

*This is an English translation of the original Dutch text. In the case of a discrepancy between the English and Dutch texts, the Dutch text shall prevail*

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**THIRD PUBLIC BANKRUPTCY REPORT PURSUANT TO SECTION 73A OF THE DUTCH BANKRUPTCY ACT IN THE BANKRUPTCIES OF:**

1. **MS MODE GROUP B.V.**
2. **MS MODE HOLDING B.V.**
3. **MS MODE NEDERLAND B.V.**

**IN ADDITION, SECOND PUBLIC BANKRUPTCY REPORT PURSUANT TO SECTION 73A OF THE DUTCH BANKRUPTCY ACT IN THE BANKRUPTCY OF:**

4. **MS MODE FRANCE B.V.**
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Data of the companies:

1. The private limited liability company **MS MODE GROUP B.V.**, having its registered office in Diemen and its place of business at Diemermere 1 in (1112 TA) Diemen, entered in the Commercial Register under number 51331012,
2. The private limited liability company **MS MODE HOLDING B.V.**, having its registered office in Diemen and its place of business at Diemermere 1 in (1112 TA) Diemen, entered in the Commercial Register under number 52639649, and
3. The private limited liability company **MS MODE NEDERLAND B.V.**, having its registered office in Diemen and its place of business at Diemermere 1 in (1112 TA) Diemen, entered in the Commercial Register under number 33111725.
4. The private limited liability company **MS MODE FRANCE B.V.**, having its registered office in Diemen and its place of business at Diemermere 1 in (1112 TA) Diemen, entered in the Commercial Register under number 33184237

Bankruptcy numbers

- : 1. F/13/16/356  
2. F/13/16/357  
3. F/13/16/358  
4. F/13/17/217

Date of judgments

- : By order of the Amsterdam District Court, dated 5 August 2016, the first three companies were granted a provisional suspension of payments.  
By judgment dated 11 August 2016, the provisional suspensions of payments were revoked and at the same time the companies were declared bankrupt.  
The fourth bankruptcy was declared by the Amsterdam District Court by judgment dated 6 June 2017.

Declared on	: The first three companies were declared bankrupt on the joint application of the Board of Directors and the Administrators in the suspensions of payments.
	: The fourth bankruptcy was declared on the company's own application.
Receivers	: F.A.M. Nowee LL.M (Van Benthem & Keulen N.V., P.O Box 85005, 3508 AA, Utrecht, telephone: 030-2595567, fax: 030-2595507, email: franknowee@vbk.nl); and
	F. Kemp LL.M (Fort Advocaten N.V., P.O. Box 70091, 1007 KB Amsterdam, telephone: 020-6645111, fax: 020-6620470, email: kemp@fortadvocaten.nl).
Delegated Judge	: Ms I.M. Bilderbeek LL.M, Amsterdam District Court
Activities of the enterprise	: Wholesale and retail trade in ladies outwear.
Turnover data	: 0. <u>MS Mode Group, consolidated</u>
	2015 EUR 234,539,000
	2014 EUR 237,860,000
	1. <u>MS Mode Group B.V.</u>
	2015 EUR --
	2014 EUR --
	2. <u>MS Mode Holding B.V.</u>
	2015 EUR --
	2014 EUR --
	3. <u>MS Mode Nederland B.V.</u>
	2015 EUR 76,800,000
	2014 EUR 74,400,000
	4. <u>MS Mode France B.V.</u>
	2015 EUR --
	2014 EUR --
Average number of personnel	: 0. MS Mode Group, consolidated : 2,350
	1. MS Mode Group B.V. : 0
	2. MS Mode Holding B.V. : 0
	3. MS Mode Nederland B.V. : 935
	4. MS Mode France B.V. : 0
Date of report	: 1 December 2017
Reporting period	: 1 June 2017 to 30 November 2017 inclusive
Hours spent in the reporting period:	340.9 hours
Total amount of hours spent	: 3,184.50 hours.

Balance bankruptcy account(s)	:	1. MS Mode Group B.V.	:	EUR	zero
		2. MS Mode Holding B.V.	:	EUR	333.81
		3. MS Mode Nederland B.V.	:	EUR	2,393,155.55
		4. MS Mode France B.V.	:	EUR	zero

## GENERAL INTRODUCTION

This report provides insight into the most important developments in the previous reporting period. This report does not contain all of the data from the first report: for more extensive background information, please refer to the previous reports.

On 6 June 2017 MS Mode France B.V., as fourth company of the MS Group, was declared bankrupt. The reporting on the four bankruptcies has been consolidated, however the actual winding up will be carried out per company.

