

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

**Report date: 21 October 2015**

**Number: 3**

Debtors:	<b>ETAM GROEP RETAIL B.V.</b> <b>ETAM GROEP HOLDING B.V.</b> Oostweg 2 (Etam Groeplan) 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:	€ 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.

Reporting period:	25 July 2015 up to and including 20 October 2015
Hours spent during the reporting period:	504 hours
Total hours spent:	3152.30 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 € 84,571.-.

### 1.6 Leases

#### *Head office and distribution centre*

See for further details the second public liquidation report.

#### *Shops*

The restarter will continue a total number of 99 shops.

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

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. Proceedings on the merits are currently pending in 8 cases (including proceedings on the merits for Enschede, for which the preliminary relief proceedings referred to hereinafter are also conducted), in which the receivers almost always claim substitution, while the lessor claims eviction. In yet another 2 cases the trustees and the restarter have waived substitution.

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

#### *Enschede preliminary relief proceedings*

The court in preliminary relief proceedings held that there is a business transfer, whereby the essential characteristics of the Etam business concept are still being applied. The lessor has not made it plausible that the restarter as successive lessee will not fulfil its obligations. Its termination was premature and constituted an abuse of rights. The lessor was therefore not permitted to evict. Proceedings on the merits are also pending against the lessor of this location in which the receivers claim substitution.

For more details see the second liquidation report.

#### *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 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.

The research is currently in the first stage.

Work  
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

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.

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.

#### Work

18.15 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

33.2 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.

### 4.3 Estate contribution

Memorandum item

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

This must still be researched.

### Work

2.35 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 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. 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

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

## Work

81.45 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). The research is currently in the first stage. (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

119.50 hours

### **8. Creditors**

#### 8.1 Claims against the insolvent company

Retail:

- Employee Insurance Agency: € 5,709,886.47
- Rent: € 2,368,784.50.

#### 8.2 Preferential claims of the tax authorities

Retail:

- Submitted: € 6,691,422.00.

Holding:

- Submitted: € 5,819,110.00

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

Retail:

- Submitted: € 3,508,505.47

#### 8.4 Other preferential creditors

Retail:

- To date 60 employees have submitted a claim for a total amount of approximately € 1,020,189.48. 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 434 creditors have submitted a claim.

Holding:

- Seven creditors have submitted a claim.

#### 8.6 Amount owed to unsecured creditors

Retail:

- Approximately € 25.2 million submitted.

Holding:

- Submitted: € 8,758.17

#### 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

141.00 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 receivers filed a defence in these proceedings on 20 September 2015. By interim judgment dated 14 October 2015 the court ordered the appearance of parties. The date and time of the appearance will be further determined. The court has requested from the parties involved the dates on which they will be unable to appear during the months of January up to and including April 2016.

Work

12.50 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 January 2016

#### Work

36.80 hours