability insurance policy - as at 1 May 2015 (effective date restart) and requested the insurers to refund any advance premium. The refunds have so far amounted to € 84,571.-.

Report 5:

The proceeds from refunded amounts to date are calculated at € 101,573.64.

1.6 Leases

Report 1 – 4:

Head office and distribution centre

The head office and distribution centre in Zoetermeer were leased from a foundation, which is general partner of a limited partnership. The restarter entered into a new lease for the distribution centre and approximately two/third part of the head office in Zoetermeer. The trustees delivered the part of the office space that will not be leased to the restarter, swept clean to the lessor. The office equipment is partly sold to the restarter and partly at an internet auction (see paragraph 3.6 of this report).

Shops

In addition approximately 200 independent shop spaces are leased from approximately 90 different lessors and there are approximately 20 ‘shop-in-shop’ shops in V&D branches. The largest part of the shops - approximately 130 - are Miss Etam shops. The rest of the shops and the shop-in-shop shops are Promiss shops.

Termination leases shops

The leases for the independent shop spaces have been terminated, except for 19 locations, for which a request has been made for substitution. Furthermore, a number of lessors have terminated the leases. The trustees have agreed with the restarter that the 20 shop-in-shops at V&D’s will be continued.

Acquired shops

The restarter concluded a lease for 82 shops, for which the trustees had given notice of termination of the lease.

In 19 cases, the bankruptcy trustees and restarters invoked their right of substitution. For 12 out of these 19 stores, a new lease has been entered into. In four cases, the request for substitution has been withdrawn. One procedure is still pending. In two cases, request for substitution has been dismissed. An appeal has been filed against one of these rejections, but this appeal has been withdrawn after an arrangement was made concerning temporary continuation for use of the restarter by way of a sublease construction.

Every successful substitution provides a successful fee for the property. The fee realised so far amounts to € 222.365,--.

The restarter will continue a total number of 96 shops (excluding shop-in-shop shops).

Report 7:

In the pending procedure the request for substitution has been denied. Subsequently an arrangement was made in which the restarter will lease an alternative location from the same lessor. The liquidation assets will receive a reimbursement of € 40,000.

Report 8:

The above mentioned arrangement (see report 7) with the restarter concerning the final pending procedure is settled in a final settlement.

Preliminary relief proceedings Enschede

In one case, the H.J. van Heekplein 52 in Enschede location, the lessor has demanded eviction in preliminary relief proceedings, but this demand was dismissed by judgment of 31 July 2015 (case number 4295909 CV EXPL 15-6081).

The provisional relief court judged that the case involved a business transfer and the essential characteristics of the Etam formula were maintained. The lessor had not demonstrated plausibly that the restarter as successive lessee was not going to fulfil its obligations. The provisional relief court the judged that termination of the lease by the lessor on the date of the liquidation order was premature and constituted an abuse of law. The lessor should have first consulted with the trustees. If it had done so, it could have learned from the trustees that there were plans for a restart and substitution. One week after the liquidation the trustees informed the lessors in writing. The conclusion is that the lessor has abused its authority to terminate the lease and the demand for eviction was rejected. On addition, proceedings on the merits have been initiated against the lessor of this location in which the trustees demand substitution as well as a declaratory decision that the lessor cannot rely on its right to terminate the lease.

Delivery shops

During the notice period the restarter has made use of the shops of the insolvent company that were not involved in the restart. The shops have been delivered to the trustees in several tranches, after which the trustees delivered the shops to the lessors. The restarter makes an additional payment into the estate for the use of the shops during the notice period.

Delivery by the trustees to the lessors has been agreed for 5 shops, so that no estate debts arose over the month of July for outstanding rent. Two shops have been delivered with the lessor's consent as from 15 July, a difference of two weeks in estate debts. The other shops have been delivered swept clean by the trustees to the lessors as at the end of the notice period, usually on 31 July 2015.

Arrangements have also been made with four lessors for the purposes of early delivery (to reduce the estate debts) about leaving the (in most cases worthless) inventory behind for no consideration. Eviction costs have thus been saved. In two cases the shop inventory was sold to the lessor. The other lessors were not interested, so that the major part of the shop inventories were sold at an Internet auction (see paragraph 3.6 of this report).

Special arrangements for location Demer 25-27 in Eindhoven

Demer 25-27 in Eindhoven is a special case. Before the liquidation the lessor offered k€ 75 (excl. VAT) for delivery as a shell.

This agreement was fulfilled by the trustees with the authorisation of the delegated judge. Thereupon the parties altered the agreement, again with the authorisation of the delegated judge in the sense that delivery is “swept clean” (instead of ‘as a shell’), which is compensated by the consideration being reduced from k€75 (excl. VAT) to k€ 69.696, - (incl. VAT). This amount has been paid into the liquidation account.

Sublease

The 16 sub tenants have been informed of the termination of the head lease.

The sub tenants have been requested to pay the lease term owed until the end of the lease into the liquidation account. By now the sub tenants have concluded agreements with the head lessor in question or have cleared the location. Therefore, this item is completed, except for the collection.

Report 7:

The debt collection from sub tenants is completed. See paragraph 4.1 of this report.

1.7 Cause of the liquidation

Report 1-4:

The trustees will further audit the causes of the liquidation. The general decline - measured in sales - in the demand for ladies' clothing and the increase in competition have been stated as causes. The extent to which these two causes also play a role in this liquidation will be the subject of further research.

For the cause and regularity audit the trustees will largely follow the purpose of the ‘Cause audit for complex liquidations protocol’ by R.J. Schimmelpenninck LL.M (TvI 2008/20). The audit will consist of three stages:

During the first stage the audit will aim at the actual course of events and the developments in the company with a focus on the last five years before the liquidation. The companies’ administrative accounting will be perused and the trustees will have interviews with several parties involved. This audit will also include the roles of the directors, supervisors, shareholders, banks, auditors and other parties involved. The first stage will be concluded with a description of the facts in a Draft Documentary Report.

In the second stage of the cause audit the trustees formulate their conclusions based on the facts in the Draft Documentary Report with regard to the causes of the liquidation, including conclusions on the relation between the internal and external causes.

Next, the trustees will draw up a Cause Report, consisting of a factual part and an assessing part. This report, or its summary, will be published as a public report, unless the trustees will not find it desirable at the time.

After conclusion of the cause audit, the third stage commences, dealing with the matter of civil liability. On the basis of the outcome of the cause audit the trustees must form an opinion on the question whether there has been mismanagement and whether this has contributed largely to the liquidation, or, if there have been any persons who have otherwise behaved culpably, making them liable towards the estate or the joint creditors.

If this turns out to be the case, the trustees will have to put forward a claim for liability in the interest of the joint creditors. For the rest, the trustees will in principle refrain from public statements on liability of the parties involved.