The reporting in these bankruptcies has been prepared in accordance with the Recofa Guidelines for Bankruptcies and Suspensions of Payments. However, for the processing of the financial data in an Interim Financial Report, we decided to use the model known under the name "Standard Financial Report", which was developed by the Winding Up of Bankruptcies Working Group 2011.

On 30 September 2017, C. de Jong LL.M was discharged, at his request, from his duties as Receiver, and the District Court appointed F.A.M. Nowee LL.M to replace him.

Only those reports which are printed on letter paper of Van Benthem & Keulen N.V. in Utrecht or Fort Advocaten N.V. in Amsterdam and bear a signature of the Receivers are authentic.

The Receivers have tried to compile this report with the greatest possible care but they do not vouch for the completeness or accuracy of all information contained in this report; in any case no rights may be derived from the information provided in this report. It is possible that further investigation will produce new or other facts or lead to different opinions or conclusions.

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## 1. INVENTORY

### 1.1 Introduction

The four companies declared bankrupt are part of the MS Mode Group; this concern was an internationally operating fashion retailer with approximately 400 shops in the Netherlands, Germany, Belgium, Luxembourg, France and Spain. The group will be hereinafter referred to as "MS".

MS Mode Nederland B.V. operated the shops. The central headquarters in Diemen was responsible for purchasing and directed all activities of the companies that were part of MS, including the foreign companies. These central departments of MS Mode Nederland B.V. took decisions on strategy, marketing and purchasing and also developed and compiled the collection, which was always done for the whole group. Approximately 140 employees worked at the central headquarters.

At the time of the declarations of bankruptcy, MS consisted of eleven companies, of which five had their registered office in the Netherlands. The group employed almost 2,500 people.

With the exception of MS Mode Spain B.V., all Dutch entities have been declared bankrupt. The shares in MS Mode Spain B.V. were transferred in the context of the restart.

The other, foreign, companies have their registered office outside the Netherlands and were dependent for the conduct of their business operations on the Dutch companies, to which the central organisation, the intercompany wholesale and the distribution were transferred. They have been declared insolvent under the law of foreign jurisdictions. These bankruptcies fall outside the scope of this report.

Moreover, MS Mode Group B.V. holds – whether or not via intermediate holding companies such as MS Mode Holding B.V. – the shares in the companies MS Mode GmbH, Sarl MS Mode France, MS Mode España S.L., MS Mode België N.V., MS Mode Luxembourg Sarl, MS Mode Distribution Sarl and MS Mode Asia Ltd., by means of which the foreign activities of the MS Mode Group were undertaken. The French participating interest always made a significant contribution to the results of MS. MS Mode Asia Ltd., which had its registered office in Hong Kong, was the only company that did not undertake retail activities but acted as an agent for the purchase of goods from suppliers in Asia.

MS also ran a web shop from the Netherlands in the foreign countries mentioned above.

After bankruptcy the Receivers strived to sell – parts of – the enterprise. These efforts were successful. More than 2/3 of the Dutch activities have been retained and activities are also being continued abroad.

### 1.2 Management and Organisation

On 28 January 2011 Maxeda Retail Group (a merger of Vendex and Koninklijke Bijenkorf Beheer B.V.) sold the chain of fashion shops M&S Mode for an amount of approximately EUR 55 million to Retail Beheer B.V. (formerly called Excellent Retail Branche Group B.V., also known under the name Excellent Retail Brands).

The name used at that time “M&S Mode” was changed to the current MS Mode, because later in 2011 the brand name, at any rate the right to use the ampersand sign (“&”) in the brand name, was sold to the British company Marks & Spencer. MS was paid a sum of EUR 37 million for this sale. From the proceeds, EUR 12 million was repaid on a loan from Rabobank, EUR 10 million was paid for repayment of a subordinated loan to Maracaibo Ltd and EUR 3 million was used to pay the costs involved in changing the brand name such as for example, new signing. The remainder was used to reinforce the cash position. EUR 26 million for goodwill was written off in the profit and loss account.

The shares in the capital of MS Mode Group B.V. were held by Retail Beheer B.V. (99.04%) and Stichting Administratiekantoor MS Mode Group (0.96%) until the end of June 2015. Retail Beheer B.V. also holds the shares in AT B.V. (America Today). Shortly before the bankruptcy, Retail Beheer B.V. transferred its shares in MS to Retail Beheer II B.V., which is not stated as such in Appendix I. The share transfer took place in order to thus deconsolidate the fiscal unity for the corporation tax. That transfer did not result in a material change of control.

