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**SECOND PUBLIC BANKRUPTCY REPORT IN THE BANKRUPTCIES OF:**

1. **MEXX EUROPE B.V.**
2. **MEXX HOLDING NETHERLANDS B.V.**
3. **MEXX EUROPE INTERNATIONAL B.V.**
4. **MEXX EUROPRODUCTION B.V.**
5. **MEXX EUROPE HOLDING B.V.**

**FIRST PUBLIC BANKRUPTCY REPORT IN THE BANKRUPTCY OF:**

6. **MEXX LIFESTYLE B.V.**
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Details of the companies

- : 1. The private limited liability company  
**MEXX EUROPE B.V.** (hereinafter: “**ME**”), having its registered office and principal place of business at Johan Huizingalaan 400 in (1066 JS) Amsterdam, registered in the Commercial Register of the Chamber of Commerce under number 28054067;
2. The private limited liability company  
**MEXX HOLDING NETHERLANDS B.V.** (hereinafter: “**MHN**”), having its registered office and principal place of business at Johan Huizingalaan 400 in (1066 JS) Amsterdam, registered in the Commercial Register of the Chamber of Commerce under number 28048659;
3. The private limited liability company  
**MEXX EUROPE INTERNATIONAL B.V.** (hereinafter: “**MEI**”), having its registered office and principal place of business at Johan Huizingalaan 400 in (1066 JS) Amsterdam, registered in the Commercial Register of the Chamber of Commerce under number 28100841;
4. The private limited liability company  
**MEXX EUROPRODUCTION B.V.** (hereinafter: “**MEP**”), having its registered office in Voorschoten and its principal place of business at Johan Huizingalaan 400 in (1066 JS) Amsterdam, registered in the Commercial Register of the Chamber of Commerce under number 28054654;
5. The private limited liability company  
**MEXX EUROPE HOLDING B.V.** (hereinafter: “**MEH**”), having its registered office and its principal place of business at Johan Huizingalaan 400 in (1066 JS) Amsterdam, registered in the Commercial Register of the Chamber of Commerce under number 28048657.
6. The private limited liability company  
**MEXX LIFESTYLE B.V.** (hereinafter: “**ML**”), having its registered office and its principal place of business at Johan Huizingalaan 400 in (1066 JS) Amsterdam, registered in the Commercial Register of the Chamber of Commerce under number 53592174.

# FORT

Bankruptcy numbers	: 1. ME	F.13/14/662
	2. MHN	F.13/14/663
	3. MEI	F.13/14/664
	4. MEP	F.13/14/671
	5. MEH	F.13/15/49
	6. ML	F13/15/146
Date of judgment	: 1. ME	4 December 2014
	2. MHN	4 December 2014
	3. MEI	4 December 2014
	4. MEP	10 December 2014 (by judgment of the Hague District Court)
	5. MEH	3 February 2015
	6. ML	31 March 2015
Declared on	: 1. ME	own bankruptcy application
	2. MHN	own bankruptcy application
	3. MEI	own bankruptcy application
	4. MEP	own bankruptcy application
	5. MEH	own bankruptcy application
	6. ML	bankruptcy application filed by Enco Zakelijk B.V.
Receiver	: F. Kemp LL.M (Fort Advocaten N.V., P.O. Box 70091, 1007 KB Amsterdam, telephone: 020-6645111, fax: 020-6620470, email: mexx@fortadvocaten.nl)	
Delegated Judge	: C.P. Bleeker LL.M (formerly L. van Berkum LL.M)	
Activities of the company	: Wholesale trade in and design of clothing, operation of clothing and fashion item shops, coordination of production activities of group companies and related companies and exploitation of and trade in industrial property rights.	
Average number of personnel	: 1. ME	299
	2. MHN	282
	3. MEI	228
	4. MEP	1
	5. MEH	-
	6. ML	-
Date of the report	: <b>21 July 2015</b>	
Reporting period	: 23 February 2015 – 1 July 2015	
Hours spent in the reporting period	: 997.6 hours	
Total hours spent	: 3,777.1 hours	
Balance of the bankruptcy accounts:	1. ME	EUR 12,406,342.93
	2. MHN	EUR 4,062,596.53
	3. MEI	EUR 42,464.22

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4. MEP	EUR	-
5. MEH	EUR	-
6. ML	EUR	-

## GENERAL INTRODUCTION

As the bankrupt Mexx companies form part of the same group, the reporting on these bankruptcies has been consolidated. The bankruptcies will be settled per company and are therefore not consolidated.

The reports in these bankruptcies have been prepared in accordance with the Recofa Guidelines for Bankruptcies and Moratoriums of Payments 2009. In the processing of the financial data the choice was made to use the model known under the name "Standard Financial Report", which was developed by the Working Group on Settlement of Bankruptcies 2011. A Financial Report has been prepared for each company.

It was not always easy to allocate payments to the right company because internal legal relationships have not always been unequivocally recorded. For that reason, later adjustments may have to be made and these adjustments can affect the stated balances of the bankruptcy accounts.

If the activities in a specific chapter have been concluded, reference will be made to preceding reports. The information in the preceding reports still stands, unless explicitly deviated from in later reports.

Only those reports which are printed on letter paper of Fort Advocaten N.V. in Amsterdam and bear the signature of the Receiver are authentic.

In the preparation of this report, the Receiver has partially relied on discussions with directors, employees and involved third parties and on unaudited financial information.