The investigation is currently in its initial phase. The bankruptcy trustees have spoken to most of the (former) members of the board, the Supervisory Board and the shareholder.

Report 5:

In the next period the discussions will be finalized with the banks, and possibly with one or more creditors. The receivers are aspire to complete the first stage of the investigation in the next reporting period.

Report 6:

The (for now) final interviews have been planned for August, September and October 2016. The trustees' aim is to complete the first investigative stage within the next reporting period.

Report 7:

The last interviews in the first investigative stage are scheduled for December 2016 and January and February 2017. The trustees' aim is to complete the first investigative stage within the next reporting period.

Report 8:

The (for now) final interviews are scheduled for April, 11th and April, 13th, 2017. The trustees' aim is to complete the first investigative stage within the next reporting period.

Report 9:

In the past period the final interviews have taken place as part of the first investigative stage. Besides these interviews the trustees investigate the accounts of Etam by examining the correspondence between the various bodies of the group companies mutually and between Etam and her stakeholders, minutes of meetings and agreements. The investigation into the accounts has almost been completed. The trustees have brought in a financial expert to assist them in making an analysis of the financial accounts of Etam. This financial analysis will be completed in the next period. The trustees are currently working on the report of the facts, that will be the conclusion of the first investigate stage.

In this report the relevant facts that have been acquired from the interviews will be described, as well as the facts that have been acquired from the investigation into the accounts and the information the trustees will receive from the analysis of the financial accounts. The trustees' aim is to complete the first investigative stage within the next reporting period.

Report 10:

The trustees are currently working on the report of the facts, that will be the conclusion of the first investigative stage. In this report the relevant facts that have been acquired from the interviews will be described, as well as the facts that have been acquired from the investigation into the accounts and the information the trustees will receive from the analysis of the financial accounts. The trustees' aim is to complete the first investigative stage within the next reporting period.

Work

Report 1: 174.1 hours

Report 2: 1.9 hours

Report 3: 0 hours

Report 4: 7.1 hours

Report 5: 0 hours

Report 6: 1,2 hours

Report 7: 0 hours

Report 8: 5.7 hours

Report 9: 0.2 hours

Report 10: 2.4 hours

Report 11: 0.0 hours

NB. The work related to the research of the causes and the regularity audit is accounted for in chapter 7.

2. Personnel

2.1 Number at the time of the liquidation

Report 1:

At the time of the declaration of liquidation approximately 2,000 employees were employed by Etam (approximately 1,050 FTE). Approximately 300 of which (approximately 230 FTE) employed at the head office, the other 1,700 (approximately 820 FTE) employees carried out retail work in the shop branches.

2.2 Number in the year before liquidation

Report 1:

In December 2014 there were approximately 2,100 employees employed; approximately 300 at the head office and 1,800 in the shop branches.

2.3 Date of notice of dismissal and other explanation

Report 1:

On 9 April 2015, the day of the granting of the moratorium, the 'community managers' were informed in a meeting. Thereupon these community managers informed the shop personnel within their area.

From the day after the moratorium the employees have been informed a couple of times per week by means of, inter alia, Q&As regarding the developments. Frequent questions were answered as much as possible in these Q&As.

During the moratorium period discussions also took place with the Dutch Trade Union Confederation and National Federation of Christian Trade Unions in the Netherlands regarding the situation arisen. On 21 April 2015, the day of the declaration of liquidation, the unions were informed of the liquidation and simultaneously the notification on the basis of Sections 3 and 4 subsection 1 and 2 of the Collective Redundancy (Notification) Act was made. The Works Council was also informed.

Because the wages could not be continued to be paid from the liquidation assets, the trustees informed the personnel by video message of the liquidation and gave notice of dismissal on 21 April 2015. The delegated judge gave authorisation for this notice of termination of the employment contracts. The formal notice of dismissal was sent by letter on the same day.

Contact with the Employee Insurance Agency was also made at an early stage. The trustees invited the Employee Insurance Agency to a discussion regarding assistance for the employees after dismissal and regarding how the employees could apply to the wage guarantee scheme as soon as possible. Having regard to the number of employees involved, the trustees, the Employee Insurance Agency and the HR department of Etam discussed the advancement of "the accelerated application for claim large employer procedure". It has been possible to make an advance payment as early as the first week of May 2015 due to this. This first advance payment included in addition to a monthly salary the holiday pay, as a result of which the employees could make use of this earlier than usual. Special items (such as kilometre expense claims) will be paid in the final account.

The trustees have, when necessary, made use of temporary workers in the manner usual for Etam.

Report 2:

Employees who did not enter the service of the restarter, received their salaries over May 2015 first (in the first week of June). They had already received an advance, see for further details the first public liquidation report.

The Employee Insurance Agency is now preparing the final settlement, including the holiday allowance from 1 April 2015 to the end date of employment and all gross and net remunerations by whatever name.

Report 3:

In the third reporting period the employment insurance agency has drawn up almost all final accounts.

Meanwhile the employment insurance agency has also submitted its first claims (see chapter 8, accounts receivable).

In addition contact has been made with various employees who had objections to their final account and the accuracy of these objections has been researched. A second statement from the employment insurance agency on the basis of justifiable objections is expected in the next reporting period.

Report 4:

During the fourth period under review, corrections were made based on objections presented by some of the employees. UWV submitted its claims to the bankruptcy trustees (see Chapter 8, Creditors). UWV has not yet submitted a settlement of the pension liability.

Report 6:

The UWV, the Dutch Employee Insurance Agency, has not yet submitted a settlement statement of the pension obligation.

Report 7:

UWV, the Dutch Employee Insurance Agency, has submitted her claim concerning the pension obligations.

Report 9:

The trustees have requested from the UWV, the Dutch Employee Insurance Agency, specification and substantiation of a part of the claim on the estate submitted by UWV. This part of the claim, or at least the status as a claim on the estate, as if it was incurred by the trustees has been preliminary contested by the trustees.

Report 10:

The UWV, the Dutch Employee Insurance Agency, has submitted a claim on the state relating to build up though not taken holidays by employees before April 9th 2015. The UWV regards this claim as a claim on the estate. The trustees contest this claim. For further information see below under 8.1 of this report.

Work:

Report 1: 138.6 hours

Report 2: 23.95 hours

Report 3: 18.15 hours

Report 4: 37.6 hours

Report 5: 7.45 hours

Report 6: 5.45 hours

Report 7: 1 hours

Report 8: 3.65 hours

Report 9: 0.3 hours

Report 10: 3.6 hours

Report 11: 0.1 hours

3. Assets

IMMOVABLE PROPERTY

3.1 Description

3.2 Sales proceeds

3.3 Level of mortgage

3.4 Estate contribution

The debtors do not own any immovable property.