Therefore, at the present time Retail Beheer B.V is only holding company of America Today; Retail Beheer II B.V. is holding company of MS.

The ultimate parent of both holdings is Excellent Retail Brands B.V. This company is controlled by J.G. Kahn Beheer B.V., J.J. Kahn Beheer B.V. and J.D. Kahn Beheer B.V.

The Board of Directors of MS Mode Group B.V., MS Mode Holding B.V. and MS Mode Nederland B.V. is formed by Ms E.M. Hoebe (CFO) and Mr M. Lagerweij (CEO, as from 1-1-2015). In the case of MS Mode Group B.V., the directors were each solely/independently authorised to represent the company, in the case of MS Mode Holding B.V. and MS Mode Nederland B.V., the Board of Directors was only jointly authorised. The Receivers have a fruitful cooperation with the Board of Directors.

MS Mode Group B.V. has a Supervisory Board, which supervises and advises the Board of Directors. The Supervisory Board comprises Mr R. M. Kahn, Mr D. J. Mok, Mr J. N. Scheffers and Mr E. D. Drok.

1.3 Balance Sheet Total, Turnover, Profit and/or Loss  
Please refer to the previous reports.

1.4 Ongoing Legal Proceedings  
There were no legal proceedings before the court.

1.5 Insurance Policies  
Please refer to the previous reports.

1.6 Lease  
Please refer to the previous reports. All lease agreements have been terminated.

1.7 Causes of the Bankruptcies  
At the time of the takeover in 2011, a credit agreement was concluded with Rabobank. The terms and conditions to be observed by MS are stated in this credit agreement. For that purpose, MS provided information each month to Rabobank.



It was established in the last quarter of 2015 on the basis of such a report that MS was not complying with the financial terms and conditions of the credit agreement. In response to this matter, Rabobank sent a notification of default on 4 February 2016. That was again the case after the first quarter of 2016, and on 14 April 2016 Rabobank then sent a letter to MS, in which it informed MS that in this period two of the financial ratios from the profit and loss account that were designated as conditions, namely the Ebitda Cover Test and the Absolute Ebitda, had been breached. This was deemed by Rabobank as continuing default.

Rabobank announced that in view of this situation, it wished to deliberate and would get back to MS. Then talks took place between MS, its shareholders, the Supervisory Board and the Rabobank Special Management Department in order to consider how the acute financing requirements could be met. Rabobank indicated during these talks that it was not prepared to provide further financing and demanded repayment of the entire contingent liability facility.

In an email letter dated 9 May 2016, Rabobank informed MS that the entire credit facility had to be fully repaid on 1 July 2016. The Board of Directors informed Rabobank that this was not attainable.

Rabobank reinforced its position by establishing rights of pledge on almost all assets (to the extent that these assets had not been already pledged). The shareholders were only prepared to consider further financing if, in exchange for this financing, securities would also be provided. Rabobank did not agree to this and insisted on an accelerated reduction of its position.

This situation generated a lot of tension and lasted until 15 July 2016. On 15 July 2016 the abovementioned report, which was drawn up by the Board of Directors and reviewed by PwC, was presented to the Supervisory Board and Rabobank.

The report did not cause Rabobank and the representatives of the shareholders and the Supervisory Board to reconsider its (repayment)/their (no longer prepared to provide additional financing) position.

In response to the report of 15 July 2016, Rabobank nevertheless decided to continue the credit relationship until 1 August 2016, in order to thus keep the business activities going with a view to a sale of MS as a going concern.

On 1 August 2016 it was clear that the sales process had not been successful. Rabobank had announced that in that case it would end the relationship. On 4 August 2016 notice of termination of the credit was given. On 3 August 2016 the Management applied for postponement of payment, which was granted on Friday 5 August 2016.

As there was no prospect whatsoever of being able to satisfy the creditors, and even the operating costs could not be paid, the Administrators were obliged to request withdrawal and with the Board of Directors' consent, the (provisional) suspensions of payments were converted into bankruptcies on 11 August 2016.

## 2. PERSONNEL

### 2.1 Number of Employees at the Time of Bankruptcy

MS Mode Nederland B.V.	:	935
MS Mode Group B.V.	:	0
MS Mode Holding B.V.	:	0

### 2.2 Number of Employees in the Year prior to Bankruptcy

### 2.3 Date of Notice of Dismissal

### 2.4 Explanatory Note

Please refer to the previous reports.

### 3. ASSETS

#### 3.1 to 3.4 Immovable Property

No ownership of immovable property or registered property was found.

