

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

**Report date: 28 August 2015**

**Number: 2**

Debtors:	<b>ETAM GROEP RETAIL B.V.</b> <b>ETAM GROEP HOLDING B.V.</b> 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)
Date of decisions:	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:	€ 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.

Reporting period:	25 May 2015 up to and including 24 July 2015
Hours spent during the reporting period:	976.35 hours
Total hours spent:	2648.30 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.

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 organisation

For a detailed description of the organisation 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 regularity 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

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.

### 1.6 Leases

#### *Head office and distribution centre*

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*

The restarter will continue a total number of 85 shops.

It already concluded a lease for 68 shops, for which the trustees had given notice of termination of the lease. The restarter is still negotiating with the lessors of the other 16 shops.

In yet another 19 cases the trustees and the restarter have invoked substitution. For 9 out of these 19 shops a new lease has been concluded. In yet another 2 cases the trustees and the restarter have waived substitution.

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.

Proceedings have been initiated in 8 cases now (including the proceedings on the merits for Enschede), in which nearly always the trustees demand substitution, whereas the lessor demands eviction.

Each successful substitution yields a success fee for the estate, ranging from k€ 10 to k€ 50.

#### *Shop-in-shops*

The trustees have agreed with the restarter that the 20 shop-in-shops at V&D's will be continued.

#### *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 11 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

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.

#### Work

1.9 hours

### **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 public liquidation report.

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.

#### Work

23.95 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

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

### 3.6 Sales proceeds

#### *Head office inventory*

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.

### 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.

### *OTHER ASSETS*

### 3.12 Description

See for further details the first public liquidation report.

### 3.13 Sales proceeds

See restart.

### Work

117.20 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 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.

### 4.2 Proceeds

So far an amount of € 1,182,335.03 was paid into the liquidation account. This amount must yet be allocated to the pre-insolvency debtors and turnover during the continuation period. The trustees expect to be able to report on this allocation in the third report.

### 4.3 Estate contribution

Memorandum item

### 4.4 Any prohibition on transfer/prohibition on pledging

This must still be researched.

### Work

10.03 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

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

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

### 4.3 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 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

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

See for further details the first public liquidation report.

## Work

123.88 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 the continuation possible.

#### 6.2 Financial reporting

The trustees expect to be able to report on this in the third 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 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).

#### Work

305.62 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

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 shares

See for further details the first public liquidation report.

#### 7.5 Mismanagement

Under research.

#### 7.6 Acting fraudulently in respect of creditors

Under research.

#### 7.7 (Other) unlawful conduct

Under research.

#### Work

97.62 hours

### **8. Creditors**

#### 8.1 Claims against the insolvent company

Retail:

- Employee Insurance Agency: memorandum item
- Rent: € 1,662,372.83.

#### 8.2 Preferential claims of the tax authorities

Retail:

- Submitted: € 4,913,433.00.

Holding:

- Submitted: € 4,041,182.00

#### 8.3 Preferential claims of the Employee Insurance Agency

Retail:

- memorandum item

#### 8.4 Other preferential creditors

Retail:

- To date 55 employees have submitted a claim for a total amount of approximately € 947,173.95. 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 € 138,278.83.

#### 8.5 Number of unsecured creditors

Retail:

- Approximately 401 creditors have submitted a claim.

Holding:

- Five creditors have submitted a claim.

#### 8.6 Amount owed to unsecured creditors

Retail:

- Approximately € 25.2 million submitted.

Holding:

- Submitted: € 6,446.17

#### 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

199.14 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. 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.

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

Two (affiliated) suppliers rejected the proposal and have brought proceedings on the trustees. See also paragraph 5.6 of this report. The trustees expect to be able to provide further information on the current situation of these proceedings in a later report.

Work

20.06 hours

### **10. Miscellaneous**

#### 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

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 October 2015

### Work

75.35 hours