

# HUDSON'S BAY

PUBLIC REPORT PURSUANT TO ARTICLE 73(A) OF THE BANKRUPTCY LAW IN  
THE BANKRUPTCY OF

**HBC NETHERLANDS B.V.**

**PUBLIC REPORT****pursuant to Article 73(a) of the Bankruptcy Act (FW),**

In the bankruptcy of the private limited liability company:

**HBC Netherlands B.V.,**

trading under the name Hudson's Bay,

established in (1181 ZE) Amstelveen at Buitenplein 101, registered with the Chamber of Commerce under number 65970411, hereinafter to be referred to as: "HBC Netherlands B.V."

with branch office in (1012 KK) Amsterdam at Rokin 17, 21, 49 and Nes 42;

with branch office in (1012 XJ) Amsterdam at Kalverstraat 212-220;

with branch office in (2311 ED) Leiden at Aalmarkt 22;

with branch office in (1315 VL) Almere at Citadel 16 1C;

with branch office in (2511 BJ) The Hague at Grote Marktstraat 48;

with branch office in (3011 PM) Rotterdam at Hoogstraat 185;

with branch office in (4811 WT) Breda at Karrestraat 8;

with branch office in (6211 CT) Maastricht at Grote Straat 5;

with branch office in (8011 TM) Zwolle at Nieuwstraat 51;

with branch office in (5211 JT) 's Hertogenbosch at Pensmarkt 8 and Schapenmarkt 2-4;

with branch office in (5038 AB) Tilburg at Heuvelstraat 33,

with branch office in (2011 SR) Haarlem at Grote Houtstraat 70,

with branch office in (7511 HN) Enschede at H.J. van Heekplein 85,

with branch office in (3811 LA) Amersfoort at Utrechtsestraat 27 and St. Jorisplein 24;

with branch office in (3511 LC) Utrecht at Rijnkade 5,

|                               |  |
|-------------------------------|--|
| Bankruptcy number:            | C/13/19/412 F  |
| Date of bankruptcy judgement: | 31 December 2019                                       |
| Bankruptcy report number:     | 02   |
| Report date:                  | 30 April 2020  |
| Supervisory judges:           | A.E. de Vos, LL.M. and K.M. van Hassel, LL.M.          |
| Administrators:               | E.P. Pandelitschka, LL.M., and S.D. van de Kant, LL.M. |
| Bankruptcy trustees:          | E.P. Pandelitschka, LL.M., and S.D. van de Kant, LL.M. |
| Activities:                   | The operation of Hudson's Bay department stores        |
| Turnover data:                | 2017: EUR 37,686,809                                   |
|                               | 2018: EUR 145,843,225                                  |

|                                |                                       |
|--------------------------------|---------------------------------------|
|                                | 2019: EUR 179,699,715                 |
| Number of employees:           | 1,046                                 |
| Bankruptcy reporting period:   | 1 February through 30 April 2020      |
| Hours spent during bankruptcy: | 1,101.8 hours                         |
| Total hours spent:             | 1,537.6 hours                         |
| Bankruptcy account balance:    | EUR 21.182.403,20 (per 30 April 2020) |

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***This public report builds on previous public reports. For a complete picture and a good understanding of the definitions used, it is therefore recommended to consult the previous public reports. Where desirable and/or useful, the trustees have omitted the information from the first reports (on the suspension of payments and bankruptcy). The additions to this report are shown in italics.***

**I. General information****1. Preliminary remarks**

***This second public report concerns the actions of the trustees in the bankruptcy from 1 February 2020 through 30 April 2020. For the background on the suspension of payments and the first month of the bankruptcy, the trustees refer to the first report dated 31 January 2020 on the suspension of payments or initial bankruptcy period.***

The bankruptcy trustees point out that part of the information was received from third parties and at this stage the information is not yet complete or been exhaustively checked by them. The bankruptcy trustees have not yet been able to verify all information included. It has not yet been ruled out that further investigation may result in new or different information which may require subsequent adjustment. This will be done in future public reports.

This public report does not constitute annual accounts or a prospectus. Creditors cannot derive any rights from this report.

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Advocaten ([www.certa.nl](http://www.certa.nl)) and Wieringa Advocaten ([www.wieringa.nl](http://www.wieringa.nl)).

## 2. The suspension of payments and conversion to bankruptcy

By application of 28 November 2019, the Board of HBC Netherlands B.V. applied to the District Court of Amsterdam for a suspension of payments.

By judgment of 31 December 2019, the District Court of Amsterdam declared the company bankrupt, while maintaining the cooling-off period (Article 63a of the Bankruptcy Act). E.P. Pandelitschka, LL.M., and S.D. van de Kant, LL.M., have been appointed bankruptcy trustees and A.E. de Vos, LL.M., and K.M. van Hassel, LL.M., have been appointed supervisory judges.