BUSINESS ASSETS

3.5 Description

Report 1:

The business assets comprise of the shop inventories, the office inventory of the headquarters and the furnishings and fittings of the distribution centre.

3.6 Sales proceeds

Head office inventory

Report 2:

The office inventory is partly sold to the restarter. As part of the restart the purchase price of this inventory had been fixed in the purchase agreement at 110% of the assessed forced-sale value, which amounts to € 114,317.50. In this context the trustees and the restarter adopt the position that under Section 37(d) of the Turnover Tax Act no turnover tax will be payable, as the sale is part of the transfer of the company.

The remaining head office inventory was sold at an Internet auction. The proceeds minus the auction charges are approx. K€22, excl. VAT.

Shop inventories

For the purpose of reducing the estate debts, arrangements have been made with some lessors about early delivery, and the trustees left the inventory (in these cases worthless) behind for no consideration. In two cases the shop inventory was sold to the lessor. The purchase prices were k€ 3.5 and k€ 2.5, excl. VAT.

The major part of the shop inventories were sold at an Internet auction. The proceeds minus the auction charges are approx. K€35, excl. VAT.

With the sales of the shop inventory the shops are delivered in a swept clean state, as a result of which no estate debts arise (see paragraph 1.6 of this report).

3.7 Estate contribution

See restart (see paragraph 6.3 of this report).

3.8 Right of seizure by the tax authorities of property found on the premises

Report 1:

The tax debt in the context of the right of seizure by the tax authorities of property found on the premises exceeds the value of the property found on the premises, while the debt to the pledgee in all probability cannot be paid from the 'free assets and effects'. The trustees therefore exercise under Section 57 subsection 3 Bankruptcy Act the rights of the tax authorities for all property found on the premises.

STOCK / WORK IN PROGRESS

3.9 Description

Report 1:

The stock comprises of clothing in the shops and the distribution centre. The cost price value on the date of the moratorium amounts to approximately € 20 million.

3.10 Sales proceeds

3.11 Estate contribution

See continuation (paragraph 1.6 of this report) and restart (paragraph 6.3 of this report).

OTHER ASSETS

3.12 Description

Report 1:

Goodwill, including inter alia the right to present oneself as the party continuing the activities of the Etam Group, the right to make an offer to the employees of the Etam Group to commence employment, the rights of the Etam Group related to its trade names (including Miss Etam and Promiss), IP rights, domain names and the email addresses linked thereto, telephone and fax numbers, the administrative organisation and the com administrative records of the Etam Group.

It has become evident that Sintra Investments B.V. is the titleholder of the majority of the domain names and trademark rights affiliated with the Etam Group. A third-party pledge is vested on these rights for the benefit of the banking financiers of the Etam Group, ING Bank N.V. and ABN AMRO Bank N.V.

Sintra Investments B.V. was found in the context of the restart to be prepared to provide cooperation to the private transfer of these rights to the restarting party.

3.13 Sales proceeds

See restart (paragraph 6.3 of this report).

Work

Report 1: 76.35 hours

Report 2: 117.20 hours

Report 3: 33.2 hours

Report 4: 37.6 hours

Report 5: 43.95 hours

Report 6: 57.5 hours

Report 7: 17,7 hours

Report 8: 11.8 hours

Report 9: 13.8 hours

Report 10: 3.8 hours

Report 11: 2.6 hours

4. Accounts receivable

4.1 Extent of the accounts receivable

Report 1:

Retail has some claims against the parties it cooperates with. The outstanding amount as from the liquidation date amounts to approximately € 1.8 million. The Etam Group has provided rights of pledge on these claims. The legal validity thereof is being researched (see also 4.4).

Report 2:

Retail has some claims against the parties it cooperates with. The outstanding amount as from the liquidation date amounts to approximately € 1.8 million. The claims are pledged to ABN AMRO and ING Bank (see paragraph 5.3 of this report). The trustees agreed with the banks that the trustees will collect the accounts receivables at an estate contribution of 10% in accordance with the arrangement with secured creditors.

Report 5

In addition to the aforesaid trade receivables there are claims of sublessees (see paragraph 1.6 of this report). Arrangements have been made in the purchase agreement with the restarter regarding the payment of the rent by the restarter to the liquidation assets. It has also been agreed that the restarter will be entitled to collect the subletting rent over the period that the restarter is obliged to pay the rent for this location to the liquidation assets. As the amounts to be claimed partially accrue to the restarter and partially to the liquidation assets, arrangements have been made with the restarter regarding the collection of the claims from the sublessees. The restarter invoices (insofar as this has not yet been done) and collects the claims from the sublessees, except with regard to two sublessees which exclusively owe an amount to the liquidation assets. A statement has been provided on behalf of the receivers stating that payment with discharging effect can be made to the restarter. The amounts received by the restarter, which concern periods for which the restarter does not pay rent to the liquidation assets and which therefore accrue to the liquidation assets, are thereupon included in the settlement between the liquidation assets and the restarter.

Report 6

All sub-tenants that had to pay to the estate – because they had not already paid or for whom the estate has charged the restarter so that the restarter carries the risk of collection – have paid. For one sub-tenant, the estate still needs to collect the contractual penalty and collection costs.

Report 7:

An arrangement has been made with the final sub-tenant mentioned above. The debt collection from all sub-tenants has been completed.

Report 9:

Etam provided guarantees to several lessors in the form of a bank guarantee by her credit providers ING Bank and ABN AMRO Bank. After investigation the banks and the trustees found that in several cases lessors wrongly claimed payment under the bank guarantee, in whole or in part. At the request of the banks the trustees have requested clarification from several lessors and as a result in some cases started with recovering the amounts paid out under the bank guarantee. The trustees and the banks agreed upon the usual contribution of 10% of the recovered amounts to the bankrupt estate, for their collection activities. Because the paid out bank guarantees can be of influence on the (correct amount of the) submitted claims by the lessors, this investigation is also relevant in connection with the intended interim distribution of estate funds to the creditors with a recognized claim on the state.

Report 10:

The investigation mentioned above is still ongoing. Several lessors have received a letter from the trustees. A few claims to the estate have already been corrected in favor of the estate.

An amount claimed under the bank guarantee in excess has been received from one lessor. These activities will be continued in the next reporting period.

4.2 Proceeds

Report 4:

So far, € 2,247,531 has been received. This amount is yet to be allocated to the pre-bankruptcy and estate debtors.

Report 5:

An amount of € 2,416,975 has been received to date.

Report 6:

The debtors are mainly sales partners (such as V&D, Wehkamp, Otto and Zalando). Out of the total collected amount of € 2,247,531, an amount of € 940,366 is owed to (pledged) pre-bankruptcy debtors. The remaining sum of € 1,103,451 is revenue, that is a result of the activities during the mentioned continuation period.

