

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

### **Concerning**

Reportnumber	15
Date report	October 15 <sup>th</sup> 2018
Bankruptcy number	F.09/15/233
'Toezicht' case number	NL:TZ:0000015867:F001
Date of decision	April 21 <sup>st</sup> 2015
Delegated judge	Mr R. Cats
Trustees	Mr M.J.H. Vermeeren Mr F.Th.P. van Voorst

### **General information**

#### **Name company**

Etam Groep Retail B.V.

#### **Information company**

Etam Groep Retail B.V.  
Oostweg 2 (Etam Groeplaan)  
2723 RH Zoetermeer

The insolvent companies are hereinafter referred to as "Retail" and "Holding" respectively or jointly as "Etam Group".

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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 public liquidation report serves exclusively for the information purposes of the interested parties. No rights can be derived from this public liquidation report. Nothing in this report can be interpreted as an acknowledgement of liability and/or waiver of any right.

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NB: The following report is bankruptcy report number 14 and NOT, as mentioned above, bankruptcy report 15. The numbering cannot be changed due to technical reasons.

### **Company activities**

Ladies fashion (retail)

### **Financial information**

<b>Year</b>	<b>Turnover</b>	<b>Profit and loss</b>	<b>Balance sheet</b>
20142015	€ 94.331,00	€ 8.957.000,00	€ 31.088.000,00
20132014	€ 199.086,00	€ 7.266.000,00	€ 33.740.000,00
20122013	€ 218.793,00	€ 5.667,000,00	€ 30.920.000,00
20112012	€ 231.016,00	€ 132.000,00	€ 34.490.000,00
20102011	€ 238.016,00	€ 3.330.000,00	€ 35.176.000,00
20092010	€ 233.585,00	€ 4.315.000,00	€ 34.021.000,00

The financial year of the insolvent companies runs from August 1<sup>st</sup> up to and including July 31<sup>st</sup>.

The consolidated net turnover and net results are mentioned above. The balance sheet total contains the consolidated balance sheets totals per July 31st of the concerning year; the balance sheet total of 2015 per January 31st 2015.

NB:

Up to and including the financial year 2012/2013 the records include the consolidated accounts of the parent company Sintra Investments B.V. On 31 December 2013 a takeover was established and legal merger was entered into with an economic and tax effective date of 1 August 2013 (see under 1.1). From this date (financial year 2013/2014) the accounts included the consolidated figures of the Holding Company.

### **Average number of personnel:**

2000.

### **Balance at the end of the reporting period:**

€ 6,875,811.13

## **Reporting period**

July 1<sup>st</sup> 2018 – September 30<sup>th</sup> 2018

## **Hours spent during the reporting period:**

Report 1: 1671.95 hours

Report 2: 976.35 hours

Report 3: 504,00 hours

Report 4: 459.35 hours

Report 5: 418.65 hours

Report 6: 356.7 hours

Report 7: 258.25 hours

Report 8: 189.10 hours

Report 9: 120.00 hours

Report 10: 131.85 hours

Report 11: 128.10 hours

Report 12: 293.55 hours

Report 13: 181.60 hours

Report 14: 158,85 hours

## **Total hours spent:**

5,533.75 hours

A guarantee has been provided by third parties for a part of the hours spent by the trustees. Reimbursement has been added to the liquidation assets. See previous report under 9.3.

## **1. Overview**

### **Board of directors and organisation**

See previous report.

### **Ongoing proceedings**

See previous report.

### **Insurances**

See previous report.

### **Leases**

See previous report.

## Cause of the liquidation

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

### Work

Report 1: 174.1 hours

Report 2: 1.9 hours

Report 3: 0 hours

Report 4: 7.1 hours

Report 5: 0 hours

Report 6: 1,2 hours

Report 7: 0 hours

Report 8: 5.7 hours

Report 9: 0.2 hours

Report 10: 2.4 hours

Report 11: 0.0 hours

Report 12: 0.9 hours

Report 13: 0.9 hours

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

## 2. Personnel

### Number at the time of the liquidation

2000.

See previous report.

### Number in the year before liquidation

2100.

See previous report.

### Date of notice of dismissal

Date	Number	Explanation
Total	0	

Work:

Report 1: 138.6 hours

Report 2: 23.95 hours

Report 3: 18.15 hours

Report 4: 37.6 hours

Report 5: 7.45 hours

Report 6: 5.45 hours

Report 7: 1 hours

Report 8: 3.65 hours

Report 9: 0.3 hours

Report 10: 3.6 hours

Report 11: 0.1 hours

Report 12: 2 hours

Report 13: 0 hours

Report 14: 0.2 hours

### 3. Assets

#### Immovable property

Description	Sales proceeds	Mortgage	Estate contribution
Does not apply			
<b>Total</b>	€ 0,00		€ 0,00

#### Explanation immovable property

Does not apply.