## 3. General information for creditors

On behalf of the bankruptcy trustees, the known creditors of HBC Netherlands B.V. have been contacted and requested to submit their claims to the bankruptcy trustees by e-mail to [crediteuren@hudsonsbay.nl](mailto:crediteuren@hudsonsbay.nl).

## 4. Communication

Although the bankruptcy has attracted the usual publicity, the administrators/trustees - in connection with the continuation of the orderly wind-down (more about this below) - have deliberately chosen not to communicate actively with the various stakeholders with press releases, but rather to communicate directly as much as possible with the trade unions, Works Council, employees, suppliers and (other) creditors.

## II. Reporting in accordance with Recofa

### 1. Inventory

#### 1.1. *Board and organisation*

HBC Netherlands B.V. was established on 4 May 2016 and carries out activities related to the operation of (most recently) fifteen Dutch branches of the originally Canadian department store 'Hudson's Bay'.

On the date of the suspension of payments, the Board of HBC Netherlands B.V. consists of Messrs F. Gröber (Director A), E. Boer (Director B) and J. van der Steen (Director B). A Director A and B are jointly authorised to represent the Board. There is no Supervisory Board.

On the date of the suspension of payments, all shares in HBC Netherlands B.V. are held by the Luxembourg company HBC Europe S.a.r.l. (hereinafter: "HBC Europe"). The Canadian

company Hudson's Bay Company (hereinafter: "HBC Company") has held all shares in HBC Europe since 1 October 2019 and is therefore indirectly the sole shareholder of HBC Netherlands B.V.

Since its incorporation in 2016, HBC Netherlands B.V. has been fully dependent on financing by its sole (indirect) shareholder HBC Company (through HBC Europe). The financing initially took the form of capital contributions and loans from the group to HBC Netherlands B.V. Early in 2018, the then-existing loan of EUR 33 million was converted into capital. Subsequently, new loans were granted. HBC Netherlands B.V.'s debt in respect of the loans amounts to EUR 74 million at year-end 2018. On 1 December 2018, HBC Company sold 50.01% of its indirect interest in HBC Netherlands B.V. to the Austrian company SIGNA Retail GmbH (hereinafter: "Signa"). As part of this transaction, the debt of over EUR 74 million to the group was repaid/converted into share capital. The trustees understand that the Board of HBC Netherlands B.V. was not involved in this transaction. As of that moment, European Department Store Holding S.a.r.l. in Luxembourg ("EDSH") was a 100% shareholder in HBC Netherlands B.V. 50.01% of the shares in EDSH are held by Signa and 49.99% are held by HBC Company. Even after this transaction, HBC Netherlands B.V. remains fully dependent on financing by its (now two) shareholders. Financing of HBC Netherlands B.V. is now provided by means of capital contributions. In June 2019, Signa and HBC Company announced that the 50.01% interest in HBC Netherlands B.V. held indirectly by Signa would be sold back to HBC Company as part of a much larger transaction. HBC Netherlands B.V. is not familiar with the underlying transaction documentation. The transaction would have been completed on 1 October 2019.

The accounts of HBC Netherlands B.V. show that Signa and HBC Company and/or their group companies have invested in total more than EUR 340 million in HBC Netherlands B.V. In addition, the lessors made available a total of approximately EUR 176 million in investment grants, which HBC Netherlands B.V. would repay in instalments via the lease payments.

*On 1 April 2020, the Galeria Karstadt Kaufhof department store group applied to the Essen District Court in Germany for a suspension of payments. Since 2019, the Signa Group has owned the entire group. This has not simplified the communication with regard to the administrative settlement of cases, especially as the financial administration was previously mainly performed in Germany.*

#### 1.2. Profit and loss

2017: EUR -/- 28,623,372;

2018: EUR -/- 81,446,208;

2019: EUR -/- 73,761,768 (through 28 November).

**1.3. Balance total**

2018: EUR 320,498,213;

2019: EUR 61,374,740 (through 30 November).

**1.4. Ongoing proceedings****Unibail-Rodamco Nederland Winkels B.V.**

On 31 July 2019, Unibail summoned HBC Netherlands B.V. to appear before the District Court of Amsterdam, claiming an amount of EUR 3,510,509 (excluding VAT), which amount was set off by HBC Netherlands B.V. against rent payments in connection with the investment contribution not paid by Unibail in the amount of this amount. In addition to HBC Netherlands B.V., HBC Company in Canada has also been subpoenaed based on a guarantee it issued. Due to the bankruptcy of HBC Netherlands B.V., these proceedings have been suspended with regard to HBC Netherlands B.V., but on 10 January last, the hearing took place between Unibail and HBC Company.