This revenue is accounted for in chapter 6 of this report. On top of that, a total sum of € 229,953 has been collected from subtenants. This sum still needs to be allocated amongst the pre-bankruptcy debtors and estate debtors.

4.3 Estate contribution

The trustees agreed with the banks that the trustees will collect the accounts receivables in exchange for a contribution to the estate of 10% of the collected receivables in accordance with the arrangement with secured creditors.

4.4 Any prohibition on transfer/prohibition on pledging

The trustees have not yet discovered any prohibition of transfer or pledge of rights.

Work:

Report 1: 7.9 hours

Report 2: 10.03 hours

Report 3: 2.35 hours

Report 4: 9.2 hours

Report 5: 9.6 hours

Report 6: 11.5 hours

Report 7: 10,45 hours

Report 8: 1.5 hours

Report 9: 0.0 hours

Report 10: 0.0 hours

Report 11: 0.3 hours

5. Bank / Securities

5.1 Claim of bank(s)

Report 1:

The insolvent companies previously had a credit facility with ABN Amro Bank N.V. and ING Bank N.V. of in total debt collection 40 million. In 2013 the credit facility was reduced to debt collection 20 million, following which the credit facility was again increased at the end of 2014 (gradually) to ultimately debt collection 25 million. The banks have for the time being jointly submitted a claim as from the liquidation date of debt collection 15,708,082.66 (excluding interest and costs). This amount comprises of a current account credit of € 12,246,725.34 and a guarantee liability of € 3,461,357.32.

5.2 Leases

Report 1:

Cars are leased from three different leasing companies. A fork-lift truck is leased. In addition there are rental contracts for office equipment. All leases are in the name of Sintra Investments B.V.

Report 2:

Part of the leases has been taken over by the restarter. The other leases were terminated. The lease objects involved have been returned.

5.3 Description of securities

Reports 1 and 2:

Pledging of inventory, stock, claims against third parties and IP rights (the majority of which belong to Sintra Investments B.V.) to ABN AMRO Bank and ING Bank. The trustees' provisional conclusion is that the rights of pledge exist. The question whether there are grounds for infringement of the legal validity of the rights of pledge will be the subject of the cause and regularity audit. So far there is no indication for this.

5.4 Position as a secured creditor

5.5 Estate contribution

See restart (paragraph 3.7 of this report) and accounts receivable (paragraph 4.3 of this report).

5.6 Retention of title

Report 1:

Various suppliers have relied on an alleged retention of title. The trustees have assessed these claims and conducted discussions with these parties.

In three cases an express retention of title has been agreed.

The trustees take the position that in other cases the retention of title is excluded in the purchase terms and conditions of the company in liquidation.

Etam has declared its purchase terms and conditions applicable to almost all its (purchase) orders. These purchase terms and conditions of Etam form part of (chapter 10) of the suppliers manual that is sent to every supplier. These purchase terms and conditions state that the ownership of the (delivered) goods already transfers to Etam at delivery. These purchase terms and conditions also state that Etam expressly rejects the applicability of any general terms and conditions. To date the trustees have taken the position with regard to almost all suppliers that no retention of title has been agreed. An arrangement has been proposed to the suppliers found to have a valid retention of title, as stated hereinafter under 5.7

Report 2:

A settlement proposal was made to suppliers with a valid retention of title (see for further details the first public liquidation report). Nearly all suppliers accepted the proposed settlement.

Two (affiliated) suppliers rejected the proposal and have brought proceedings on the trustees. The trustees expect to be able to provide further information on the current situation of these proceedings in a later report.

5.7 Right to claim back unpaid goods

Report 1:

Various suppliers have relied on an (alleged) right to claim back unpaid goods. The trustees have assessed these claims and conducted discussions with these parties.

Firstly the trustees researched whether the right to claim back unpaid goods was invoked in a timely manner. In cooperation with NTAB and the administrative records of Etam the cost price value of the stock, delivered by the suppliers but not paid to them, was calculated, which stock was still present at Etam (in the shops and/or the distribution centre) at the date of the invoking of the right to claim back unpaid goods. Thereupon a calculation was made in the same manner of the cost price value of the stock concerned, however in that case as at 30 April 2015.

The trustees have tried as much as possible to reach settlements with the suppliers.

The trustees had to take into consideration the restart with effective date on 1 May 2015 in the offered settlement proposals. A distinction was made between the goods that were sold up to and including 30 April 2015 by the estate and the goods that were still present with commencement from 1 May 2015.

The trustees are prepared, in the context of a settlement with regard to the sold stock, to compensate 70% of the cost price value from the date of the invoking of the right to claim back unpaid goods up to and including 30 April 2015. With regard to the stock falling under the right to claim back unpaid goods present as from 1 May 2015, the restarter is prepared to offer 50% of the cost price value. The liquidation assets are outside this 50% settlement.

Meanwhile, a considerable number of the suppliers with a legally valid invoked right to claim back unpaid goods have accepted the proposals from the trustees and the restarter.

Report 2:

A settlement proposal was made to suppliers with a valid right to claim back unpaid goods (see for further details the first public liquidation report). Nearly all suppliers accepted the proposed settlement.

5.8 Rights of retention

Report 1:

Four creditors have relied on the right of retention. Arrangements have been made with all these parties, following which the goods were released.

Work:

Report 1: 272.65 hours

Report 2: 123.88 hours

Report 3: 59.05 hours

Report 4: 40 hours

Report 5: 50.60 hours

Report 6: 32.45 hours

Report 7: 6,8 hours

Report 8: 2.4 hours

Report 9: 0.55 hours

Report 10: 1.9 hours

Report 11: 6 hours

6. Restart / continuation of the enterprise

CONTINUATION

6.1 Operation / securities

Report 1:

The enterprise is to be continued in the interest of a restart and arrangements have been made with suppliers to make the continuation possible.

6.2 Financial reporting

Report 4:

The turnover during the continuation period amounted to approximately € M 13 to 14 (incl. VAT) so far. In order to allocate this turnover, agreements have been reached in advance between the estate and the banks, to whom the stocks were pledged. The basic principle is that the sale was effected by the banks and it was regarded as a sale under execution pursuant to 3:251 of the Dutch Civil Code.

The turnover was used for e.g. payments to suppliers subject to retention of title or right of recovery based on the agreed regulation (see section 5.6 of this report). During the continuation period, additional stock was purchased to avoid having (entirely) empty stores. During the division between the estate and pledgees, the costs of returns, gift vouchers and essential suppliers were taken into consideration. One significant, unanswered question within this framework is whether VAT should be paid for the purchased stocks. So far, the bankruptcy trustees and the banks have claimed that VAT is not indebted, because the sale is deemed to be a sale under execution pursuant to 3:251 of the Dutch Civil Code. For the estate (and assuming the correctness of the view on the VAT), a € M 5 to 5.5 income will remain in all probability.

