

*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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**FOURTH 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, THIRD 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,
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 decision 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: 030-2595546, 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	: <u>0. MS Mode Group, consolidated</u> 2015 EUR 234,539,000 2014 EUR 237,860,000  <u>1. MS Mode Group B.V.</u> 2015 EUR -- 2014 EUR --  <u>2. MS Mode Holding B.V.</u> 2015 EUR -- 2014 EUR --  <u>3. MS Mode Nederland B.V.</u> 2015 EUR 76,800,000 2014 EUR 74,400,000  <u>4. 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	: 30 April 2018
Reporting period	: 1 December 2017 to 1 April 2018
Hours spent in the reporting period:	115.3 hours
Total amount of hours spent	: 3,300.00 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	2,269,713.42
		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 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.

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 both 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.

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. held – 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.

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

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.

The ultimate parent 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.

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

Please refer to the previous reports.



## 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

### 3.13 Participating Interests

Please refer to the previous reports.

## 4. DEBTORS

### 4.1 Amount of Accounts Receivable

Several substantial receivables have been collected. There is still 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 Claim of Bank

Please refer to the previous reports.

### 5.2 Lease Agreements

Please refer to the previous reports.

### 5.3 Contributions and Cost Reimbursements

Agreement has been reached with the bank on the contributions to be paid by it (perhaps with the exception of a VAT issue).

### 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 still have to be provided by the Board of Directors.

### 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*, Illegalities

Our own further investigation resulted in a first (internal and confidential) memorandum, following which further investigation is being 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.

The positions set forth below have been taken from the online registration service and have not yet been verified by the Receivers.

### 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	4,092,356

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 are being held with the Netherlands Tax and Customs Administration. These consultations can be expected to result in a correct determination of the tax positions 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	14,001,492
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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 35,321.413 has been filed. This amount is expected to increase.

At present, the following amounts are recorded:

MS Mode Group B.V.	:	EUR	16,469,256
MS Mode Holding B.V.	:	EUR	51,360

MS Mode Nederland B.V.	:	EUR	35,321,413
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.

Consultations on the settlement of the tax positions are being held with the Netherlands Tax and Customs Administration.

The Receivers are further investigating actions prejudicial to creditors and illegalities. A confidential report on this investigation will be submitted to the Delegated Judge in the short term.

10.3 Filing of the Next Report

In three months' time.

Prepared, signed and filed with the Amsterdam District Court Bankruptcy Registry on 30 April 2018.

F.A.M. Nowee,  
Receiver

F. Kemp,  
Receiver