#### Operating Assets

##### 3.5 Description

##### 3.6 Sales Proceeds

##### 3.7 Estate Contribution

##### 3.8 Preferential Claim of the Netherlands Tax and Customs Administration

##### 3.9 Stocks / Work in Hand

##### 3.10 Sales Proceeds

##### 3.11 Estate Contribution

##### 3.12 Intellectual Property Rights

Please refer to the preceding reports.

##### 3.13 Participating Interests

The bankrupt Dutch entities (indirectly) hold the shares in the following participating interests, please also refer to Appendix 1:

- MS Mode Asia Ltd.
- MS Mode France B.V.
- Sarl MS Mode France
- MS Mode België N.V.
- MS Mode Spain B.V.
- MS Mode España S.L.
- MS Mode Luxembourg Sarl
- MS Mode Distribution Sarl
- MS Mode GmbH

The directors appointed under the Articles of Association of the foreign companies are in all cases the same directors as in the Dutch companies. The Board of Directors is advised by local law firms.

The foreign companies operated independently, kept their own accounting records and took care of matters such as insurance, promotion and (tax) returns. The strategy was developed in the Netherlands. All stock was designed, purchased and sold intercompany to the foreign participating interests by MS Mode Nederland B.V.

MS Mode Nederland B.V. had concluded with the foreign companies transfer pricing agreements, which included agreements on prices, payments and margins. The purport of these agreements was to allow the foreign companies to operate with an operating margin of 2% (Belgium 3.5%). Settlements were made each year. If the turnover of a participating interest was disappointing and the operating margin was not met, MS Mode Nederland B.V. had to pay the difference between the realised margin and the operating margin. In this way, various current account relationships exist in the group.

The Receivers investigated the possibility of including the shares in the foreign participating interests in a possible restart. The shares in MS Mode Espana S.L., MS Mode Asia Ltd and MS Mode Luxembourg S.a.r.l were taken over, which results in the following overview of the foreign companies:

#### **MS France**

MS Mode Holding B.V. holds all shares in MS Mode France B.V. MS Mode France B.V. holds, in turn, all shares in Sarl MS Mode France. The preparation of the company's own bankruptcy application was completed. MS Mode France was declared bankrupt on 6 June 2017.

Key figures:

- 138 shops
- 659 employees
- EBITDA in 2015: € 8.5 million

**MS Belgium / Luxembourg**

**MS Germany**

**MS Spain**

**MS Asia**

Please refer to the preceding reports.

## 4. DEBTORS

### 4.1 Amount of Accounts Receivable

There was a limited receivables position, because MS, as a retail company, sold its stock in the shops against payment in cash.

The financial records show a receivables position of EUR 798,614 due from 28 debtors; largely old receivables or receivables from foreign parties.

Several substantial receivables have since been collected. In the preceding reporting period two of the three remaining receivables have been extinguished through setoff. There is now one remaining receivable of more than € 70,000 and in respect of this claim, talks on the amount of a renovation contribution are being conducted.

### 4.2 Proceeds

### 4.3 Estate Contribution

Please refer to the previous reports.

## 5. BANK / SECURITIES

### 5.1 Claims of Bank

Please refer to the previous reports.

### 5.2 Lease Agreements

Please refer to the previous reports.

### 5.3 Contributions and Cost Reimbursements

The Receivers have made various agreements, relating partially to estate contributions, and partially to allocation agreements, with Rabobank.

A fixed contribution in the costs of EUR 800,000 has been agreed.

In addition, the VAT - if due on the shop sales- will also be reimbursed to the Receivers.

An amount on account of necessary variable costs and essential suppliers, namely EUR 1,905,563, will first be deducted from the total gross sales proceeds of EUR 8,084,786. On top of that, an amount due to suppliers (see 5.5) of maximum EUR 805,322 will be deducted. Of the net proceeds to be thus calculated, an additional 19% is due to the Receivers as payment for the operating costs.

The Receivers received a proposal for a settlement from the bank. This raised substantive questions and these questions are under discussion.

In any case, the bank has acknowledged that it owes an amount of EUR 940,697. This amount has since been paid.

Discussions on additional amounts owed were held and these discussions resulted in an agreement that will be submitted to the Delegated Judge for approval.

### 5.4 Reservations of Ownership

### 5.5 Right of Reclamation

### 5.6 Rights of Retention

Please refer to the previous reports.

## 6. RESTART / CONTINUATION

### Continuation

6.1 Operation / Securities

6.2 Financial Reporting

6.3 Restart, Description

6.4 Proceeds

Please refer to the previous reports.