The bankruptcy trustees also refer to the preliminary financial documentation attached to this report.

Report 6:

Please see paragraph 6.4 of this report.

RESTART

6.3 Description

Report 1:

The process concerning the restart has progressed - summarised - as follows.

Almost immediately after the granting of the moratorium on 9 May the, then still, administrators, have by agreement in consultation with pledgees ABN Amro Bank and ING Bank given the assignment to KPMG Corporate Finance to continue with the sales process for the enterprise that was already commenced and to further supervise this process.

The sales process comprised of the following stages:

- a. The preparatory stage (the first week after 9 April 2015), during which the already existing online data room was further filled;
- b. The admission stage during which an ‘access fee’ to the amount of € 5,000 and an amount to be refunded to the level of € 20,000 was requested from parties, which did not already have access to the data room prior to the declaration of the moratorium. After payment thereof and after the signing of the process conditions (hereinafter referred to as: “NDA”) access to the data room was provided to these parties;
- c. A first selection stage, during which further information was provided to parties on request, and the opportunity was given to them to place a first bid. Following the total of eight bids parties were asked a number of questions. These questions concerned inter alia acquiring clarity of the bid (price, number of shops to be taken over, number of employees to be taken over, etcetera), acquiring a broad insight into their business plan and the question of how and where from the purchase price and the operation after a restart would be financed. This stage lasted until approximately 20 April 2015;
- d. A second selection stage, during which discussions were held with a number of parties (which at that time had placed the best bids) and during which these parties were provided with the opportunity to hold discussions with the management team;

A final stage from Monday morning 27 April 2015, during which the three highest bidders were given the opportunity to place a final unconditional bid no later than on Tuesday 28 April 2015. The final choice was made, in consultation with the banks and with the permission from the delegated judge, for FIPH B.V., which had placed the best bid. The level of the bid, the number of shops and employees to be taken over, the business plan and the manner in which the purchase price and the operation after a restart would be financed were taken into consideration hereby. The agreement reached was thereupon detailed in a purchase agreement.

6.4 Accountability

Report 6:

The settlement agreements with the banks and the restarter for the continuation period and the restart have been drawn up. The trustees have requested the supervisory judge’s approval of the agreements.

The supervisory judge acknowledges that the agreements conclude the transactions that were already approved, and as such, no formal approval is needed. However, due to the importance of these agreements, the supervisory judge has determined that the draft agreements also need to pass a second opinion by mr G. Lekx, former accountant, whom has evaluated the drafts and met with the trustees and their accountant.

Mr Lekx has reported to the supervisory judge on 15 July 2016. His conclusion is as follows:

‘The administration of the Etam estate is extensive and complex due to the (justified) maintenance of the bankrupted party’s accounts at ING and ABN AMRO. Extensive because the activities have been continued, firstly at the estate’s expense and thereafter at the restarter’s expense, and complex because the mutations on these securities cash accounts had to be allocated to the estate, the banks, and the restarter. The provided description of the administrative process, the explanation and the notes regarding the provided financial documents, and the administrative ties between the various settlement agreements evaluated by me show that in financial/administrative terms, the estate was in control at all times. Moreover, I am of the opinion that you, given the information provided by the trustees and the work I have performed, are able to approve the settlements and the financial overview.’

The supervisory judge is of the opinion that Mr Lekx’s conclusion is correct, and as such, that the settlements with the banks and the restarter are in line with what has been agreed upon in the relevant settlement agreements and are thus correct, as well as that the financial overview drawn up by the trustees provides a sufficiently clear view of the matter.

6.5 Proceeds

See paragraph 6.6 of this report.

6.6 Estate contribution

Report 1:

The final estate contribution is also still dependant on a number of factors, just as the sales proceeds are and are estimated at approximately M€ 12-14. This will be accounted for in the next report.

Report 2:

The trustees expect to be able to report on these matters in the third report, specifying the definitive proceeds of both the continuation of the company and the restart. The trustees do not see any reason to reconsider their estimation of the proceeds in the first report (approximately M€ 12-14).

Report 3:

The trustees make reference to the provisional financial reporting, which is attached to this report.

Report 4:

The settlements of the purchase agreement between (i) the estate and the restarter and (ii) the estate and the banks, are nearly complete and they will be discussed with the delegated judge in late January 2016. The majority of the settlement items are either final or their settlement system has been finalised. In broad terms, 50% of the cost price value has been paid for stock, leading to a purchase sum of approximately € 6 M. This amount accrues almost entirely to the pledgee.

The estate (based on division between the estate, banks and restarter) will receive approximately € 650k for stock, € M 1.8 for goodwill and approximately € 900k for the office and retail inventories. Also the estate will receive a compensation of approximately € M 5 due to the restarter's temporary continuation of some of the stores, including the staff working in those stores.

In addition to these items, many (smaller) items exist that require settlement between the estate, banks and restarter. A more detailed explanation will be given in a subsequent report.

The bankruptcy trustees refer to the preliminary financial documentation attached to this report.

Report 8:

The trustees had already reached an agreement with the banks concerning the final settlement of the continuation period as well as the restart (see above under 6.4). Recently the trustees also reached an agreement with the restarter concerning the final settlement of the restart. The trustees retained a sum of money by means of security until the settlement was finalized (as mentioned each time in the heading of the bankruptcy reports under 'Balance at the end of the reporting period'). Based on the final settlement the liquidation assets have recently been reduced with an amount of € 220.864 as a result of payment to the restarter. The financial settlement of the restart with the restarter has been completed.

Work

Report 1: 710.30 hours

Report 2: 305.62 hours

Report 3: 81.45 hours

Report 4: 169.85 hours

Report 5: 134.9 hours

Report 6: 45.45 hours

Report 7: 89,8 hours

Report 8: 31.1 hours

Report 9: 2.20 hours

Report 10: 3.45 hours

Report 11: 1 hours

7. Regularity

For the cause and regularity audit the trustees will largely follow the purpose of the 'Cause audit for complex liquidations protocol' by R.J. Schimmelpenninck LL.M (Tvl 2008/20). (See paragraph 1.7 of this report).

7.1 Accounting obligation

Under research.

7.2 Filing of the annual accounts

Report 1:

The Holding Company and Retail have made use of the exemption from the filing of annual accounts in conformity with Section 403 subsection 1 under b Book 2 of the Civil Code. The financial data of all companies forming part of the Etam Group (see 1.1) are (inter alia) for the financial years 2012/2013, 2011/2012 and 2010/2011 included in the consolidated annual accounts of Sintra Investments B.V.