The Receiver has not been able to verify all information and therefore does not vouch for the accuracy or completeness of all information contained 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 to 1.3 Introduction, Management and Organisation, Balance Sheet Total, Turnover, Profit and Loss  
For an extensive description of the backgrounds of the Mexx group, please refer to the First Consolidated Bankruptcy Report. The same applies for an overview of the management and organisation, for the balance sheet totals and for other financial information on profit or loss made.

The bankruptcy of Mexx Lifestyle (hereinafter “ML”) merits separate consideration, as its bankruptcy was declared after the first report.

Mexx Lifestyle was founded as Mexx Malibu B.V. on 21 September 2011. On 20 December 2012 the name was changed to Mexx Lifestyle. The shares in Mexx Lifestyle are held by Management Malibu Holdings (Lux) SARL (10.26%) and Gores Malibu Holdings (Lux) SARL (76.07%).

The board is comprised of Mr R.C.M.J. Reynders, Mr F. Goni and Mr M.R. Stone.

Mexx Lifestyle holds, in turn, the shares in the company incorporated under Canadian law, Mexx Canada Company and in Mexx Europe Holding B.V. and its subsidiaries. Mexx Lifestyle did not appear to conduct any additional or other activities than holding the shares and everything that goes with that (for example, issuing a group guarantee for obligations of subsidiaries). Its role in the financing constructions and the liquidation of Mexx Canada, in particular, will be considered in more detail.

On 31 March 2015 Mexx Lifestyle was declared bankrupt on application of Enco Zakelijk B.V.

### 1.4 Insurance Policies Settled.

Insurance policies were arranged through the insurance agent AON Risk Solutions. As a rule, the insurance policies were taken out by ML, the other entities were then co-insured. This involved in any case the following policies of ML:

- Corporate liability insurance
- Fire insurance (All Risks)
- Transport insurance
- Directors' liability insurance
- Supplementary directors' liability insurance
- Employment Practices Liability Insurance (since expired)
- Travel insurance (since expired)

All policies taken out through AON Risk Solutions have since been terminated.

### 1.5 Commercial Leases

All business premises were leased. The relevant premises in the Netherlands were the headquarters in Amsterdam, the distribution centre in Voorschoten, 19 shop premises, 32 Shop-in-Shops and a storage space at Schiphol Plaza. Out-of-court settlements pertaining to the conditions of termination of the commercial lease were made at various locations. All commercial leases have since been terminated and where appropriate, possession of the leased property has been transferred to the lessors.

A detailed summary is given below

## **Amsterdam Headquarters**

ME leased from Johan H (Amsterdam) B.V. six floors in the office premises at Johan Huizingalaan 400 in Amsterdam and all 200 accompanying parking places. The annual rent amounted to approximately EUR 2,250,000 including VAT. The Receiver terminated the commercial lease but in the meantime, it was terminated as from 6 February 2015 by mutual agreement after the restarting party (Mexx Global BV) had concluded a new commercial lease with the lessor. This is a beneficial manner of termination for the estate.

## **Voorschoten Distribution Centre**

ME and MH leased from ABN AMRO Bouwfonds Vastgoedfonds VII Distrifonds II Nederland C.V. and Stichting Bewaarder Distrifonds II a distribution centre (27,969 m<sup>2</sup>) with office space (5,530 m<sup>2</sup>) and 200 parking places in Voorschoten. The Receiver terminated the commercial lease whereupon the lessors invoked a bank guarantee.

It was then agreed that Mexx Global B.V. leases as from 7 February 2015 and that the commercial lease with ME and MEH was terminated on that date. On account of a refund in respect of the bank guarantee already paid out, that constitutes a gain of EUR 396,701.16 for the estate.

In addition to this, agreements were made on the manner in which possession of the property is transferred by the Receiver, which leads to an additional gain.

## **Own Shops**

MHN leased premises for Own Shops from various lessors. There are 21 commercial leases for the 19 shop premises in total. For an extensive description, please refer to the First Bankruptcy Report.

All commercial leases for the Own Shops have since been terminated. The majority of the commercial leases were terminated through expiration of the term of notice of three months under Section 39 of the Dutch Bankruptcy Act. An alternative manner of termination was provided for in respect of some commercial leases.

The shop in Lelystad was subleased for a period of more than five weeks.

The commercial lease for Schiphol Plaza was transferred to Mexx Global in the context of a subrogation under Section 7:703 of the Dutch Civil Code.

The shop premises in The Hague were subleased and transferred via subrogation.

The commercial lease for the shop in Nijmegen was prematurely terminated by mutual agreement and was continued by Mexx Global.

## **Shop-in-Shops Vroom & Dreesmann**

MHN leased 32 spaces (Shop-in-Shops) in warehouses of V&D. These Shop-in-Shops were continued by the Receiver until the restart. For the financial reporting on this continuation, please refer to Chapter 6.

In the context of the restart the commercial leases are continued by Mexx Global. Agreement on the settlement of amounts owed to Mexx in respect of the period before the bankruptcy has been reached with V&D and V&D has paid the Receiver an amount of EUR 873,717.00. This matter has thus been resolved.

## **Maasmechelen (Belgium)**

ME leased shop space in the Maasmechelen Village Outlet Centre in Belgium. The shop space was operated by a Belgian company. The commercial lease was terminated on 24 April 2015 and is continued by Mexx Global.