*By judgment of 21 April 2020, the District Court of Amsterdam ordered HBC Company to pay Unibail EUR 3,016,559.19 in rent arrears through July 2019, EUR 136,254.38 per month as basic rent for the period July 2019 through December 2019 (less the resumed rent payments), EUR 24,965 as an investment-related rent for August 2019, EUR 25,574 as an investment-related rent for the period from September to December 2019 and legal costs of EUR 3,935.83. Later, HBC Company informed the trustees that it has lodged an appeal summons to Unibail.*

**CBRE Maastricht and CBRE The Hague**

CBRE Maastricht and CBRE The Hague have summoned HBC Netherlands B.V. to appear before the District Court of The Hague, claiming I) that HBC Netherlands B.V. must continue to operate its stores after 31 December 2019 in accordance with the Hudson's Bay formula until 31 March 2022 and 31 July 2022, respectively, on forfeiture of a penalty of EUR 100,000 per day with a maximum of EUR 50,000,000; II) to have all announcements that HBC Netherlands B.V. would cease operations within 48 hours rectified on forfeiture of a penalty of EUR 50,000 per day with a maximum of EUR 2,000,000; as well as III) that whenever HBC Netherlands B.V. wishes to make public notices with regard to the rental properties it must first communicate with them on forfeiture of a daily penalty of EUR 50,000 with a maximum of EUR 1,000,000. On 26 November 2019, the Court dismissed CBRE's claims. CBRE did not appeal.

**Kroonenberg B.V. and Kalverpassage B.V.**

These companies have brought similar claims to those brought by CBRE, but before the District Court of Amsterdam. The District Court of Amsterdam granted the claims of Kroonenberg and Kalverpassage by judgment of 5 November 2019. Notice of these

judgments was served to HBC Netherlands B.V. on or about 12 November 2019 by Kroonenberg and Kalverpassage. HBC Netherlands B.V. lodged an appeal against these judgments, but the Amsterdam Court of Appeal upheld the judgments by decision of 26 November 2019.

#### 1.5. *Insurance*

The usual insurance has been taken out and is being examined by the trustees. Where possible, this insurance has been cancelled upon delivery of the leased department stores, or - most often in consultation with the insurer - they have already been cancelled due to the bankruptcy on the date of the bankruptcy.

#### 1.6. *Rent*

##### **Rent**

- 1.6.1. HBC Netherlands B.V. leases business premises on behalf of the department stores in Almere, Amersfoort (2 buildings), Amstelveen, Amsterdam Kalvertoren, Amsterdam Meathall, Amsterdam Rokin (3 buildings), Breda, Den Bosch (2 buildings), The Hague, Enschede, Haarlem, Leiden, Maastricht, Rotterdam, Tilburg, Utrecht, Zwolle and a distribution centre in Mijdrecht.

The total rental charge totalled more than EUR 4.7 million monthly (inclusive of VAT). The rent is paid through February 2020 (end of notice period). On 29 November 2019, the Board of Directors and the administrators terminated the lease agreements pursuant to Article 238 of the Bankruptcy Act with due observance of a notice period of 3 months.

The HBC Netherlands B.V. Utrecht branch was handed over to the lessor on 31 December 2019.

In all instances, the lease agreements based on which HBC Netherlands B.V. leased its retail premises, contain a guarantee from HBC Company to the lessor for payment obligations of HBC Netherlands B.V. under the lease agreement. In some cases, in addition to this guarantee, an additional guarantee from HBC Company - covered by bank guarantees - applies. For the time being, the total amount of guarantees issued by HBC Company appears to total approximately EUR 280 million.

*In this reporting period, all rented premises were vacated and returned. This was a quite considerably logistical task in which the trustees had to hire various external parties. All of the rented locations were delivered on time. Workable agreements have been reached with most of the lessors / property management.*

### Sublease

- 1.6.2. HBC Netherlands B.V. subleases business premises to various parties. These sublease agreements have also been terminated.

This subleasing concerns a branch of La Place Food at 11 locations, a branch of Topshop at 2 locations, a branch of Saks Fifth Avenue OFF 5th at two other locations and a Ron Blaauw restaurant at 1 location.

### 1.7. *Cause of bankruptcy*

The following very preliminary analysis is based on the initial discussions with the various people involved.

Despite the good intentions, the Hudson's Bay department stores of HBC Netherlands B.V. did not get off the ground sufficiently. Although various theories on the reasoning are circulating in the media, it is still too early for the bankruptcy trustees to come up with any realistic let alone in-depth analysis of the reasons and/or causes.

The bankruptcy trustees note however, that the administration shows that in the spring of 2019 the Board of HBC Netherlands B.V. was asked to develop a strategy based on integration and synergy with which HBC Netherlands B.V. could become profitable and in which the company was expected to operate until 2021. In the summer of 2019, the directors of HBC Netherlands B.V. were informed by the shareholders that the ongoing and heavily loss-making operation of HBC Netherlands B.V. had led them to decide that they wished to cease the business activities of HBC Netherlands B.V.