In this context Sintra Investments B.V. filed a declaration on 19 January 2004 under Section 403 subsection 1 under f Book 2 of the Civil Code for the Holding Company and on 30 November 2005 the same declaration for Retail. Both declarations were withdrawn on the basis of Section 404 subsection 1 Book 2 of the Civil Code with commencement on 31 December 2013. These declarations of withdrawal were filed on 16 December 2013 for the Holding Company and on 30 December 2013 for Retail.

Over the financial year 2013/2014 draft consolidated annual accounts of the Etam Group Holding B.V. were drawn up, but there was no final adoption of these. At the time of the liquidation order the filing period for these annual accounts had not yet expired. In the three preceding years Sintra Investments B.V. filed consolidated annual accounts in a timely manner.

<i>Year</i>	<i>Filing</i>	<i>Publication date</i>	<i>Consequence</i>
2012/2013	<ul style="list-style-type: none"> - consolidated annual accounts by Sintra Investments B.V. - declaration of consent under Section 403 subsection 1 under b Book 2 of the Civil Code by the Holding Company and Retail 	22-7-2014 22-7-2014	In a timely manner
2011/2012	<ul style="list-style-type: none"> - consolidated annual accounts by Sintra Investments B.V. - declaration of consent under Section 403 subsection 1 under b Book 2 of the Civil Code by the Holding Company and Retail 	7-2-2013 7-2-2013	In a timely manner
2010/2011	<ul style="list-style-type: none"> - consolidated annual accounts by Sintra Investments B.V. - declaration of consent under Section 403 subsection 1 under b Book 2 of the Civil Code by the Holding Company and Retail 	15-10-2012 15-10-2012	In a timely manner

7.3 Unqualified audit certificate from auditor

Report 1:

Over the financial years 2012/2013, 2011/2012 and 2010/2011 consolidated annual accounts of Sintra Investments B.V. were filed, which include the financial data of the insolvent companies, provided with an unqualified audit opinion from the auditor.

7.4 Payment obligation shares

Report 1:

The Holding Company was founded in 1923 and Retail in 1974. It therefore applies to both insolvent companies that any claim on the basis of the obligation to pay up is time barred. The trustees will not conduct any research into this.

7.5 Mismanagement

Under research.

7.6 Acting fraudulently in respect of creditors

Under research.

7.7 (Other) unlawful conduct

Under research.

Work

Report 1: 31.5 hours

Report 2: 97.62 hours

Report 3: 119.5 hours

Report 4: 110.8 hours

Report 5: 56.4 hours

Report 6: 133.15 hours

Report 7: 32,55 hours

Report 8: 4.65 hours

Report 9: 35.7 hours

Report 10: 3.0 hours

Report 11: 0.7 hours

8. Creditors

8.1 Claims against the insolvent company

Retail:

- Employment Insurance Agency (Dutch UWV): € 6,123,382.93.
- Rent: € 3,656,158.13

- Whether there is a claim of the tax authorities (concerning turnover tax) is currently under discussion.

There is a discussion between the trustees and the tax authorities whether the VAT concerning the sales to consumers of stock (pledged to the banks) during the continuation period qualifies as a claim on the estate, as opposed to a general bankruptcy claim. There is a test case in another retail-bankruptcy (the bankruptcy of Geddes & Gillmore) about this question. In the court decision of July 5th 2017, the court of Amsterdam asked the following prejudicial questions to the Supreme Court :

Question 1

Should the turnover tax debt, that arises because the pledgee – based on article 3:251 BW – commences a private sale and delivery to private person, whilst the pledgee (pursuant to the ruling HR May 6th 1983, NJ 1984/228 (Rentekas)) also refers to the sales tax included in the proceeds, be qualified as a claim on the estate, as opposed to a general bankruptcy claim?

If so, could this claim on the estate be qualified as one of the three categories of claims on the estate as mentioned by the Supreme Court in marginal number 3.7.1 of the ruling of April 19th 2013 (Koot/Tideman)?

Question 2

Does it make a difference if:

- a) the sale and delivery by the pledgee take place before the bankruptcy pursuant to the agreement made with the pledgee as described in article 3:251 paragraph 2 BW?
- b) the sale and delivery take place after the bankruptcy pursuant to the agreement made with the trustee as described in article 3:251 paragraph 2 BW?
- c) the sale and delivery take place after the written permission of the court in preliminary relief proceedings upon request of the pledgee or the trustees, based on article 3:251 paragraph 1 BW, as a different means of executory sale than described in article 3:250 BW?
- d) the trustees are involved in the sale and delivery of the goods, for example by opening the shops of the bankrupted company, whether or not against payment by the pledgee, to make staff available or let payments go via the bank account of the estate?

Question 3

To what extent is it relevant whether there was a continuation of the company as described in article 98 Fw or article 173a Fw?

The trustees are currently awaiting the outcome of this test case.

The trustees have (in keeping with various correspondence and discussions with the tax authorities) recently filed for turnover tax return over the continuation period, running from April 9th 2015 (date of suspension of payment) to May 1st 2015 (date of restart). The trustees also filed for tax return for the settlement of the estate over 2015 and 2016.

Report 11:

The Supreme Court has answered the above mentioned preliminary questions in its judgment of December 15th 2017

(<http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2017:3149>).

The Supreme Court considers that the preliminary questions relate to all cases in which a pledged asset is sold by foreclosure in a different way than the one meant in article 3:250 of the Dutch Civil Code pursuant to article 3:251 of the Dutch Civil Code, so also if this sale is based on an agreement with the trustee – or on an agreement with the pledge holder concluded before the liquidation order – and the sale takes place by selling from the shops belonging to the bankruptcy estate by employees of the bankrupt company, from which is sold to private individuals, so that there's no reverse-charging VAT as mentioned in article 24ba subsection 1, preamble and under d, of the Turnover Tax (Implementation) Decree 1968. NB: in the bankruptcy of Etam the assets were sold in the same manner.

The Supreme Court considers – with reference to earlier judgments – that in the above mentioned way of selling (in which the pledge holder and pledgor have agreed upon a private sale pursuant to article 3:251 subsection 2 of the Dutch Civil Code) the pledge holder exercises her right to proceed to a public sale by foreclosure of the pledged asset and to recover the secured debt-claim from the sale proceeds, without the necessity to obtain any approval in advance of the court for doing so, as mentioned in article 3:248 subsection 1 of the Dutch Civil Code, so it is a matter of sale and transfer of title as a result of the summary execution of the pledge holder.

The preliminary questions address the issue if, in these cases, the turnover tax of the transfer of title constitutes as a debt to the bankruptcy estate.

