

**BANKRUPTCY REPORT**

number: 2

date: April 1, 2014

Company data	: OAD Touringcarbedrijf B.V. Also acting under the names: OAD Schiphol OAD Zeeland OAD-Van Dam OAD Nightliner
Bankruptcy number	: C/08/13/819 F
Date of bankruptcy order	: 25 September 2013
Trustees	: <u>Up to January 15, 2014:</u> mr J.A.D.M. Daniels and mr J.T. Stekelenburg <u>As from January 15, 2014:</u> mr D. Meulenberg and mr J.T. Stekelenburg
Staff members in bankruptcy matters	: <u>Up to January 15, 2014:</u> M. Samsen; M.L. Wijlens; A.K. de Beurs, G.J. Bramer; A.C. Vroom <u>As from January 15, 2014:</u> J. Brinks; S. Kriekaart, E. Touwen and G.F. Zoer
Financial	: <u>Up to January 15, 2014:</u> drs. A.B. Terpstra <u>As from January 15, 2014:</u> mr G.W. Luesink and M.M.S. Feenstra
Bankruptcy judge	: mr. M.L.J. Koopmans
Activities of the company	: Operation of a touring car, taxi and bus rental company. source: extract Trade Register of the Chamber of Commerce
Sales data	: The management provided the trustees with the consolidated (draft) annual accounts of OAD Groep Holding B.V. for the Financial year from 1 November 2011 through 31 October 2012. The annual accounts are not signed and have not been published. The consolidated annual accounts incorporates the financial data of the companies belonging to the OAD Groep Holding B.V., among others Oad Groep B.V. and group companies in which OAD Groep Holding B.V. has control. The net sales in the financial year 2011/2012 amounted to € 575.901.000,00. The net sales in the financial year 2010/2011 amounted to € 617.070.000,00
Average number of staff	: 228
Period under review	: <b>21 November 2013 through 24 March 2014</b>
Number of hours spent during the period under review	: <b>162 hours and 20 minutes</b>
<b>Balance at the end of the period</b>	: <b>€ 709,554.64</b>

## 1. Survey

- 1.1 Directie en organisatie : Sole shareholder of OAD Touringcarbedrijf B.V. is OAD Busbedrijf B.V., of whichn Oad B.V. is the sole shareholder, of which OAD Groep B.V. is the sole shareholder, of which OAD Groep Holding B.V. is the sole shareholder. The managers of OAD Touringcarbedrijf B.V. are Mr. J.G. ter Haar, Mrs. Q.F. ter Haar, Mr. F.W. Schuitemaker and OAD Groep B.V. The managers are jointly authorized (with other managers). **The Legal concern structure (organogram) as at 1 September 2013 is shown in the annex to this report.**
- 1.2 Profit and loss : Consolidated.  
Loss of € 3.006.000,00 in the Financial year 2011/2012  
Loss of € 21.576.000,00 in the Financial year 2010/2011
- 1.3 Balance sheet totall : consolidated  
€ 74.293.000,00 as at 31 October 2012  
€ 81.602.000,00 as at 31 October 2011
- 1.4 Current Legal proceedings : There are no current Legal proceedings.
- 1.5 Insurances : All insurance policies are in the name of OAD Groep Holding B.V., which is not in a state of bankruptcy, or in the name of Oad Groep B.V..Policies covering the present bankruptcy have been or will be cancelled. A possible return of premium will be added to the estate
- 1.6 Lease contracts :
  - Lease of business premises at Udenseweg 45 in Zeeland. Part of the premises was sub-leased. In consultation with the lessor, the restarter and the sub-lessor the lease contract will be cancelled because of the bankruptcy, or the restarter will take the bankrupt's place. Consultations are still going on.  
**In the past period under review the restarter came to an agreement with the lessor about the continuation of the lease.**
  - Lease of the business premises at Hoofdweg 329 in Lijnden. In consultation with the lessor and the restarter, the lease contract will be cancelled because of the bankruptcy, or the restarter will take the bankrupt's place.  
**In the past period under review the restarter came to an agreement with the lessor about the continuation of the lease.**
- 1.7 Bankruptcy cause : According to the managers the bad economic conditions and the consequent decline in sales are the main causes of the bankruptcy. The immediate cause of the bankruptcy is the cancellation of the credit agreement by the bank. The bank requested an extra capital injection under a number of

conditions. The shareholders were unable to meet this request (in time). According to the managers the means for this capital injection were available but failed to provide the possibility to also meet the sudden demand from a creditor for a bank guarantee. When the bank cancelled the credit agreement, the managers had no other possibility than to file a petition for bankruptcy of Oad Groep B.V. and its subsidiaries. Other parties involved in the bankruptcy mention other causes for the bankruptcy. After the investigations to be carried out by the trustees an analysis will be made of the causes of the bankruptcy.