In September 2019, HBC Netherlands B.V. publicly announced that it will close its stores on 31 December 2019. Since then, HBC Netherlands B.V. has been engaged in the orderly conduct of its business activities. To enable this so-called 'orderly winddown', Signa and HBC Company made available financing of the operations on a proven cash-need basis until 31 December 2019 (including payment of creditors and landlords) and a settlement of these operations as of 31 December 2019, whereby no financing was provided for a termination of the department store leases as of 31 December 2019 or beyond that date. There was also a reason for this: the lessors have extensive security from one of the (indirect) shareholders, HBC Company. According to the underlying agreement, the financing obligation for Signa and HBC Company in the context of the orderly winddown will lapse in the event that HBC Netherlands B.V. applies for suspension of payments or is declared bankrupt. The possible claims of HBC Netherlands B.V. on the financing by Signa and HBC Company were capped at EUR 35 million.

In the period since, HBC Netherlands B.V. has worked hard to realise the plan to terminate and liquidate its business activities in a way that does justice to the interests of as many of

its stakeholders as possible.

The Board of HBC Netherlands B.V. - expressly requested by Signa - has engaged the services of Gordon Brothers International for the last period of the sale, which started at the beginning of October 2019. This party, which has acted in retail insolvencies in the Netherlands on several occasions, has carried out various activities and has also brought own (for the occasion purchased) stock into the stores. A detailed agreement has been concluded between HBC Netherlands B.V. and Gordon Brothers on the distribution of the proceeds of the stock sold by HBC Netherlands B.V. and Gordon Brothers (see also chapter 3).

In view of the depicted dependence on financing by the shareholders (see also 1.1), the cause of the bankruptcy for the time being appears to be that the shareholder(s) no longer wish to make good the (start-up) losses.

Further investigation is being carried out into (other) possible causes of the bankruptcy.

## **2. Employees**

### **2.1. *Number at the time of the bankruptcy***

According to the trade register data of the Chamber of Commerce HBC Netherlands B.V. there were 1,556 employees. According to the management's statement, 1,046 people were still employed as of 28 November 2019 (FTE 694.49). HBC Netherlands B.V. also employed a large number of freelancers, secondments and temporary workers.

### **2.2. *Number in the year prior to bankruptcy***

1,474 (FTE 960.27).

### **2.3. *Date of dismissal***

Within the framework of the so-called 'orderly wind-down', a social plan has been agreed upon in consultation with trade unions and the Works Council. As a result, settlement agreements were concluded whereby the employment contracts with the employees ended on 31 December 2019. In December 2019, the salaries for that month, the final accounts and pension entitlements from the estate were paid.

### **2.4. Under the social plan, the employees were entitled to severance pay guaranteed by the Canadian HBC and Signa. The funds for this were eventually made available on 27 December 2019 through a foundation set up specifically for this purpose and paid out to the employees.**

### **2.5. In view of the handover obligations to the lessors, the handover by the many subtenants, the removal of the hundreds of shop-in-shops, the distribution centre as well as the**

dismantling of the department stores, the trustees will be assisted in January and February 2020 by a group of approximately 30 people consisting of “old” personnel and hired workers.

- 2.6. *In January, a few employees submitted correction claims with respect to the final account payment and/or the payment under the social plan. After the claims were examined, a corrective payment round was carried out early February 2020 both for salaries and other emoluments as the social plan. The salaries of TEAM 2020 employees and reimbursements for hired-in staff were also paid in January and February. All employees received an annual statement. As far as the trustees are aware, all claims of the HBC Netherlands B.V. employees have been paid in full.*

*Although the trustees have already mentioned the strong commitment of the employees in the department stores in the previous report, it is certainly worth mentioning that the people of Team 2020 (see 2.5) did a great job over the past reporting period. Without their efforts, the trustees would never have realised the result achieved. The trustees are greatly indebted to them for that.*

### 3. Assets

#### Real estate

- 3.1. *Description*
- 3.2. *Sales revenue*
- 3.3. *Mortgage amount*
- 3.4. *Estate contribution*

As far as HBC Netherlands B.V. is aware, HBC Netherlands B.V. does not own any real estate. The head office, retail premises and distribution centre are rented.

*All of the real estate (head office, retail and distribution centre) was rented. HBC Netherlands B.V. did not own any real estate.*

#### Company assets

- 3.5. *Description*
- 3.6. *Sales revenue*
- 3.7. *Estate contribution*
- 3.8. *Preferential claims of the tax authority*

The assets of HBC Netherlands B.V. consist of shop inventory, stock, receivables from third parties, cash and cash equivalents (bank and cash equivalents) and possible IP rights.