## 1.6 and 1.7 Various Activities and Causes of the Bankruptcy

Extensive information about the activities to be carried out in this bankruptcy was given in the First Bankruptcy Report. In the bankruptcy of Mexx Lifestyle that was declared at a later date, a first exploratory investigation is being carried out. In the other bankruptcies this phase of the inventory has, for the most part, been completed and the emphasis is on settling a large number of ongoing issues.

For information about the causes of the bankruptcy, please refer to paragraphs 1.6 and 1.7 of the First Bankruptcy Report. This information can be briefly outlined as follows.

After the merger of the brands Moustache and Emmanuelle, the company was sold to the American company Liz Claiborne. Liz Claiborne was a listed company and partly for that reason, had a strong focus on a growth scenario, which was compounded by the earn-out arrangement agreed with the seller/founder in 2001. This unbridled emphasis on growth led to a turnover-driven approach in which irresponsible guarantees on margins and rents were provided and the quality of the collection and the internal organisation and business processes were neglected. A response to innovative developments in the branch, such as the emergence of e-commerce, fast fashion and chain integration, was non-existent, or at any rate inadequate.

The sale to Gores in 2010 did not lead to improvements. Gores has knowledge in the technology branch in particular and did not manage to gain adequate control of the management and the strategic policy. The brand increasingly lost its allure and value; not enough marketing was done and too much trust was placed in the results of the wholesale activities. Mexx existed, according to a director, on a financial drip feed provided by Gore, which drip feed, however, was turned off in the course of 2014. The management was not able to cope with this situation. An opportunistic policy with attention focussed in particular on the new collection was conducted. The necessary restructuring was not carried out, the top-down hierarchy was felt to be demotivating and there was a failure to show sufficient vision and decisiveness.

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## 2 PERSONNEL

Completed as regards the companies named in the first report.

Mexx Lifestyle did not have any employees.

### 3. ASSETS

#### Immovable Property

3.1 to 3.4

Mexx did not own any immovable property.

#### Operating Assets

3.5 Description

Mexx's operating assets included the plant and equipment and fixtures and fittings of the Headquarters, the Distribution Centre, the Own Shops and the Shop-in-Shops. This property has been sold. For an extensive description, please refer to the previous bankruptcy report.

#### **Pilot**

Shop fixtures and fittings, delivered by Booma Import Export LTD, were stored at the premises of the freight transporter Pilot Freight Services B.V. Booma has a claim of EUR 350,000. The lot of shop fixtures and fittings has been valued at EUR 175,000 private sale value and 50,000 forced sale value.

There are conflicting claims. Pilot is asserting a right of retention and Booma has invoked a reservation of ownership, which has been acknowledged by the Receiver. The Receiver tried to mediate in reaching a settlement.

#### **Hirsch**

The lot of shop fixtures and fittings stored at the premises of Hirsch GmbH in Germany was valued at a forced sale value of EUR 5,000. Hirsch is asserting a right of retention. On account of the costs of removal and sale, the Receiver has decided not to exercise the possibility to claim the shop fixtures and fittings.

#### 3.6 Sale Proceeds

The proceeds to be allocated to the operating assets at the various locations are as follows:

Headquarters	EUR 203,000
Voorschoten Distribution Centre	EUR 621,000
Own Shops	EUR 108,000
Shop-in-Shops	EUR 51,000

To the extent that shop fixtures and fittings and office equipment and supplies have not been sold privately, this property will be sold via an Internet auction.

#### 3.7 Estate Contribution

The operating assets described had not been pledged. For that reason, no estate contribution is required.

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

As regards the claims of the Tax and Customs Administration, the preferential claim of the Tax and Customs Administration can have priority over the right of pledge under Section 21(2) in conjunction with Section 22(3) of the Dutch Tax Collection Act 1990. As the operating assets had not been pledged, this situation does not apply. The regular preferential claim of Section 21 of the Dutch Tax Collection Act 1990 applies to all claims of the Tax and Customs Authority.

## Stocks / Work in Hand

### 3.9 Description

Stocks, namely items of clothing or accessories produced and bought from suppliers on the instructions of Mexx, were found at various locations. The stock includes clothing from various collections dating from 2009 until (spring) 2015 and the permanent collection.

There were three important distribution centres where the stock was stored. Imported and shipped goods were stored at the premises of freight transporters, OTX Logistics B.V. and OTX Logistics Rotterdam B.V. From there the goods were transported to an own Distribution Centre in Voorschoten and to an external Distribution Centre of Alpha Textielveredeling B.V.

For various reasons the stock has been improperly intermixed in such a way that stocks can no longer be allocated to individual suppliers.

At the time of the declaration of bankruptcy, an unknown amount of goods were on hand in the shops. These stocks were sold in the context of the continuation of the shop activities and to a limited extent as part of the restart. Please refer to Chapter 6.

A further report on the important stock positions is set forth below.

#### **OTX Stock**

OTX retains a large quantity of goods in its possession, namely goods that Mexx purchased from suppliers. OTX accepted delivery of the goods from the 108 foreign suppliers on behalf of Mexx and transported these goods to the Netherlands. OTX then stored the goods until they were distributed to the two distribution centres. OTX has provided a specification of the goods that it has in its possession; there is uncertainty about the exact numbers.

OTX is claiming a right of retention and possessory pledge in respect of the goods it is holding. Various suppliers have claimed rights of a property law but also contract law nature. The Receiver is of the opinion that the property rights were transferred to Mexx. The stock is rapidly becoming obsolete and an attempt is being made to mutually reach a settlement and agreement.

