

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

Report date: 28 January 2016

Report number: 4

Debtors:	ETAM GROEP RETAIL B.V. ETAM GROEP HOLDING B.V. Oostweg 2 (Etam Groeplaan) 2723 RH ZOETERMEER The insolvent companies are referred to hereinafter 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)
Dates of judgements:	Moratorium: Thursday 9 April 2015 Bankruptcy: 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's activities:	Ladies' fashion (retail)
Sales data:	€ 200 million to € 230 million See for further details the first public liquidation report.
Average number of personnel:	2000
Balance at the end of the reporting period:	€ 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.

Reporting period:	21 October 2015 up to and including 20 January 2016
Hours spent during the reporting period:	459.35 hours
Total hours spent:	3611.65 hours A guarantee was issued for a portion of the time spent. The costs will be compensated via the estate. See paragraph 9.3 of this report.

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.

This is an English translation of the original Dutch text. The trustees cannot guarantee the accuracy and completeness of the translation. In case of a discrepancy between the English and Dutch texts, the Dutch text shall prevail.

1. Overview

1.1 Board of directors and organization

For a detailed description of the organization the trustees refer to the first public liquidation report. Nature and background of the transaction and merger as at 31 December 2013 are subject of the cause and lawfulness audit.

1.2 Profit and loss

See for further details the first public liquidation report.

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

1.3 Balance sheet total

See for further details the first public liquidation report.

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

1.4 Ongoing proceedings

See for further details the first public liquidation report.

1.5 Insurances

See for further details the third public liquidation report.

1.6 Leases

Head office and distribution centre

See for further details the second public liquidation report.

Shops

For a more detailed explanation, see the third bankruptcy report.

The restarter will continue with a total number of 96 shops.

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.

Every successful substitution provides a successful fee for the property. The fee realised so far amounts to € 201,638

Shop-in-shops

See for further details the second public liquidation report.

Delivery shops

See for further details the second public liquidation report.

Special arrangements for location Demer 25-27 in Eindhoven

See for further details the second public liquidation report.

Sublease

See for further details the second public liquidation report. This subject has been completed, except for the collection.

1.7 Cause of the bankruptcy

The trustees will further investigate the causes of the bankruptcy. 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 the bankruptcy will be the subject of further investigation.

For the cause and regularity audit the trustees will as much as possible 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 the trustees aim to reveal the actual course of events and the developments in the company with a focus on the last five years before the bankruptcy. The companies' administrative accounting will be studied and analyzed and the trustees will interview several parties involved. The audit will also include an assessment of 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 bankruptcy, 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 assessment. This report, or its summary, will be published as a public report, unless the trustees will not deem this 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 is cause to assume mismanagement and whether this has contributed largely to the bankruptcy, 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. In all other cases 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. In due course, the final talks will be held with the parties involved directly and also with the banks. The bankruptcy trustees aim at completing the first investigation stage during the coming period of 6 months.

Work

7.1 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

See for further details the first public liquidation report.

2.2 Number in the year before liquidation

See for further details the first public liquidation report.

2.3 Date of notice of dismissal and other explanation

See for further details the first and second public liquidation report.

During the third period under review, Employee Insurances Implementing Agency UWV prepared nearly all pay slips. 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.

Work

37.6 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

See for further details the second public liquidation report.

3.6 Sales proceeds

Head office inventory

See for further details the second public liquidation report.

Shop inventories

See for further details the second public liquidation report.

3.7 Estate contribution

See restart (paragraph 6.3 of this report).

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

See for further details the first public liquidation report.

STOCK / WORK IN PROGRESS

3.9 Description

See for further details the first public liquidation report.

3.10 Sales proceeds

3.11 Estate contribution

See continuation and restart (paragraph 6.1 of this report) and restart (paragraph 6.3 of this report).

OTHER ASSETS

3.12 Description

See for further details the first public liquidation report.

3.13 Sales proceeds

See restart (paragraph 6.3 of this report).