### Inventory

The inventories of HBC Netherlands B.V. consist of office and shop inventories as present in the head office in Amstelveen, the distribution centre in Mijdrecht and shop inventories in the 14 department stores. The Valuating company Troostwijk appraised these assets shortly before the date of the suspension of payments. The majority of the office and shop inventories were sold to Kaufhof GmbH for an amount of EUR 3,300,000, which is well above the appraised liquidation value. The removal of these inventories and the timely dismantling and handover of the leases is an enormous logistical operation. The trustees aim to finalise this by 1 March 2020.

In addition, (part of) the remaining shop inventory that was not purchased by Kaufhof GmbH or - for logistical reasons - is not included. Here, too, the previous appraisal values are leading for possible sales.

*The remaining properties in inventory have either been sold by the trustees or they have waived these properties (because these properties represent(ed) a de facto negative value).*

### Stock

There were three types of saleable goods in the department stores: items purchased by HBC Netherlands B.V. (own stock), concession- and consignment goods and goods brought in by the Gordon Brothers.

| 29-11/31-12 (moratorium) | EUR        | incl. VAT     |
|--------------------------|------------|---------------|
| own stock                | 12,746,536 | 15,423,308.56 |
| consignment*             | 5,279,444  | 6,388,127.24  |
| Concession               | 766,666    | 927,665.86    |
|                          | 18,792,646 | 22,739,101.66 |
| *Gordon Brothers         | 2,557,355  | 3,094,399.55  |

\*Gordon Brothers' stock turnover is included in consignment turnover

- 3.9. From the date of the suspension of payments, the sale of the stock in the department stores continued. By 31 December 2019, all stock in the department stores had been sold. See also chapter 6.
- 3.10. *Description*
- 3.11. *Sales revenue*
- 3.12. *Estate contribution*

Other assets

- 3.13. *Description*
- 3.14. *Sales revenue*

The trustees are investigating whether there are still possible IP rights.

*In the context of the investigation into possible IP rights, there was possible interest from third parties in the customer data of HBC Netherlands B.V. collected in the context of the loyalty programme and the newsletter, as well as the data of online store customers. For reasons of privacy protection, the trustees have decided not to investigate this further. The trustees have instructed the processor to delete the data or formally terminate the processing services, which implies that the processor was obliged to delete the data in accordance with the GDPR regulations.*

*HBC Company has indicated the trustees that it wishes to terminate the use of the trademark based on the Trademark Licence Agreement 2018.*

## Refunds

*HBC Netherlands B.V. has made various advance payments to service providers. The trustees have requested these parties to draw up final statements of account and to repay the advances, whether after offset or otherwise. As of the reporting date, an amount of EUR 722,878.57 has been received in refunds.*

**4. Debtors**

- 4.1. *Amount of receivables*
- 4.2. *Yield*
- 4.3. *Estate contribution*

*HBC Netherlands B.V. has claims against third parties. This concerns receivables from subtenants as well as receivables from suppliers who have taken back stock already paid for in the context of agreements made before the date of suspension of payments and have sent credit notes to HBC Netherlands B.V. for this purpose.*

*The trustees have continued to collect on debts. As of the date of suspension of payments, this has resulted in an amount of EUR 2,307,685.37 including VAT.*

**5. Bank / collateral**

- 5.1. *Claims from bank(s)*  
No claims from banks are known to the administrators.
- 5.2. *Lease contracts*

Various items are leased at the head office, the distribution centre and the stores.

In addition, HBC Netherlands B.V. also leases cars. Most lease cars were returned at the end of December 2019. Some 11 lease cars will be used by the Hudson Bay's 2020 team in January and February 2020 during the dismantling period.

5.3. *Description of security*

5.4. *Separatist position*

5.5. *Estate contribution*

Euro delkredere GmbH and Zurich Insurance reported to the administrators shortly after the suspension of payments was declared and indicated that they have a pledge on (part of) the stock, insofar as this stock was supplied by suppliers affiliated with euro delkredere. Euro delkredere provides a payment service between HBC Netherlands B.V. as the buyer and various suppliers, whereby Euro delkredere has undertaken vis-à-vis these affiliated suppliers to compensate them for any loss that these suppliers may suffer as a result of non-payment of their claims against HBC Netherlands B.V. Euro delkredere has insured its obligation to indemnify its affiliated suppliers with Zurich Insurance and has (re)transferred this claim in advance to the suppliers. euro delkredere and Zurich Insurance have agreed with HBC Netherlands B.V. that they have established a pledge on stocks held by HBC Netherlands B.V. as security for payment to be claimed from HBC Netherlands B.V. by the former. It is therefore not (explicitly) the case that all suppliers of HBC Netherlands B.V. are affiliated with the payment service of euro delkredere. During the suspension of payments procedure, the administrators continually discussed the amount of the claims relating to the continuation of the sale with euro delkredere. Any unpaid and goods have been paid for by the estate - after inspection by the financial department - provided that it had also been established that there was a lien on them. Deliveries after 1 October 2019 were and are no longer insured by euro delkredere and are therefore not subject to any pledge.