#### **Voorschoten Stock**

There was a considerable quantity of items of clothing, according to Mexx's accounting records approximately 766,000 items, in the Voorschoten Distribution Centre; these items of clothing are exclusively stock items that are stored "flat".

The stocks were divided and packed in such a way that they were ready for shipment to customers and were distributed among approximately fifty thousand different storage bins. These stocks were recorded in the buyer's name not the supplier's name. Moreover, returned goods, i.e. goods of which the ownership was first transferred to customers and then were returned, were also stored in the Voorschoten Distribution Centre. This is an important cause of the previously mentioned mixing.

#### **Alpha Group Stock**

Approximately 93,000 items of clothing, exclusively "hanging" clothing, were in the premises of Alpha. Alpha has invoked a right of retention.

#### **Shop Stocks**

The exact amount of goods in the shops and their origins were unknown.

#### **Wohrl**

Under a consignment agreement with Rudolf Wohrl, AG stocks were stored there. The amount of these stocks were not recorded by Mexx. The goods were sold.

## **Fiege**

A stock of approximately 135,000 items was with FIEGE Logistik Stiftung & Co KG; these goods were exclusively goods returned by customers.

## **Other Stocks**

Various other parties, such as freight transporters and distributors, had stocks in their possession. The Receiver asked these parties to provide a specification of the goods in their possession. Many of them asserted a right of retention, pledge or a similar right under foreign law. These lots of goods were sold in consultation with the parties concerned.

## **Conclusion**

Conflicting claims arose in regard of the stocks that were mostly of a contract law nature, such as a right of retention, an ownership right, hidden or possessory pledge and a right of reclamation. Almost all issues have been settled by agreement.

## **Work in Hand / Customs**

There were complications in regard of several stocks on account of the fact that these stocks had not yet been cleared through Customs.

Mexx mainly purchased its stocks from parties established outside the European Union and therefore under the regulations the purchased goods then had to be imported before they could be sold within the EU. Mexx had been granted a licence from the Customs to independently clear goods that it received. As a result of the bankruptcy, the licence was cancelled. The importation procedure could only be completed through a customs agent and the administrative organisation of Mexx was not sufficiently equipped to meet the strict conditions set for this procedure.

### 3.10 Sale Proceeds of Stocks

#### **Voorschoten Stock**

A limited part of the stock was privately sold to parties in Russia and Kazakhstan; this sale yielded proceeds of EUR 1,780,949.06.

The remaining stock was sold in the context of the restart for an amount of EUR 1,850,000.

#### **Alpha Group Stock**

The stock at the premises of Alpha was also sold in the context of the restart for an amount of EUR 605,000.

The amounts of both proceeds are being held in deposit for the time being.

#### **Shop Stocks**

In the context of continuation of the activities of the Own Shops and the Shop-in-Shops, proceeds (incl. VAT) of EUR 3,784,289.19 and EUR 1,894,979.04 respectively were realised

The remaining stocks were sold for an amount of EUR 412,000.

#### **Wohrl**

The stocks at Wohrl generated proceeds of EUR 269,011.84.

## **Fiege**

The remaining lot of goods at Fiege was largely sold privately for an amount of EUR 1,164,968.00. Fiege is assisting the Receiver in the sale of the remaining goods.

## **OTX; Settlement with Suppliers**

The Receiver did not sell the OTX stock. A settlement concerning the claims a number of suppliers are asserting to various stocks was reached with them, with the consent of the Delegated Judge. Under this settlement (in broad lines) the Receiver acknowledges the claims of the supplier in question to the OTX stock and the supplier waives its claims to other stocks.

This settlement provides a pragmatic and attractive solution for the problem of the conflicting claims. The majority of the suppliers have accepted the solution.

### 3.11 Estate Contribution

ACF asserts a right of pledge to the stocks that were in the Netherlands and in transit to the Netherlands. The Receiver receives an estate contribution of 12.5% on the proceeds of the stock pledged to ACF.

## Other Assets

### 3.12 Intellectual Property Rights

#### **Description of IP Rights**

Mexx was the owner of a large amount of intellectual property rights, such as logos and brand names, copyrights, designs and models, registered with the Benelux Trademarks Register, the Office for Harmonization in the Internal Market and the World Intellectual Property Organization. The intellectual property rights included in total 420 nationally registered trademarks, 22 Benelux trademarks, 13 EU trademarks and 225 WIPO trademarks (Madrid Agreement). These IP rights, save for the nationally registered German trademarks, were held by ME.

#### **Licences P&G and OWP**

Mexx Global B.V. is continuing the licence agreements with Procter & Gamble International Operations S.A. ("P&G") and OWP Brillen GmbH ("OWP").

OWP is due to pay a licence fee up to 1 January 2015.

P&G is due to pay a licence fee up to and including 6 February 2015. The settlement between P&G and Mexx Global for the first quarter takes place in the second half of 2015. That has to do with the advance of EUR 700,000 that P&G paid into the Receiver's escrow account for the licence fee for the first half year of 2015. If the final fee owed is higher than the advance, then P&G will make an additional payment. If the fee is lower than the advance paid, the remainder must be refunded to P&G.

Initially, both licensees suspended their obligation to pay the licence fee for the fourth quarter of 2014 because the identity of the owner was unclear. Both ACF and Gores are claiming the first-ranking right of pledge. All parties concerned agree to an arrangement under which the licence fee is paid into the Receiver's escrow account.