Work

37.6 hours

4. Debtors

4.1 Extent of the accounts receivable

Retail has some claims against the parties it cooperates with. The outstanding amount as from the date of the bankruptcy amounts up to approximately € 1.8 million. The claims are pledged

to ABN AMRO Bank and ING Bank (see paragraph 5.3 of this report). 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.

4.2 Proceeds

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

4.3 Estate contribution

Memorandum item.

4.4 Any prohibition on transfer/prohibition on pledging

This must still be researched.

Work

9.2 hours

5. Bank / Securities

5.1 Claim of bank(s)

ABN AMRO Bank and ING Bank have lodged a joint claim of € 15,708,082.66 (exclusive of interest and charges). See for further details the first public liquidation report.

5.2 Leases

See for further details the second public liquidation report.

5.3 Description of securities

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 assessment 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

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 started proceedings against the trustees. See paragraph 9.3 of this report

5.7 Right to claim back unpaid goods

See for further details the second public liquidation report.

5.8 Rights of retention

See for further details the first public liquidation report.

Work

40.0 hours

6. Restart / continuation of the company

CONTINUATION

6.1 Operation / securities

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

6.2 Financial reporting

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.

RESTART

6.3 Description

For a detailed description of the process regarding the restart we refer to the first public liquidation report.

6.4 Accountability

6.5 Proceeds

6.6 Estate contribution

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.

Work

169.85 hours

7. Regularity

For the cause and regularity audit the trustees will as much as possible follow the proposed system of the 'Cause audit for complex liquidations protocol' by R.J. Schimmelpenninck LL.M (TvI 2008/20). The research is currently in the first stage. (see paragraph 1.7 of this report).

7.1 Accounting obligation

Under investigation.

7.2 Filing of the annual accounts

See for further details the first public liquidation report.

7.3 Unqualified audit certificate from auditor

See for further details the first public liquidation report.

7.4 Payment obligation for shares

See for further details the first public liquidation report.

7.5 Mismanagement

Under investigation.

7.6 Acts fraudulent in respect of creditors

Under investigation.

7.7 (Other) unlawful conduct

Under investigation.

Work

110.80 hours

8. Creditors

8.1 Claims against the insolvent company

Retail:

- Employee Insurance Agency: € 5,767,788.21
- Rent: € 2,579,904.90

8.2 Preferential claims of the tax authorities

Retail:

- Submitted: € 7,638,901.00

Holding:

- Submitted: € 5,819,110.00

8.3 Preferential claims of the Employee Insurance Agency

Retail:

- Submitted: € 3,548,917.69

8.4 Other preferential creditors

Retail:

- To date 64 employees have submitted a claim for a total amount of approximately € 1,033,833.90. In addition to the claim of the banks of € 15,708,082.66 eight creditors have furthermore made a preferential claim for a total amount of € 137,839.48.

Holding:

- Claim of the bank of € 15,708,082.66

8.5 Number of unsecured creditors

Retail:

- Approximately 469 creditors have submitted a claim.

Holding:

- Thirteen creditors have submitted a claim.

8.6 Amount owed to unsecured creditors

Retail:

- Approximately € 26.1 million submitted.

Holding:

- Submitted: € 16,936.81

8.7 Expected manner of settlement

The trustees will provide information on this in the next report. It seems probable that no payment can be made to the unsecured creditors.

Work

36.2 hours

9. Proceedings

9.1 Name other party/parties

9.2 Nature of the proceedings

9.3 Stage of proceedings

Substitution proceedings

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/stores. See also paragraph 1.6 of this report.

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

Two (affiliated) suppliers dismissed the bankruptcy trustees' proposal referred to in section 5.6 of this report, instituting proceedings against the bankruptcy trustees. 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.

Work

30.1 hours

The restarter did not issue a guarantee for the costs of the hours spent on the substitution proceedings.

The banks did not issue a guarantee for the costs incurred for the above proceedings against the suppliers.

Those hours will be specified in a subsequent report.

10. Miscellaneous

10.1 Period of settlement of the bankruptcy

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

10.2 Plan of action

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.

10.3 Submission of the next report

On or around 21 April 2016

Work

26.0 hours