*The claims of the suppliers - some of which were only made known in the previous reporting period - on whose behalf euro delcredere is acting, have now (more or less) been settled.*

5.6. *Ownership retention*

5.7. *Advertising rights*

5.8. *Retention rights*

To the extent that a claim has been made for retention of title, right of complaint or right of retention, the administrators have settled this.

## 6. Restart / Continuation

### Continuation

#### 6.1. *Operation/security*

#### 6.2. *Financial reporting*

Immediately after the granting of the suspension of payments on 28 November 2019, the Board of Directors and the administrators noted that the continuation of the warehouse operation after 31 December 2019 was not realistic, and therefore the leases of the leased premises were terminated on 29 November 2019 pursuant to article 238 Dutch Bankruptcy Act with 3 months' notice. Subsequently, the subtenants were informed about this and the relevant sub tenancy agreements were also terminated. Continuation beyond 31 December 2019 was not realistic as a social plan had been agreed with all personnel whereby the employment contracts would be terminated on 31 December 2019. As part of the orderly wind-down, it was also the intention to cease all activities as of that date. Hence, no new stock had been purchased for some time and the sale was also aimed at empty sales as of that date. Agreements had already been reached with concession and consignment holders/shop in shops (SIS) to cease sales and dismantle the shops on 15 December.

At the beginning but also in the subsequent period, the administrators and the Board of Directors noted that the available liquidities in combination with the funds that became available as a result of the successful liquidation sale made it possible to fully meet the obligations arising from the suspension of payments. In order to limit the unrest among personnel, wholesale suppliers as well as the concession and consignment suppliers in shops, landlords and subtenants as much as possible, and thus increase the chance of success in maximising revenue during this period, it was decided to continue the orderly winddown already initiated as much as possible, but in a controlled orderly way. The controlled form was aimed, among other things, at limiting and preventing the unnecessarily increasing debt burden, for which good agreements had been made with various suppliers about the settlement of their positions. In addition, this involved optimising the remaining sales process in relation to continuously updating the cash flow forecasts, by monitoring on a daily basis whether HBC Netherlands B.V. could continue to meet its continuing obligations. However, it did prove necessary to pay a large number of essential suppliers. The already ongoing discontinuation sale in the stores has been continued. Additionally, the store in Utrecht had already been closed based on an earlier agreement with the relevant lessor and had been handed over in accordance with the relevant agreements on 31 December 2019.

During the suspension of payments procedure, a great deal of time was spent - in addition to the continuation of the sales - on further checking and limiting ongoing (financial) obligations.

In September 2019 the parties involved agreed upon a social plan for the employees. As

mentioned above, this social plan was finally secured and implemented on 27 December 2019. During the suspension of payments, all employees therefore received the salary for the month of December 2019, their final settlement, as well as a benefit under the agreed social plan.

In the meantime, the closure-sale of the stores was so successful that even before 31 December 2019 some stores had to close as they simply ran out of stock. In the end it turned out that all stock had been sold as of 31 December. In the final days, only the stores with a contractual operating obligation remained open until 31 December 2019.

The administrators and the Board of HBC Netherlands B.V. owe the staff, the Works Council and staff of HBC Netherlands B.V. a debt of gratitude that the period from the date of the suspension of payments until 31 December 2019 was so successful.

During the suspension of payments period, HBC Netherlands B.V. ultimately achieved retail sales of EUR 22,739,101.70 (inclusive of VAT). In addition, all necessary costs have been paid, including many forced creditors, which, however, maximised the turnover and, incidentally, considerably reduced the debt burden by making the relevant arrangements.

*During the suspension of payments period, HBC Netherlands B.V. ultimately achieved retail sales in the department stores of EUR 24,328,336.20 (inclusive of VAT) from the period of suspension of payments, including the credit card payments and cash receipts received subsequently. Additionally, the requisite costs have been paid, including many essential suppliers, which maximised the turnover however and, incidentally, considerably reduced the debtburden by making relevant arrangements.*

#### Restart

- 6.3. *Financial reporting*
- 6.4. *Description*
- 6.5. *Accountability*
- 6.6. *Yield*

As a result of the judgment of the Amsterdam Court of Appeal, HBC Netherlands B.V. was obliged to continue operating the stores in Breda and at the Kalverpassage in Amsterdam after 1 January 2020, subject to a penalty of EUR 100,000 per day per store. As a result, on 31 December 2019, the administrators and Board of Directors applied to the Court to convert the suspension of payments into bankruptcy. As a result, the penalty payments will not be forfeited and will not be included in the liabilities when the bankruptcy is settled.

By continuing the orderly wind-down and selling the entire stock and the store inventory at the end of December 2019, a continuation after bankruptcy was not an option.