#### **Rights of Pledge and Valuation**

A first-ranking right of pledge was established on the IP rights for the benefit of Crystal Financial LLC ("Crystal"). A second-ranking right of pledge was established for the benefit of a Gores company.

Discussion arose on the scope of the pledges with Crystal and Gores, because not all formal acts for the establishment of pledge had been fulfilled.

Parties were able to agree that a few IP rights had not been pledged.

The pledged IP rights were valued on the instructions of Crystal and Gores and a Forced Liquidation Value at 30 September 2014 of CAD 24,282,000, equal to approximately EUR 17,000.000<sup>1</sup>, was determined. However, various assumptions are linked to this valuation, such as the assumption that preparations had reportedly been made for an insolvency. That was not the case.

It was difficult to reach good agreements on the allocation of the purchase price. In order to facilitate the restart as much as possible, all intangible assets, which also included non-pledged elements such as goodwill and work in hand, were sold in a bundle. Therefore, it was the responsibility of the Receiver and pledgees to determine an allocation by mutual agreement. Parties extensively negotiated on this issue of allocation and finally agreement was reached. An important point for the Receiver in these negotiations was that the candidate selected for the takeover has a clear continuity scenario in mind, which will result in considerable secondary benefits for the estate.

The IP rights were sold for EUR 17,150,000 in the context of the restart. Of this amount, a portion of EUR 2,260,000 falls to the estate.

### 3.13 Participating Interests

For an overview of the various participating interests of Mexx, please refer to the Legal Tree attached as Appendix 1 to the First Bankruptcy Report.

#### **Mexx Asia**

Mexx Europe International holds all shares in Mexx Asia Pacific Ltd. The board of Mexx Asia Pacific requested the Receiver in his capacity as shareholder to assist in the filing of the application for bankruptcy by signing documents and to pay the costs involved. The Receiver requested relevant information, and as this information was not received, no assistance was provided.

#### **Mexx Singapore**

Mexx Europe holds all shares in Mexx Singapore Trading PTE Ltd. The trust office in Singapore provided the board of Mexx Singapore Trading, but was not paid. In this case too, the Receiver was requested to play a leading role (as shareholder), which request, in the absence of adequate information, could not be met. The trust office has since informed the Receiver that it wishes to proceed with a voluntary liquidation of Mexx Singapore. For that purpose an extraordinary shareholders' meeting and creditors' meeting will have to be held, at which meetings a statement of affairs is presented.

#### **Mexx Poland**

The restarting party, Mexx Global B.V., acquired in the context of the restart an option to acquire the shares in the capital of Mexx Poland Sp. Z.O.O. This option was further extended in the past reporting period. It is anticipated that in the coming reporting period the option will be exercised and the shares transferred.

#### **Mexx Hellas**

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<sup>1</sup> On the basis of the exchange rate at the date of this report.

In the past reporting period the shares that Mexx Europe International B.V. held in the capital of the Greek participating interest Mexx Hellas EPE have, as had been agreed in the restart agreement, transferred to the restarting party Mexx Global B.V.

## **Mexx Scandinavia AS**

The local receiver has sold the stock that was in the estate of Mexx Scandinavia AS at the time of the bankruptcy. An agreement on the division of the proceeds has been made.

A claim of EUR 1,774,102.07 has been filed in the bankruptcy of Mexx Scandinavia AS. A further substantiation of the claim has been requested, which request, in view of the possibility of a payment, will be met.

### 3.14 Location Goodwill

With reference to Chapter 1, paragraph 4, the assets of ME included the lease goodwill of the shops at Hartenstraat in Amsterdam and Oudegracht in Utrecht. Via subrogation the Receiver received EUR 72,500 for the goodwill of the shop at Hartenstraat in Amsterdam, and (to avoid subrogation) EUR 450,000 from the lessor of the shop at Oudegracht in Utrecht.

### 3.15 Cash

Brinks Waardetransport took care of the transfer of the cash of the 19 Own Shops in the Netherlands. The day after the declaration of bankruptcy Brinks discontinued its services. As from that moment the Receiver gave instructions that only payments by PIN can be made in the Own Shops. The Receiver took possession of the cash received thereafter, against receipt.

The total amount of cash, EUR 65,311.38, was deposited into the bankruptcy account.

## **Cheques**

Under an order redirecting the bankrupt companies' mail to the Receiver, a number of (French) cheques were received and the reason for these cheques and their origin could not be easily traced back to the financial records. The issuers of the cheques sent appear to be trade debtors. The total value is approximately EUR 350,000. An investigation is being carried out in order to ascertain whether the cheques are collectable, which parties are the issuers and which Mexx entity is the beneficiary.

## 4. DEBTORS

### 4.1 and 4.2 Amount of Accounts Receivable and Proceeds

Currency	Balance at start	Write off at start	Received	Outstanding
EUR	23,437,361	38,322	5,073,483	18,325,555
GBP	314,914		3,817	311,097
SEK	3,508,093	21,665	898,210	2,588,218
USD	3,667,371			3,667,371

The largest debtor of Mexx Europe is the Russian customer, BNS. At the invitation of BNS, the Receiver visited the headquarters of BNS in Moscow, together with a director of ACF, in order to discuss a repayment arrangement. On the basis of these agreements, BNS pays EUR 3.9 million spread over a number of months. BNS is complying with its agreements.

