

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

**Report date: 21 april 2016**

**Report number: 5**

Debtors:	<b>ETAM GROEP RETAIL B.V.</b> <b>ETAM GROEP HOLDING B.V.</b> 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 evident from the administrative records 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 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.
Average number of personnel:	2000
Balance at the end of the reporting period:	<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 <i>The liquidation assets must still be settled with various obligations with the banks and the restarter, which are to be debited from this balance. 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.</i></p>

Reporting period:	9 April 2015 up to and including 24 May 2015
Hours spent during the reporting period:	<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
Total hours spent:	<u>Report 5:</u> 3705.45 hours A guarantee has been provided by third parties for a part of the hours spent. The costs for this are reimbursed to the liquidation assets. See below under 9.3.

## 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).

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

### 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 aspire to complete the first stage of the investigation in 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

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.

#### 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

### **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.

### 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

## 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 € 1.8million. 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 € 1.8million. 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.*

### 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.*

#### 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

This must still be researched.

#### 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

### **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

## **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.

#### 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

#### 6.5 Proceeds

#### 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.

#### 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

## **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 (Tvi 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"> <li>- consolidated annual accounts by Sintra Investments B.V.</li> <li>- declaration of consent under Section 403 subsection 1 under b Book 2 of the Civil Code by the Holding Company and Retail</li> </ul>	22-7-2014  22-7-2014	In a timely manner
2011/2012	<ul style="list-style-type: none"> <li>- consolidated annual accounts by Sintra Investments B.V.</li> <li>- declaration of consent under Section 403 subsection 1 under b Book 2 of the Civil Code by the Holding Company and Retail</li> </ul>	7-2-2013  7-2-2013	In a timely manner
2010/2011	<ul style="list-style-type: none"> <li>- consolidated annual accounts by Sintra Investments B.V.</li> <li>- declaration of consent under Section 403 subsection 1 under b Book 2 of the Civil Code by the Holding Company and Retail</li> </ul>	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

## **8. Creditors**

### 8.1 Claims against the insolvent company

#### *Retail:*

- *Employment Insurance Agency (Dutch UWV): € 6,123,382.93.*
- *Rent: € 2,832,033.24.*

### 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 67 employees have submitted a claim for a total amount of approximately € 1,038,593.16. In addition to the claim of the banks at € 15,708,082.66 seven creditors have furthermore made a preferential claim for a total amount of € 144,724.61.*

#### *Holding Company:*

- *ABN-AMRO bank claim € 15,708,082.66*

### 8.5 Number of competing creditors

#### *Retail:*

- *Approximately 484 creditors have submitted a claim.*

#### *Holding Company:*

- *Twelve creditors have submitted a claim.*

### 8.6 Amount owed to competing creditors

#### *Retail:*

- *Approximately € 28.2 million submitted.*

#### *Holding Company:*

- *€ 18,078.18 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

## **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 5

*See above under 1.6.*

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

##### Report 2 – 4:

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.

##### Report 5

*On 5 April 2016 the post-defence hearing took place. The proceedings are currently on the cause list for 27 April 2016 for judgment.*

##### 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

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. Other

### 10.1 period of settlement of the liquidation(s)

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

### 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.*

10.3 Submission of the next report  
*On or around 21 July 2017.*

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