#### Work immovable property

None.

#### Business assets

Description	Sales proceeds	Estate contribution
See previous report		
<b>Total</b>	€ 0,00	€ 0,00

#### Explanation business assets

See previous report.

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

See previous report.

### Work business assets

See paragraph 6.4 of previous report (Continuation).

### Stock / work in progress

Description	Sales proceeds	Estate contribution
See previous report		
<b>Total</b>	€ 0,00	€ 0,00

### Explanation stock / work in progress

See paragraph 6.4 of previous report (Continuation).

### Work stock / work in progress

See paragraph 6.4 of previous report (Continuation).

### Other assets

Description	Sales proceeds	Estate contribution
See previous report		
<b>Total</b>	€ 0,00	€ 0,00

### Explanation other assets

See paragraph 6.4 of previous report (Continuation).

#### Work other assets

Report 1: 76.35 hours

Report 2: 117.20 hours

Report 3: 33.2 hours

Report 4: 37.6 hours

Report 5: 43.95 hours

Report 6: 57.5 hours

Report 7: 17,7 hours

Report 8: 11.8 hours

Report 9: 13.8 hours

Report 10: 3.8 hours

Report 11: 2.6 hours

Report 12: 1.8 hours

Report 13: 2.35 hours

Report 14: 0.0 hours

#### 4. Accounts receivable

##### Accounts receivable

Description	Extent	Sales proceeds	Estate contribution
See previous report and interim financial report			
<b>Total</b>		€ 0,00	€ 0,00

##### Explanation accounts receivable

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

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

##### Report 13:

Basically all bank guarantees have been checked.

Current status:

Total bank guarantees: 82

Total amount of bank guarantees: € 3,476,724.49

Total claimed bank guarantees: 61

Total amount of claimed bank guarantees: € 2,840,545.29

(Partially) wrongly claimed bank guarantees: 19

Total value of (partially) wrongly claimed bank guarantees: € 957,916.41

Amount wrongly claimed: € 358,093.31

The item 'partially wrongly claimed bank guarantees' will be adjusted downwards if and in case a lessor can prove that the bank guarantee has been claimed rightfully. Not yet all lessors have shared their definitive assessment of their legal position.

##### Report 14:

Current status:

Total bank guarantees: 82

Total amount of bank guarantees: € 3,476,724.49

Total claimed bank guarantees: 61

Total amount of claimed bank guarantees: € 2,840,545.29

*(Partially) wrongly claimed bank guarantees: 20*

*Total value of (partially) wrongly claimed bank guarantees: € 983,538.23*

*Amount wrongly claimed: € 432,800.32*

*Already refunded: € 42,816.93*

*Settled: € 192,678.10*

*The item 'partially wrongly claimed bank guarantees' will be adjusted downwards if and in case a lessor can prove that the bank guarantee has been claimed rightfully. Not yet all lessors have shared their definitive assessment of their legal position.*

### **Work accounts receivable**

Report 1: 7.9 hours

Report 2: 10.03 hours

Report 3: 2.35 hours

Report 4: 9.2 hours

Report 5: 9.6 hours

Report 6: 11.5 hours

Report 7: 10,45 hours

Report 8: 1.5 hours

Report 9: 0.0 hours

Report 10: 0.0 hours

Report 11: 0.3 hours

Report 12: 0.15 hours

Report 13: 0.45 hours

Report 14: 0.35 hours

## **5. Bank / securities**

### **Claim of bank(s)**

#### **Leases**

See previous report.

#### **Description of securities**

See previous report.

#### **Position as a secured creditor**

See previous report.

#### **Retention of title**



See previous report.

### **Rights of retention**

See previous report.

### **Right to claim back unpaid goods**

See previous report.

### **Estate contribution**

### **Work bank / securities**

Report 1: 272.65 hours

Report 2: 123.88 hours

Report 3: 59.05 hours

Report 4: 40 hours

Report 5: 50.60 hours

Report 6: 32.45 hours

Report 7: 6,8 hours

Report 8: 2.4 hours

Report 9: 0.55 hours

Report 10: 1.9 hours

Report 11: 6 hours

Report 12: 8.2 hours

Report 13: 10.20 hours

Report 14: 10.25 hours

## **6. Restart / continuation of the enterprise**

### **Operation / securities**

See previous report.