The collection of the accounts receivable is the responsibility of the pledgee ACF and is proceeding with difficulty. All claims that were eligible for collection were notified to credit insurer Atradius. Therefore, Atradius has, in the meantime, carried out a considerable amount of work, in Germany and France in particular. Many debtors are asserting a right to set off against damage claims or set off against credit invoices for returned goods. In addition to this, many debtors are setting off against marketing contributions and bonuses that Mexx Europe normally paid out. A lot of time and effort is required to assess all these claims to setoff. After the outstanding liability of ACF has been paid, the Receiver will assume responsibility for collection of the accounts receivable and where necessary, will take legal action.

Consultations will be held with a debtor in Hungary this month and failing an acceptable result, the Receiver will request ACF to take legal action.

### 4.3 Estate Contribution

It has been agreed with ACF in the case of collected, pledged accounts receivable that the estate will receive a contribution of 5%.

## 5. BANK / SECURITIES

### 5.1 ING Bank N.V.

In addition to the previously described credit relationship with ACF, all Dutch shops had an account with ING Bank N.V., in which the shop proceeds were received.

There were three arrangements with ING, which included an approval and interest system: the notional balance pool, the notional interest pool and the zero balance pool. The purpose of these three pools is effective cash management.

At the time of the bankruptcy there was a credit balance under the account system, which was transferred to the bankruptcy account on the instructions of the Receiver.

The various accounts were maintained for continuation of the company. ING provided (digital) access to the accounts of bankrupt companies. The position of ING Bank N.V. will be (further) settled in the coming period.

### 5.2 Bank Guarantees and Sureties

ABN AMRO and ING issued bank guarantees and sureties.

#### **ABN AMRO Bank N.V.**

15 bank guarantees were issued for a total amount of approximately EUR 3,470,000. The bank guarantees were issued by ABN AMRO Bank N.V., therefore not ACF. This involved nine guarantees for lessors, two sureties for the Tax and Customs Administration and one guarantee for the benefit of a creditor of ME.

All kinds of complications have arisen as regards identity, terms and other conditions. These matters are being investigated.

The same applies for the counter guarantees issued, because they were partially given by a company that is not a party to the underlying credit agreement.

#### **ING Bank N.V.**

Consultations are being held with the ING on the bank guarantee(s) issued.

### 5.3 Financiers' Claims

The Mexx concern was financed by various parties. The financing structure was characterised by a relatively limited regular banking credit, supplemented with a loan from the Silicon Valley Bank, a shareholder loan and supplier credit. Gores had issued guarantees to Silicon Valley Bank and the most important supplier of clothing, Li & Fung Credit PTE. LTD. For more information, please refer to the previous report.

### 5.4 Description of Securities

#### **ABN AMRO Commercial Finance N.V., Crystal Financial LLC, Gores, Suppliers:**

Please refer to the previous report.

### 5.5 Lease Contracts

Please refer to the previous report.

## 5.6 Separatist Position

ACF is claiming as separatist the proceeds of the stocks on hand in the distribution centres and at the premises of OTX. In addition to this, ACF is claiming the collection proceeds of the accounts receivable from third parties.

Gores is claiming as separatist the proceeds of the IP rights and the income from the licence agreements.

## 5.7 Estate Contributions

The Receiver has agreed with ACF that the estate will receive an estate contribution of 5%, subject to a maximum of EUR 250,000, on the proceeds of the collected pledged accounts receivable. The estate will also receive 12.5% of the proceeds of the pledged stocks.

## 5.8 Reservation of Ownership (not on Stocks)

19 parties have notified the Receiver that they are asserting a reservation of ownership in regard of goods delivered to Mexx. An inventory of the various claims has been drawn up and in the most cases settled in close consultation.

The Receiver has rejected a number of these claims to reservation of ownership, either by asserting the General Purchase Conditions of Mexx, or on account of arguments based on property law such as intermixture of goods.

## 5.9 Right of Reclamation, Right of Retention, Pledge and Reservation of Ownership on Stocks

Please refer to the previous report.

## **Suppliers**

### Kostroma

There is some debate between the Receiver and Kostroma about the claims that it is asserting to the stocks sold by the Receiver. The Receiver and Kostroma are consulting on a settlement. It is anticipated that, with the consent of the Delegated Judge and the pledgee ACF, a settlement will be reached in the coming reporting period.

### TMS Group ("TMS")

In the past reporting period the Receiver has repeatedly consulted with TMS on an out-of-court settlement. The parties have reached agreement in broad lines (and conditionally) on a settlement, which is also supported by the pledgee ACF.

The Receiver expects to finalise and complete this settlement in the coming reporting period.

### Amazon

Amazon has claimed ownership of stock goods on the basis of a reservation of ownership. The Receiver is assessing this claim. This investigation will be continued in the coming reporting period.

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## 6. RESTART / CONTINUATION

### Continuation

#### 6.1 Operation / Securities

See elsewhere in this report and in the previous report.

#### 6.2 Financial Reporting

Please refer for a justification of the continuation of the retail activities to the previous report.

See also the enclosed interim financial reports.

### Restart

#### 6.3 Description

Please refer to the previous report.

The obligations under the assets agreement are being complied with and – if necessary – well-meaning consultations are held with Mexx Global.

#### 6.4 Accountability / Course of the Takeover Process

#### 6.5 Proceeds

Please refer to the previous report.

#### 6.6 Estate Contribution

The estate receives a contribution of 12.5% on the proceeds of the stocks pledged to ACF. On the assumption that the entire amount of the proceeds is pledged, the estate receives 12.5% of EUR 1,850,000, namely EUR 231,250.