After the empty sales of the department stores, the store and office inventory purchased by Kaufhof was moved out. This relocation is a logistical challenge and a schedule and plan for each store has been started. All stores must be evacuated by Kaufhof by mid-February 2020. However, Kaufhof is not taking all shop inventories with it, which the trustees are aware of. Daily consultations are being held between Kaufhof and the trustees about this clearance, because the trustees are required to handover to the lessors in time and properly in accordance with the stipulations of the lease agreements. In the coming period it will become clear whether Kaufhof and the trustees will be able to achieve this designated goal.

*Further agreements were made with Kaufhof regarding, among other things, the dismantling(process) of the shop inventories it had purchased due to the additional costs the estate was required incur on behalf of Kaufhof. These (further) agreements have resulted in Kaufhof still having to make a payment to the estate of EUR 65,400. Due to the aforementioned postponement of payment by Kaufhof, it is still unclear when this amount will be paid.*

## **7. Lawfulness**

### **7.1. Accounting duty**

The administration of HBC Netherlands B.V. is carried out at the office of a (former parent) group company in Germany, making it more challenging in some areas to understand and/or obtain adequate insights in (parts of) the administration. The trustees are in the process of securing the relevant (digital) administrations with external assistance.

*The trustees have secured the relevant digital records with external assistance. As a result of the corona restrictions, the physical transfer of this secured administration has been delayed somewhat, but this will take place in the coming reporting period.*

### **7.2. Annual accounts filing**

### **7.3. Auditor's certification**

### **7.4. Obligation to pay up shares**

Under investigation

### **7.5. Maladministration**

### **7.6. Fraudulent action**

As is customary, the trustees will investigate these matters in the future.

**8. Accounts payable**

8.1. *Body of creditors*

8.1.1. Suspension period

EUR 26,085,455.99 (inclusive of VAT) + PM.

8.1.2. bankruptcy period

EUR 36,657,922.80 (EUR 10,572,466.95 of which in the bankruptcy period)  
(including VAT) + PM.

8.2. *Preferential claims from the tax authorities*

The Tax authorities were paid an amount of EUR 5,242,155 in respect of VAT and wage tax during the moratorium period and an amount of EUR 2,522,562 after the bankruptcy date.

*Primarily as a result of the estate's rental payments for January and February 2020, the estate has VAT to recover from the tax authorities. The VAT declaration for the period in question and the refund to be obtained at that time is currently being prepared in consultation with the Tax and Customs Administration. No outstanding claims against HBC Netherlands B.V. have been reported by the tax authorities.*

8.3. *Preferential claim(s) of the Employed Person's Insurance Administration Agency (UWV)*

The trustees are not aware of any claims by UWV. All known entitlements of the personnel of HBC Netherlands B.V., including pension obligations, have been paid.

8.4. *Other preferential creditors*

The trustees are not aware of any other preferential creditors.

8.5. *Number of competing creditors*

According to the administration, there were approximately 1,100 creditors on the date of the suspension of payments.

8.6. *Amount of ordinary / unsecured creditors' claims*

According to the administration, ordinary / unsecured creditors (could) have claims amounting to approximately EUR 50 million as of the date of the suspension of payments. This does not include claims of personnel, the Tax authorities, UWV, lessors as of 1 January 2020 and utilities.

8.7. *Expected method of settlement*

At this moment it is not yet possible to give a realistic prospect to the ordinary / unsecured creditors. The prospects for the (as yet unpaid) estate and preferential creditors are not unfavourable.

*Although it is relatively early in the process of the bankruptcy, the trustees believe that the prospects of unsecured creditors receiving a payment on their claim are cautiously optimistic. For the time being, it appears that the (not yet paid) estate and preferential creditors can be paid. In view of this, the trustees will ask the bankruptcy judges to set a date for the creditors' meeting.*

## **9. Proceedings**

### **9.1. Name of other parties**

A (former) employee of HBC Netherlands B.V., Rotterdam branch.

### **9.2. Nature of the proceedings**

Contestation of a summary dismissal issued on 7 November 2019, claim for payments

### **9.3. Status of the proceedings**

*The subpoena was issued after the suspension of payments date (12 December 2019). Parties are discussing a settlement.*

*The parties have reached an arrangement which has been approved of by the supervisory judges.*

### **9.4. Name of Other Parties**

Gordon Brothers International LLC

### **9.5. Nature of the proceedings**

*By writ of summons dated 1 April 2020 before the Court of Amsterdam in preliminary relief proceedings, Gordon Brothers International LLC demanded immediate payment from the estate of EUR 6,656,672.58 based on contractual agreements and/or - alleged - execution costs. The trustees believe that both the amount of the claim and the ranking claimed are incorrect.*

### **9.6. Status of the proceedings**

*After rejoinder, the case is now pending judgment on 14 May 2020..*

### **9.7. Name of Other Parties**

*The following parties are listed as interested parties are listed in the application:*