According to established case law of the Supreme Court debts to the bankruptcy estate are only those debts that give an immediate claim towards the bankruptcy estate, either because these debts have been accrued by order of the trustee, or because these debts are the result of the trustee acting contrary to an obligation or duty posed upon him in his capacity. To assume an obligation by the trustee is taken to mean that the trustee undertakes this debt through a legal act because his intention is directed to do so (articles 3:33 and 3:35 Dutch Civil Code)(see: HR April 19th 2013, ECLI:NL:HR:2013:BY6108, NJ 2013/291 (Koot/Tideman q.q.), legal ground 3.7.1).

The Supreme Court determines that in the mentioned case in the absence of a specific regulation to that end, there is no debt pursuant to the law . Neither is the conduct of the trustee in the mentioned case contrary to his compliance of a commitment or obligation.

According to the Supreme Court this debt or obligation is also not assumed by the trustee in this capacity. And because the sale and transfer of title is the consequence of the summary execution by the pledge holder, it is not a legal act by the trustee to which the chargeability of turnover tax is connected. This will not change if the trustee assists in the sale in any way.

The Supreme Court therefor concludes that the answer to the first two preliminary questions is negative.

With respect to the third preliminary question the Supreme Court considers that, if the trustee continues the business of the bankrupt company as mentioned in article 98 of the Bankruptcy Act or article 173a of the Bankruptcy Act, the costs and other debts that ensue from this continuation in general can be considered as debts to the bankruptcy estate, because they have been assumed in his capacity as trustee. That also applies for the turnover tax debts that are due based on the transfers of title by way of sale by the trustee in connection with the continuation of the company.

If and to the extent that the transfers of title are the consequence of a forced sale due to the summary execution of the pledge holder or mortgage holder, according to the Supreme Court there is no legal act connected to which the chargeability of turnover tax is connected. The same applies if the forced sale takes place with the assistance of the trustee out of (or with the facilities of) the continuation of the company by the trustee.

The Supreme Court therefor answers the third preliminary question in such a way, that it is not relevant for the answer to the first two preliminary questions whether or not it is a matter of continuance of the bankrupt company as mentioned in article 98 of the Bankruptcy Act or article 173a of the Bankruptcy Act.

With the above mentioned judgment the statement of the trustees, that the VAT of the sales to private individuals after the bankruptcy date are no debt to the bankruptcy estate, is confirmed.

Report 10:

Contested claim to the estate of the UWV

The UWV, the Dutch Employee Insurance Agency, has submitted a claim on the estate relating to build up though not taken holidays by employees before April 9th 2015. The UWV regards this claim as a claim on the estate. The trustees contest this claim. In similar proceedings the subdistrict court judge of the Court of The Hague, location Leiden, has asked preliminary questions to the Supreme Court (JAR 2017/78).

The proceedings are on the register of the Supreme Court for the conclusion by the advocate general (see also www.hogeraad.nl/prejudiciele-vragen, case 17/01157).

8.2 Preferential claims of the tax authorities

Retail:

- Submitted: € 7,638,901.

Holding Company:

- Submitted: € 5,819,110.

8.3 Preferential claims of the Employee Insurance Agency (Dutch UWV)

Retail:

- € 3,548,967.44.

8.4 Other preferential creditors

Retail:

- To date 63 employees have submitted a claim for a total amount of approximately € 1,037,572.41. In addition to the claim of the banks at € 15,708,082.66 ten creditors have furthermore made a preferential claim for a total amount of € 121,994.76

Holding Company:

- ABN-AMRO bank claim € 15,708,082.66

8.5 Number of competing creditors

Retail:

- Approximately 510 creditors have submitted a claim.

Holding Company:

- Fourteen creditors have submitted a claim.

8.6 Amount owed to competing creditors

Retail:

- Approximately € 27.2 million submitted.

Holding Company:

- € 25,095.89 submitted.

Work

Report 1: 214.75 hours

Report 2: 199.14 hours

Report 3: 141.00 hours

Report 4: 36.2 hours

Report 5: 55.9 hours

Report 6: 28 hours

Report 7: 68,6 hours

Report 8: 102.3 hours

Report 9: 51.1 hours

Report 10: 99.1 hours

Report 11: 108.95 hours

9. Proceedings

9.1 Name other party/parties

9.2 Nature of the proceedings

9.3 Stage of proceedings

Substitution proceedings

Report 2:

The trustees have initiated proceedings against a number of lessors who refuse to cooperate with the substitution of the restarter as lessee of the retail floor space.

See also paragraph 1.7 of this report. The trustees expect to be able to provide further information on the current situation of these proceedings in a later report.

Report 6

See above, under section 1.6 ‘Acquired stores’. The final ongoing procedure regarding subrogation is pending judgment on 19 August 2016.

Report 7

An arrangement was made in the pending procedure concerning the subrogation. See paragraph 1.6 of this report.

Suppliers with a retention of title and/or a right to claim back unpaid goods

Report 2 – 5:

Two (affiliated) suppliers dismissed the bankruptcy trustees’ proposal referred to in section 5.6 of this report, instituting proceedings against the bankruptcy trustees. See also paragraph 5.6 of this report. On 30 September 2015, the bankruptcy trustees filed a statement of defence.

By interlocutory judgement dated 14 October 2015, the district court demanded the personal appearance of the parties on 5 April 2016. On 5 April 2016 the post-defence hearing took place. The proceedings are currently on the cause list for 27 April 2016 for judgment.

Report 6:

The Court of The Hague has ruled in pre-payment in the proceedings between Stitch and their co-claimants and the trustees acting on behalf of Etam.

The Court of The Hague agrees with the Etam trustees' standpoint regarding the arrangements made with suppliers. The trustees have temporarily continued the business operations of Etam, i.e. the sale of clothes and fashion items, during the temporary suspension of payment and the subsequent bankruptcy of Etam until the moment of the realisation of the restart.

The suppliers with a valid property law-based claim to the relevant sold goods have all been offered an arrangement by the trustees, in which 70% of the cost price of the relevant sold goods is offered as compensation. All of the suppliers involved with a property law-based claim, with the exception of two supplies, have accepted this arrangement.

The trustees have offered this arrangement because the suppliers would also incur costs if they would have attempted to recover the sold goods. These costs have been discounted in the offered arrangement of 70% of the cost price. Moreover, the trustees felt that it was likely that the sales proceeds in other stores than those owned by the bankrupted party would be lower.

The two suppliers who did not accept the arrangement wished to be paid 100% of the invoicing value.

The judge has denied them their claim and has ruled that the impoverishment/damage incurred by these suppliers does not equal the invoicing value of the relevant goods, but that in determining the damages, the costs they would have incurred had they attempted to recover the goods must also be taken into account. Hence, it seems that the claim of Stitch and its co-claimants has been granted on the basis of unjust enrichment (article 6:212 of the Dutch civil code). In this matter, the Court has ruled these costs to amount up to about 20.5% of the cost price of the relevant goods.