## 7. LEGALITIES

### 7.1 Accounting Records Obligation

The accounting records were kept by means of automated accounting software. The Receiver is of the opinion that the nature and format of the accounting records comply with the statutory requirements.

### 7.2 Filing of Annual Accounts

Mexx consolidated its annual accounts. The consolidating company was Mexx Lifestyle. The consolidated companies are ME, MEI, MEP, MHN and MEH. Mexx filed consolidated annual accounts at the level of ML. Under Section 2:403 of the Dutch Civil Code, the bankrupt companies are exempted from the obligation to file their unconsolidated annual accounts.

ML filed the annual accounts in the three years prior to the bankruptcies as follows:

<b>Year</b>	<b>Date of Filing:</b>	<b>On time yes/no</b>
2011	1 August 2012	Yes
2012	28 May 2014	No, almost 4 months too late.
2013	30 June 2014	Yes

### 7.3 Unqualified Auditors' Report

Please refer to the previous report.

### 7.4 Obligation to pay up Shares

Due to the direct effect of the Dutch Act for Simplification and Flexibilisation of the Law applicable to Private Limited Liability Companies, (hereinafter: "Dutch Flex BV Act"), the customary investigation of compliance with the obligation to pay up shares is only relevant to a limited degree. Transitional law does provide that loss or damage caused before the Dutch Flex BV Act entered into operation (on 1 October 2012) must be determined under the provisions of the former law applicable to private limited liability companies.

The bankrupt companies were incorporated before the introduction of the Dutch Flex BV Act. The Receiver will carry out further investigation.

### 7.5 Mismanagement

The Receiver is carrying out an investigation.

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

The Receiver has investigated a number of financing arrangements and did not find any irregularities in these arrangements. A further investigation will be carried out.

## 8. CREDITORS

Creditors can file their claim in writing and accompanied by supporting documents to the Receiver, preferably via the email address [mexx@fortadvocaten.nl](mailto:mexx@fortadvocaten.nl).

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

In such cases it is impossible to determine how the estate debts should be allocated. A correct and fair method is being sought.

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

There is a group tax entity for corporation tax purposes. The head holding company is not yet bankrupt. A 403 statement has been issued and specific guarantees have been given. Corporation tax aspects are being investigated.

There was also a group tax entity for VAT purposes. The estate has been released from the liability therefor, as the termination of the group tax entity was notified to the Tax and Customs Administration.

The tax return for the fourth quarter of 2014 until the date of bankruptcy has already been filed. Agreements have been made with the Tax and Customs Administration about the way in which the VAT return will be filed for the period after bankruptcy. The first tax return will relate to the period as from the bankruptcy date up to and including the first quarter of 2015. The tax return is being prepared. The following tax returns will always be filed per year.

The following preferential claims are known:

Mexx Europe	EUR 866,298.33
Mexx Europe International	EUR 397,044.00
Mexx Holding Netherlands	EUR 270,528.00
Mexx Europroduction	EUR 2,778.00
Mexx Europe Holding	Not yet filed
Mexx Lifestyle	Not yet filed

### **Customs Administration**

Mexx Europe BV had an Authorised Economic Operator status, hereinafter "AEO status", i.e. it was mainly responsible for compliance with the customs requirements. This meant that, for example, less physical and document checks were carried out. This eases the administrative burden and speeds up the importation of goods. In connection with the AEO status, Mexx Europe BV had provided security of EUR 593,000. The Customs Administration used this security to carry out the working arrangement in respect of the settlement of freight and insurance costs. The agreement was that Mexx Europe BV notified each month a fixed amount of freight and insurance costs, which amount formed the basis for settlement with the Customs Administration on account of the fact that the customs duty owed was deducted from the security. After the end of the financial year a final settlement statement was drawn up on the basis of the actual freight and insurance costs paid by Mexx Europe B.V. This final financial statement was sent to the Customs Administration within six months after the end of the financial year. The final financial settlement statement mostly resulted in a refund from the Customs Administration because on the basis of monthly statements a higher amount than was actually owed by Mexx Europe B.V. had been set off against the security.

The Receiver has agreed to the withdrawal of the AEO status, because Mexx Europe B.V. no longer meets the conditions and moreover, the estate has no interest in this status because activities are no longer being conducted.

The final financial statement for 2014 in respect of the AEO status is currently being prepared. A postponement up to 1 September 2015 has been granted for the filing of the final financial statement.

## 8.3 Preferential Claim of the UWV

Mexx Europe	EUR	440,305.20
Mexx Europe International	EUR	503,927.95
Mexx Holding Netherlands	EUR	261,185.85
Mexx Europroduction	EUR	2,533.52
Mexx Europe Holding		Not yet filed
MEXX Lifestyle		Not yet filed

## 8.4 Other Preferential Creditors

Mexx Europe	EUR	144,591.54
Mexx Europe International	EUR	284,032.69
Mexx Holding Netherlands	EUR	26,380.48
Mexx Europroduction		Not yet filed
Mexx Europe Holding		Not yet filed
Mexx Lifestyle		Not yet filed

## 8.5 Number of Unsecured Creditors

Mexx Europe	313
Mexx Europe International	38
Mexx Holding Netherlands	51
Mexx Europroduction	2
Mexx Europe Holding	5
Mexx Lifestyle	3

## 8.6 Amount of Unsecured Creditors

A large amount of claims of suppliers, such as those of Li & Fung, have not yet been filed.