## 7. LEGALITIES

### 7.1 Accounting Records Obligation

The accounting records were well kept and organised. At unconsolidated level, additional information will have to be provided.

### 7.2 Filing of Annual Accounts

On time.

### 7.3 Unqualified Auditor's Report

Issued for the Annual Accounts 2014, but not for 2015.

### 7.4 Obligation to pay up Shares

Fulfilled.

### 7.5 Mismanagement

### 7.6 Actions prejudicial to the Creditors within the meaning of the *Actio Pauliana*

Our own further investigation resulted in a first (internal and confidential) memorandum, following which a further investigation will be carried out. In that context several parties will be (re-)interviewed by the Receivers.



## 8. CREDITORS

Claims can be filed via an online registration service. Creditors can file their claim for verification via the website [www.crediteurenlijst.nl](http://www.crediteurenlijst.nl), accompanied by (scanned) supporting documents. Any claim to a right of preference, a right of retention, a reservation of ownership and/or any other right should be explicitly stated and substantiated.

### 8.1 Estate Debts

These debts will have to be identified and set out in more detail. At present, the following amounts are recorded:

MS Mode Group B.V.	:	EUR	zero
MS Mode Holding B.V.	:	EUR	zero
MS Mode Nederland B.V.	:	EUR	4,090,877

The debt to the Employee Insurance Agency [*Uitvoeringsinstituut Werknemersverzekeringen*], hereinafter called "UWV", arising from the assumption of wage obligations represents the lion's share of the aforementioned amounts. The subrogation claims relate to a low preferential estate debt of EUR 3,060,601 in respect of wage obligations assumed and a high preferential debt of EUR 590,023 in respect of wage tax.

### 8.2 Preferential Claim of the Netherlands Tax and Customs Administration

Consultations on a correct determination of the tax positions were held with the Netherlands Tax and Customs Administration. A correct determination of the tax positions can be expected in the short term.

### 8.3 Preferential Claim of the UWV

The UWV has filed preferential claims of EUR 1,491,297 (wages) and EUR 280,363 (wage tax) in the bankruptcy of MS Mode Nederland B.V.

### 8.4 Other Preferential Creditors

This category of creditors has not yet been clarified either. To date, other preferential claims have been filed only in the bankruptcy of MS Mode Nederland B.V., however a part of these claims do not appear to be preferential but unsecured claims. At present, the following is recorded:

MS Mode Nederland B.V.	:	EUR	13,998,022
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### 8.5 Unsecured Creditors

1. MS Mode Group B.V. has, other than that for which it is jointly and severally liable to Rabobank, practically no regular trade creditors. There are several large intercompany debts to the other bankrupt companies;
2. MS Mode Holding B.V. has, other than that for which it is jointly and severally liable to Rabobank, practically no unsecured creditors;
3. In the bankruptcy of MS Mode Nederland B.V. an amount of EUR 35,272.389 has been filed. This amount is expected to increase.

At present, the following amounts are recorded:

MS Mode Group B.V.	:	EUR	16,466,779
MS Mode Holding B.V.	:	EUR	51,360
MS Mode Nederland B.V.	:	EUR	35,272,389
MS Mode France B.V.	:	EUR	0

8.6 Anticipated Manner of Settlement

In view of the current state of the bankruptcy proceedings, a definite answer on the manner of settlement cannot be given yet. However, unless considerable funds are realised, it seems likely that the bankruptcy will be terminated due to insufficient funds, whereby the estate debts can be paid or partially paid but not the tax debts.

## 9. LEGAL PROCEEDINGS

9.1 Opposing Party(ies)

9.2 Nature

9.3 State of Progress

Please refer to the previous reports.

## 10. OTHER

10.1 Period required for Completion of the Bankruptcy Proceedings  
Not yet known

10.2 Action Plan

The inventory phase has been completed.

The settlement of the rights of unpaid suppliers whose stock was sold has been completed.

In the context of the continuation of activities and the restart agreement, the Receivers stipulated the payment of reimbursements. Consultations were held and resulted in a draft agreement for which the approval of the Delegated Judge will be requested.

The tax position will be further determined. Consultations were held with the Netherlands Tax and Customs Administration in which considerable progress was made.

The Receivers are further investigating actions prejudicial to creditors and illegalities.

10.3 Filing of the Next Report  
In three months' time.

Prepared, signed and filed with the Amsterdam District Court Bankruptcy Registry on 1 December 2017.

F.A.M. Nowee,  
Receiver

F. Kemp,  
Receiver