- 1) ASR Dutch Prime Retail Custodian B.V.*
- 2) ASR Property Fund N.V*

- 3) *ASR Utrecht Real Estate Investments Netherlands B.V.*
- 4) *CBRE DRET Custodian I B.V.*
- 5) *CBRE DHC Den Haag (Grote Marktstraat V) B.V.*
- 6) *CBRE DHC Maastricht (Grote Staat V) B.V.*
- 7) *Kalverpassage B.V.*
- 8) *Kroonenberg Groep B.V.*
- 9) *“Stichting de Samenwerking”, Pension Fund for the Dutch Butchers Industry*
- 10) *Rokin 21 B.V.*
- 11) *Rokin 49 B.V.*
- 12) *Meatpacking B.V.*
- 13) *Rokin 17 B.V.*
- 14) *Monumenten L&P V B.V.*
- 15) *Stichting tot Behoud van Monumenten Laurentius en Petroneila*
- 16) *Unibail-Rodamco Nederland Winkels B.V.*
- 17) *Allianz Lebensversicherungs A.G.*
- 18) *Rotterdam Hoogstraat 185 Immobilien s.a.r.l.*
- 19) *AG Beursplein Rotterdam Coöperatieve U.A.*
- 20) *Royalton Hill B.V.*
- 21) *Blokvast XV B.V.*
- 22) *Breedvast BHM B.V.*
- 23) *XPO Supply Chain Netherlands B.V.*
- 24) *Mr E.P. Pandelitschka in his capacity of trustee in the bankruptcy of HBC Netherlands B.V. (in liquidation)*
- 25) *Mr S.D. van de Kant in his capacity of trustee in the bankruptcy of HBC Netherlands B.V. (in liquidation)*

#### 9.8 *Nature of the proceedings*

*By petition of 27 March 2020, HBC Company requested the Amsterdam district court to order a preliminary hearing of witnesses.*

*The case can be summarised as follows.*

*Parties 1 through 22 (the “Lessors”) are or were the owner and/or lessor of properties that were let to HBC Netherlands B.V. (in liquidation) (“HBC NL”). In connection with the lease to HBC NL, some Lessors have obtained certain guarantees from HBC Company, at the time the indirect owner of HBC NL. Party 23, XPO, has obtained guarantees from HBC Company in relation to a Logistic Services Agreement (‘LSA’) it entered into with HBC NL.*

*By hearing witnesses under oath, HBC Company wishes to investigate and collect evidence of a potential infringement of European and/or Dutch competition law in the conclusion of the said lease agreements between the Lessors and HBC NL and the LSA between XPO and HBC NL and the inseparable conclusion of certain guarantees between the Lessors and XPO*

*on the one hand and HBC Company on the other hand.*

*Legal relevance (according to HBC Company): direct or indirect coordination of conduct between two or more of the Lessors and XPO may be contrary to European and/or Dutch competition law, which - on account of a breach of public order or otherwise - leads to the nullity of the legal acts in question (Article 101 TFEU, Articles 6(1) and (2) of the MA and Article 3:40(1) of the DCC), and according to HBC Company there are strong indications that the Lessors and XPO are guilty of this.*

#### 9.9 *Status of the proceedings*

*A number of interested parties objected to the granting of the application. The trustees have deferred to the court's decision in the matter. The court has announced that a hearing on the application is likely to be scheduled in the third quarter of 2020.*

### 10. **Miscellaneous**

#### 10.1. *Term of settlement of bankruptcy*

At present it is not yet known how much time it will take to wind up the bankruptcy.

#### 10.2. *Plan of approach*

In the coming period, the bankruptcy trustees will mainly focus on:

- The settlement of the sale of the assets by Kaufhof and its logistics;
- The (timely and sound) handover of the 14 department stores, the distribution centre and the head office;
- Examination and collection of the accounts receivable portfolio;
- The settlement of ongoing proceedings;
- Examination of the administration;

Investigation into the causes of the bankruptcy.

#### *Plan of approach*

In the coming period, among other things, the trustees will focus on:

- Examination and collection of the accounts receivable portfolio;
- Examination and collection of refunds;
- The settlement of ongoing proceedings;
- Examination of the administration;
- Investigation into the causes of the bankruptcy.

10.3. *Submission of next report*

The next public report will be submitted in three months' time.

Amsterdam, 30 April 2020

E.P. Pandelitschka, LL.M.

S.D. van de Kant, LL.M.

Annex 1: Overview of hours of suspension of payments period

Annex 2: Overview hours of bankruptcy period through 30 January 2020

Annex 3: Financial report suspension of payments

Annex 4: Statements of assets and liabilities as of 31 December 2019

Annex 5: Interim financial report bankruptcy period through 29 January 2020

Annex 6: Statements of assets and liabilities as of 30 January 2020