Although the trustees feel that these costs should not have been determined based on article 6:97 of the Dutch civil code, and that if they were to be estimated, the estimate ought to be higher, the trustees decided not to lodge an appeal, based on pragmatic considerations.

The judgement has been anonymously published on rechtspraak.nl under the number ECLI:NL:RBDHA:2016:9398:

<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:9398&keyword=ECLI%3aNL%3aRBDHA%3a2016%3a9398>.

Work:

Report 1: 15.60 hours

Report 2: 20.06 hours

Report 3: 12.50 hours

Report 4: 30.10 hours

Report 5: 11.7 hours

Report 6: 1.6 hours

Report 7: 4 hours

Report 8: 1.1 hours

Report 9: 0.0 hours

Report 10: 0.0 hours

Report 11: 0.0 hours

The restarter did not issue a guarantee for the costs of the hours spent on the substitution proceedings. Those hours will be specified in a subsequent report.

Report 9:

In the final settlement with the restarter, the compensation for the work done by the trustees to enforce the right to lease substitution has been set to EUR 20,000.

The banks have given a guarantee for those costs incurred in the abovementioned proceedings against the suppliers, namely 113.25 hours total. The estate has charged these hours to the banks at the current rates for trustees. This amounts to € 12,674.27 (excluding office expenses and VAT). The estate then also passed on the charges for the compensation paid out to Stitch to the banks as well.

10. Other

10.1 period of settlement of the liquidation(s)

The trustees will provide information on this in the next report.

Report 9:

The trustees, in consultation with their financial advisor and with consent of the supervisory judge, have decided in early 2017 to carry out the first (partial) payment to the bankruptcy estate creditors/beneficiaries. All relevant known factors, such as (i) assets, (ii) known liquidation costs, (iii) submitted claims, (iv) the possibility that the VAT of the continuation period qualifies as a claim on the estate and (v) the claims likely to receive (but not yet submitted,) have been taken into account. Of course their assessments have been cautious and conservative.

Based on this the trustees have concluded that with a sufficient degree of certainty can be decided to:

- Payment in full of the submitted preferential claim of the UWV, as approved by the trustees – therefore not the contested part of the claim as mentioned above..
- Partial payment of 50% of the submitted unsecured claims, approved by the trustees.

Needless to say every submitted claim should be well-substantiated and will be checked thoroughly prior to the interim distribution.

10.2 Plan of action

Report 1:

The most urgent cases that required the immediate attention from the trustees are settled or under control. The following reporting period will mainly concern (i) the completion of the restart, (ii) the financial accounting for the continuation and the restart, (iii) the tax accounting for the continuation and the restart, (iv) the settlement with the pledgees, (v) the settlement with the suppliers with a valid reliance on retention of title or right to claim back unpaid goods, (vi) the conversion of the remaining assets into cash (vii) the supervision of the debt collection and (viii) the commencement of the various inspections into the causes of the liquidation and regularity.

Report 2:

The next reporting period will mainly concern (i) the financial accounting for the continuation and restart, (ii) the tax accounting for the continuation and restart, (iii) the settlement with the pledgees, (iv) the continuation of the debt collection, (v) continuation of the cause and regularity audit, (vi) conducting pending proceedings.

Report 3:

The next reporting period will mainly concern (i) the financial accounting for the continuation and restart, (ii) the tax accounting for the continuation and restart, (iii) the settlement with the pledgees, (iv) the continuation of the debt collection, (v) continuation of the cause and regularity audit, (vi) conducting pending proceedings

Report 4:

The next reporting period will mainly concern (i) the financial accounting for the continuation and restart, (ii) the tax accounting for the continuation and restart, (iii) the settlement with the pledgees, (iv) the continuation of the debt collection, (v) continuation of the cause and regularity audit, (vi) conducting pending proceedings.

Report 5:

The following reporting period will mainly concern (i) the completion of the financial accounting for the continuation and the restart, (ii) the fiscal accounting for the continuation and the restart, (iii) the tax accounting for the continuation and the restart, (iii) the completion of the settlement with the pledgees, (iv) the continuation of the debt collection, (v) the continuation of the cause and regularity audit, (vi) the continuation of the pending proceedings.

Report 6:

In the next reporting period the trustees will focus mainly on (i) fiscal accountability of the continuation and restart, (ii) completing the settlements with the banks and the relaunching parties, (iii) continuing the debt collection process, (iv) continuing further exploration for causes of the bankruptcy and review of the lawfulness of the boards' decisions, (v) continuing the pending proceedings.

Report 7

In the next reporting period the trustees will focus mainly on (i) fiscal accountability of the continuation and restart, (ii) completing the settlement with the restarter, (iii) completing the debt collection process, (iv) continuing further exploration for causes of the bankruptcy and review of the lawfulness of the boards' decisions, (v) possible appeal in a subrogation procedure.

Report 8

In the next reporting period the trustees will focus mainly on (i) fiscal accountability of the continuation and restart, (ii) completing the settlement with the restarter, (iii) completing the debt collection process, (iv) continuing further exploration for causes of the bankruptcy and review of the lawfulness of the boards' decisions, (v) possible appeal in a subrogation procedure.

Report 9:

In the next reporting period the trustees will focus mainly on (i) monitoring the test case concerning the VAT-issues in retail-bankruptcies, (ii) execution of the decision to grant interim distributions to creditors/estate beneficiaries, (iii) determine the contested part of the claim of the UWV and (iv) continuing further exploration for causes of the bankruptcy and review of the lawfulness of the boards' decisions.

Report 10:

In the next reporting period the trustees will focus mainly on (i) monitoring the test case concerning the VAT-issues in retail-bankruptcies, (ii) continuing the interim distributions to creditors/estate beneficiaries, (iii) monitoring the procedure concerning the contested claim of the UWV, (iv) continuing the investigation of the payments to the lessors under the bank guarantee and reclaim the amounts paid in excess and (v) continuing further exploration for causes of the bankruptcy and review of the lawfulness of the boards' decisions.

Report 11:

In the next reporting period the trustees will focus mainly on (i) continuing the interim distributions to creditors/estate beneficiaries, (ii) continuing the investigation of the payments to the lessors under the bank guarantee and reclaim the amounts paid in excess and (iii) continuing further exploration for causes of the bankruptcy and review of the lawfulness of the boards' decisions.

10.3 Submission of the next report

On or around April 1st 2018.

Work

Report 1: 30.20 hours

Report 2: 75.35 hours

Report 3: 36.8 hours

Report 4: 26.00 hours

Report 5: 48.15 hours

Report 6: 40.4 hours

Report 7: 27,35 hours

Report 8: 24,9 hours

Report 9: 16.15 hours

Report 10: 14.6 hours

Report 11: 8.45 hours