### **Financial reporting**

See previous report.

### **Work continuation of the enterprise**

See paragraph 6.8 of the previous report (Work continuation)

### **Restart of the enterprise**

### **Description**

See previous report.

### **Accountability**

See previous report.

### **Proceeds**

### **Work restart of the enterprise**

Report 1: 710.30 hours

Report 2: 305.62 hours

Report 3: 81.45 hours

Report 4: 169.85 hours

Report 5: 134.9 hours

Report 6: 45.45 hours

Report 7: 89,8 hours

Report 8: 31.1 hours

Report 9: 2.20 hours

Report 10: 3.45 hours

Report 11: 1 hours

Report 12: 4.95 hours

Report 13: 1.65 hours

Report 14: 2.6 hours

## **7. Regularity**

### **Accounting obligation**

Under research (see paragraph 1.7 of the report, “Causes of the liquidation”).

### **Filing of the annual accounts**

See report 10.

### **Unqualified audit certificate from auditor**

See previous report.

### **Payment obligation shares**

See previous report.

### **Mismanagement**

Under research (see paragraph 1.7 of the report, “Causes of the liquidation”).

### **Acting fraudulently in respect of creditors**

Under research (see paragraph 1.7 of the report, “Causes of the liquidation”).

### **Explanation regularity**

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

Report 13:

The report of the facts being prepared, but not completed properly. During the next reporting period the trustees will allocate extra manpower, to allow first investigative stage to be concluded.

### **Work regularity**

Report 1: 31.5 hours  
Report 2: 97.62 hours  
Report 3: 119.5 hours  
Report 4: 110.8 hours  
Report 5: 56.4 hours  
Report 6: 133.15 hours  
Report 7: 32,55 hours  
Report 8: 4.65 hours  
Report 9: 35.7 hours  
Report 10: 3.0 hours  
Report 11: 0.7 hours  
Report 12: 85.05 hours  
Report 13: 56.60 hours  
Report 14: 21.25 hours

## **8. Creditors**

### **Claims against the insolvent company**

€ 9.782.173,54

Employment Insurance Agency (Dutch UWV): € 6,125,009.36 (see explanation previous report).

Rent: € 3,657,158.13 (definite amount is under research, see explanation previous report).

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

Report 12:

### **Claims against the insolvent company of the Employee Insurance Agency (Dutch UWV) (preferential and competing)**

The preferential claim of the Employee Insurance Agency (Dutch UWV) has been paid in full (€ 5,770,665.72). 50% of the unsecured estate claims (50% of € 354,243.64 = € 177,171.82) has been paid.

### **Claim against the insolvent company of the lessors (competing)**

The current status of the estate makes it possible for a (partial) payment of the unsecured estate claims. For this reason the trustees have started the payment of 50% of the unsecured estate claims submitted by the lessors.

### **The step-by-step plan of the trustees is as follows:**

- Per location (or – if possible – per lessor, which depends on the circumstances of the case) the trustees will draw up an inventory of the claim submitted per lessor;
- Subsequently the submitted estate claim will be checked using the accounts of the liquidated assets, the accounts of the insolvent company, information received from the banks (including the claimed bank guarantees) and information received from the restarter;
- The lessor will be informed about the result of this check by the trustees, after which the lessor will be allowed a period to respond. After receiving the consent of the lessor on the result, a (partial) payment will be paid out by the bankruptcy estate.

### **(Interim) conclusion of trustees**

The examination has been concluded for approximately 75%. From the examination the following (interim) conclusions can be drawn:

- The lessors have submitted a total amount of € 4,552,964.15 of alleged unsecured estate claims to the bankrupt estate (NB: this is not a definitive amount: approximately 25% of the lessors/locations still needs to be checked).  
The above mentioned amount is considerably higher than the total amount of unsecured estate claims to the estate of the lessors that has been mentioned in the previous reports (€ 3,657,158.13). The difference is largely explained by the fact that most lessors initially submitted their unsecured estate claims as an unsecured bankruptcy claim, at least the usual registration of the estate claim and indication as such was (initially) omitted.
- After verification of the submitted unsecured estate claims the trustees are of the opinion that an amount of € 3,086,260.47 was indeed submitted with a just cause (NB: this is not a definitive amount: approximately 25% of the locations still need to be checked).

- Based on the assumption that the amount of € 3,086,260.47 as validated by the trustees is correct, a 50%-payment to unsecured estate creditors of € 1,534,089.72 may be expected. From the latter amount an amount of € 946,876.65 has been paid to the lessors.