## 2. Staff

2.1 Number at the time of the bankruptcy. : 228

2.2 Number in the year before the bankruptcy. : 228

2.3 Date of notice of dismissal : 26 September 2013

**By order of the trustees, all (former) employees have been provided with annual (income) statements.**

### Activities in the period under review

**Correspondence with (former) employees and with the external salary administrator.**

## 3. Assets

### Immovable property

This company has no immovable property.

3.1 Description : Not applicable

3.2 Sale proceeds : Not applicable

3.3 Mortgage amount : Not applicable

3.4 Contribution to the estate : Not applicable

Activities in the period under review : None

### Operating assets

3.5 Description :

- touring cars
- (small) buses and cars
- one Volkswagen Transporter

### Other operating assets Oad.c.s.

**During the past period under review the trustees investigated the possibilities of selling the operating assets in the premises of Oad c.s. in Holten.**

**It was decided to work towards an online-auction. The relevant order has been given to Troostwijk Veilingen B.V. (hereinafter: Troostwijk). The auction is scheduled for the end of April/beginning of May and is being prepared.**

**Parallel to the preparation of the auction of the movables the trustees have been busy securing the digital and physical records. Further information under item 7.1. of this report. It has been agreed with Troostwijk that they will make sure that all digital systems are certified deleted before they are offered for sale.**

3.6 Sale proceeds	:	<ul style="list-style-type: none"> <li>• Touring cars, € 8.850.000,00</li> <li>• Buses and cars € 267.650,00</li> <li>• Volkswagen Transporter, not yet known</li> </ul> <p><b>Oad Bus B.V., being the party restarting the bus related activities is interested and made an offer for the car, together with an offer for a number of other movables. Please see the report on Oad Busbedrijf B.V., under 3.</b></p> <p>Other operating assets Oad c.s.: not yet known.</p>
3.7 Contribution to the estate	:	<b>Depending on the result of the matter referred to in 5.1 agreements will be made about a contribution to the estate.</b>
3.8 Soil privilege tax	:	<b>It is not clear whether this right is applicable (see discussion referred to in 5.1.</b>
<u>Activities in the period under review</u>	:	<b>Correspondence, discussions and coordination Troostwijk in respect of the preparation of the auction and connected activities. Several discussions were held with OAD Bus, the buyer of the assets and the activities in connection with other assets and the completion of the earlier transaction.</b>
<u>Stocks/Work in hand</u>		No stocks/work in hand found in this company.
3.9 Description	:	Not applicable
3.10 Sale proceeds	:	Not applicable
3.11 Contribution to the estate	:	Not applicable
<u>Activities in the period under review</u>	:	None
<u>Other assets</u>		No other assets found in this company
3.12 Description	:	Not applicable
3.13 Sale proceeds	:	Not applicable
<u>Activities in the period under review</u>	:	None

#### 4. Accounts receivable

- 4.1 Amount : Nominal: € 3.800.000,00. This amount includes debtors who are at the same time creditor (so they can set off) and intercompany claims. The adjusted portfolio will be considerably lower. With the restarter Oad Bus B.V. arrangements have been made about the debt collection by Oad Bus. The proceeds will go to the estate.  
**During the period under review Oad Bus B.V. collected a considerable amount of debts. In total more than € 1,100,000.00, which amount was partly paid into the estate account and partly into the old Rabo Bank accounts of the bankrupt companies. Oad Bus B.V. will continue its collecting activities in the next period of time.**
- 4.2 Proceeds : Not yet known
- 4.3 Contribution to the estate : **Depending on the result of the issue mentioned to 5.1 agreements will be made about a possible contribution to the estate.**
- Activities in the period under review : **Correspondence and discussions with Oad Bus B.V. about the collection of outstanding debts.**

#### 5. Bank/securities

- 5.1 Claims from bank(s) : Rabobank (concern financing), € 11.912.089,00 on bankruptcy date. The trustees repaid the bank from the proceeds of the restarted units. Other proceeds will be released. At a later time the obligation to contribute of the individual Oad companies and possible rights of recourse will be considered. The legal validity of the claims and securities of the Rabobank will be examined.  
**The aforementioned examination is still running. There are still a number of issue which are not clear as to securities. This involved that the trustees so far have not been able to recognize any securities. Rabobank and the trustees are still negotiating about the manner how and whether these issues and uncertainties can be solved.**
- 5.2 Lease contracts : Not applicable
- 5.3 Description of the securities : Please note: the hereinafter stated securities are all securities the Rabobank had on the companies in the OAD Groep at the time of the bankruptcy order. Not all securities relate to the present bankruptcy. The securities of the Rabobank include:  
A right of pledge on:
- all present and future equipment;
  - all present and future stocks;
  - all present and future rights of intellectual property;

- all present and future rights/claims on Stichting Internet Domein Registratie Nederland (SIDN) pursuant to domain names registered with SIDN ;
- all existing rights/claims on third parties existing on the date of registration of the deed of pledge and all rights/claims obtained from the legal relationships existing at the time of registration of the deed of pledge;