Mexx Europe	EUR	25,081,362.76
Mexx Europe International	EUR	802,045.36
Mexx Holding Netherlands	EUR	740,073.74
Mexx Europroduction	EUR	7,904.93
Mexx Europe Holding	EUR	909,667.14
Mexx Lifestyle	EUR	376,095.27

## 8.7 Anticipated Manner of Settlement of the Bankruptcy

In view of the current state of the bankruptcy proceedings, it is not possible to give a definite answer on the manner of settlement.

## 9. LEGAL PROCEEDINGS

### 9.1 Names of the Opposing Party(ies)

Mexx Europe is party to the legal proceedings against the following parties:

1. SL Spirit GmbH (Germany)
2. TKXX Handel mit Mexx-Produkten GmbH (Germany)
3. Neckermann.de GmbH (Germany)
4. Wiegandt Handels GmbH (Germany)
5. Intershop Communications AG (Germany)
6. Melkior SARL (France)
7. ULY (France)
8. ING Bank N.V. (Netherlands)
9. Lundiform B.V. (Netherlands)
10. Pedro Almeida Soc. Unipessoal LDA (Netherlands)
11. Mr R. Mor (met MHN) (Switzerland)

MEP is party to legal proceedings against the following party:

12. Lineasse Tessuti SPA (Italy)

### 9.2 and 9.3 Nature and State of Progress of the Legal Proceedings

The first four legal proceedings are taking place in Germany, namely claims of ME against customers. These legal proceedings have ended because the debtors became bankrupt. Two claims have been filed with the appointed receiver and acknowledged by him (TKXX Handel mit Mexx-Produkten GmbH and Wiegandt Handels GmbH), the receiver refuses to acknowledge one claim filed (Neckermann.de GmbH) and the fourth claim has not been filed yet (SL Spirit GmbH).

The French legal proceedings (5 and 6) involve debt-collection proceedings. One of the creditors was also declared bankrupt after the declaration of bankruptcy of ME (Melkior SARL); a repayment arrangement was agreed with the other creditor (ULY).

The legal proceedings against Lundiform B.V. and Pedro Almeida Soc. Unipessoal LDA have been stayed under Section 29 of the Dutch Bankruptcy Act.

Finally, ME and MHN are, reportedly, jointly involved in legal proceedings in Switzerland, in which a former director (Mor) submitted a claim against Mexx. There is no information whatsoever on this matter and it will be further investigated.

MEP is involved in legal proceedings against Lineasse Tessuti SPA. On the basis of the European Insolvency Regulation, Italian law applies. Italian law provides, as does Dutch law, that the legal proceedings are stayed on account of the bankruptcy of MEP.

Three legal proceedings will be examined in more detail.

#### **Lundiform B.V.**

On 27 November 2007 Mexx Europe and Lundiform B.V. concluded an agreement under which Lundiform would produce interior materials for Mexx Europe. The dispute concerns whether, or not, Mexx Europe has a purchase guarantee. This matter has been litigated right up to the Dutch Supreme Court. On 5 April 2013 the Dutch Supreme Court referred the proceedings to the Dutch Court of Appeal in the Hague. At the time of the declaration of bankruptcy of Mexx Europe, the proceedings were on the cause list of this court for

the scheduling of a date for the hearing of oral arguments. Those proceedings were then stayed under Section 29 of the Dutch Bankruptcy Act.

Lundiform alleges that it has a claim against Mexx Europe. This claim may only be filed for verification. There is, nevertheless, a financial interest involved in continuation of the proceedings. Mexx Europe provided a bank guarantee of EUR 900,000 for Lundiform's claim. If the claim is rejected, the bank guarantee is released and the estate receives EUR 900,000.

During consultations it appeared that the parties are too far apart and legal proceedings will continue.

### **Intershop Communications AG**

These legal proceedings involve a claim of Intershop Communications AG against ME and a counterclaim of EUR 331,000. The legal proceedings are at an advanced stage. The Receiver is currently examining the case file.

### **ING Bank N.V.**

Mexx Europe is claiming repayment of interest charged by ING Bank N.V. in connection with a debit position in the dollar account of Mexx Europe.

The crux of the legal proceedings is whether ING Bank was entitled to charge the interest. ING Bank contends that it was contractually entitled to do so. Mexx Europe disputes that contention. Alternatively, Mexx Europe is asserting that the charging of this interest for many years was in violation of the bank's duty of care. The interest has increased to millions of euros.

On 25 June 2015 a meeting in chambers, at which the parties appeared in person, was held. The judge asked questions and an out-of-court settlement was discussed. The parties failed to reach such a settlement and requested the court to render judgment. The pronouncement of judgment is scheduled for 5 August 2015.

# FORT

## 10. OTHER

### 10.1 Period required for Completion of the Bankruptcy Proceedings

Not yet known

### 10.2 Action Plan

Issues which require immediate attention still regularly present themselves. It is anticipated that their intensity will gradually decrease.

The liquidation has not yet been completed. The Receiver will primarily focus on debt collection, sale of stocks and safeguarding counter guarantees.

Consultations will be held with suppliers and creditors on the correct determination of their rights. Further investigation will be carried out into the causes of the bankruptcy and illegalities, if any.

### 10.3 Filing of the Next Report

In three months' time.

Prepared, signed and filed with the Registry of the Amsterdam District Court on 21 July 2015.

F. Kemp  
Receiver