### **Expected period for completing examination and possible second (partial) payment**

Based on the status of the bankrupt estate as well as the expected total amount of unsecured estate claims, a second (partial) payment is to be expected. Most relevant is the definitive position of the fiscal authorities with reference to their alleged preferential claim against the bankruptcy estate.

The trustees aim to finalize the examination of the claims of the lessors in the following reporting period, or at least to be able to report about a second (partial) payment. Since the estate claims have already been checked, a second (partial) payment shall be transferred significantly faster.

Report 13:

#### **(Intermediate) conclusions of the trustees**

The investigation has been completed for approximately 85%. From this investigation the following (intermediate) conclusions can be drawn:

- The lessors have submitted a total amount of € 5,050,040.45 of unsecured estate claims to the bankrupt estate.
- After verification of the submitted unsecured estate claims the trustees are of the opinion that an amount of € 3,413,229.71 was indeed submitted with a just cause.
- Based on the assumption that the amount of € 3,413,229.71 as validated by the trustees is correct, a 50%-payment to unsecured estate creditors of € 1,697,574.34 may be expected. From the latter amount an amount of € 1,238,685.33 has been paid to the lessors.

#### **No estate claim of the tax authorities**

The tax authorities have confirmed to the trustees that it will comply with the conclusion of the trustees that, in keeping with the ruling in the case of 'Geddes & Gilmore' of the Supreme Court, the turnover tax, due to the sale of supplies pledged to the bank during the continuation period, shall not be considered to be an estate claim.

Report 14:

#### **(Intermediate) conclusions of the trustees**

*The investigation has been completed for approximately 95%. From this investigation the following (intermediate) conclusions can be drawn:*

- *The lessors have submitted a total amount of € 5,545,204.62 of unsecured claims to the bankruptcy estate.*
- *After verification of the submitted unsecured estate claims the trustees are of the opinion that an amount of € 3,633,879.72 was indeed submitted with a just cause.*

- *Based on the assumption that the amount of € 3,633,879.72 as validated by the trustees is correct, a 50%-payment to unsecured estate creditors of € 1,807,899.35 may be expected. From the latter amount an amount of € 1,263,488.09 has been paid to the lessors.*

#### **Preferential claims of the tax authorities**

€ 18,023,823.00

#### **Preferential claims of the Employee Insurance Agency (Dutch UWV)**

€ 3,548,999.11

#### **Other preferential creditors**

€ 16,866,629.08

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

#### **Number of competing creditors**

510.

Approximately 510 creditors have submitted a claim.

#### **Amount owed to competing creditors**

€ 27,337,735.05

#### **Plan of action**

See paragraph 10.1 of the previous report.

#### **Work creditors**

Report 1: 214.75 hours

Report 2: 199.14 hours

Report 3: 141.00 hours

Report 4: 36.2 hours

Report 5: 55.9 hours

Report 6: 28 hours

Report 7: 68,6 hours

Report 8: 102.3 hours

Report 9: 51.1 hours

Report 10: 99.1 hours

Report 11: 108.95 hours

Report 12: 173.3 hours

Report 13: 92.05 hours

Report 14: 117 hours

## 9. Proceedings

**Name other party/parties**

**Nature of the proceedings**

See previous report.

**Stage of proceedings**

All proceedings have been concluded.

**Work proceedings**

Report 1: 15.60 hours

Report 2: 20.06 hours

Report 3: 12.50 hours

Report 4: 30.10 hours

Report 5: 11.7 hours

Report 6: 1.6 hours

Report 7: 4 hours

Report 8: 1.1 hours

Report 9: 0.0 hours

Report 10: 0.0 hours

Report 11: 0.0 hours

Report 12: 0.0 hours

Report 13: 0.0 hours

Report 14: 0.0 hours

## 10. Other

**Plan of action**

Report 12:

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

**Period of settlement of the liquidation(s)**

*See previous report as well as 8.1 (Claims against the insolvent company).*

**Submission of the next report**

*On or around January 2<sup>nd</sup> 2019.*

**Work other**

Report 1: 30.20 hours

Report 2: 75.35 hours

Report 3: 36.8 hours

Report 4: 26.00 hours

Report 5: 48.15 hours

Report 6: 40.4 hours

Report 7: 27,35 hours

Report 8: 24,9 hours

Report 9: 16.15 hours

Report 10: 14.6 hours

Report 11: 8.45 hours

Report 12: 17.2 hours

Report 13: 17.4 hours

Report 14: 7.2 hours