A right of mortgage in respect of:

- the building rights, i.e. the permission to have a roofing for a covered pick-up point of passengers and buses on the premises situated at Sint Jansgildestraat in Beek (municipality Montferland), recorded in the land register municipality of Bergh, section L, number 813;
- the dwelling with the land and all appurtenances, situated at 7671 HA Neede, 36a and 38 Borculoseweg, recorded in the land register municipality of Neede, section C number 8474;
- the dwelling with land and all appurtenances, situated 6881 SM Velp, 7 Emmastraat , recorded in the land register municipality of Velp, section H, number 2131
- a parcel of land at the Enterseweg in Goor, recorded in the land register municipality of Goor, section A number 2463;
- the business property with the land and all appurtenances, situated 7471 ST Goor, 2 Breukersweg, recorded in the land register municipality of Goor, section A number 3171;
- the dwelling with land and all appurtenances, situated at 7471 BR Goor, 72 and 72b Grotestraat, recorded in the land register municipality of Goor, section C number 3431;
- the dwelling with the land and appurtenances, situated at 7451 CM Holten, 5 Oude Deventerweg, recorded in the land register municipality of Holten, section E number 3374;
- a parcel of land situated at Holten, Burgemeester van der Borchstraat, recorded in the land register, municipality Holten, section E number 3575;
- the dwelling with land and all appurtenances, situated at 7451 CM Holten, 1 Oude Deventerweg, recorded in the land register municipality of Holten Section E number 3476;

- the business premises with dwelling, land and appurtenances, situated at 7451 CH Holten, 2, 4 and 6 Burgemeester Borchstraat, recorded in the land register municipality Holten, section E number 3492;
- a parcel of land situated at Holten, Oude Deventerweg, recorded in the land register municipality Holten, section F number 5748.
- the building right, i.e. the permission to have and maintain buildings (business premises with dwelling) on the parcel situated at 7462 BA Rijssen, Walstraat 1, 5 and 9, recorded in the land register municipality Rijssen, section F number 3799;
- the business premises with land and all appurtenances, situated at 1381 BA Weesp, Slijkstraat 20, recorded in the land register municipality Weesp, section A number 5359..

- 5.4 Separatists position : **See item 5.1.**
- 5.5 Contributions to estate : **Depending on the result of the issue mentioned to 5.1 agreements will be made about a possible contribution to the estate.**
- 5.6 Retention of title : No information
- 5.7 Right of recovery : No information
- 5.8 Right of retention : No information
- Activities in the period under review : **An extensive investigation was carried out into the legal effectiveness of the securities of the Rabobank. Because of the size of the (credit) facility and the diversity of securities request, the credit facility and securities are based on a voluminous file. Besides there has been extensive correspondence between the trustees and the Rabobank.**

## 6. Restart/continuation

Oad Bus B.V. (a new company incorporated by the purchasing investment company, hence not belonging to the companies within the concern) restarted the activities of OAD Busbedrijf B.V..

**Regarding the way of sale of the bus related activities and the purchase prices paid by Oad Bus B.V., the trustees observe the following.**

**Considering the circumstances stated in the aforementioned explanation the trustees acted according to the findings and chose to approach a limited number of parties about the sale of bus related activities.**

Finally the trustees succeeded to come to an agreement with Oad Bus B.V. in respect of the sale of a number specified assets/activities, with the purpose to continue the bus related activities. As regards the price the trustees remark that when the (final) offer of Oad Bus B.V. was accepted, which offer was higher than the assessed value, there was certainty about both the proceeds and employment, which would not have been the case if the trustees had rejected the (final) offer of Oad Bus B.V. An important extra aspect was that the aforementioned (final) offer of Oad Bus B.V. not only was higher than the assessed value but also higher than the amounts offered for the same assets/activities before the bankruptcy, whereas normally a bankruptcy has a value decreasing effect. A final consideration for accepting the (final) offer of Oad Bus B.V. was that the regional transporter with whom Oad Busbedrijf B.V. had an agreement for the maintenance of the buses, had informed the trustees that if no certainty were obtained within short about the continuation of that agreement, maintenance would be given to someone else, which decision would have had a negative effect on the sales proceeds. Apart from all this, the trustees had discussions in the period under review with Oad Bus B.V. about a number of issues connected with the restart. Among other things about the continuation of the temporary use of rooms in the head office in Holten by Oad Bus B.V., in anticipation of moving to the premises in Goor. Apart from that Oad Bus B.V. informed the trustees about a number of matters which in the first instance were not involved in the restart (among other things skis, hardware, office equipment and a vehicle) which Oad Bus B.V. still wanted to buy from the trustees. At the time this report was made, negotiations had been partly finished and were partly still going on. In the next report the trustees will give further information.

6.1 Commercial operations/securities : Not applicable

6.2 Financial recording : Not applicable

Activities during the period under review



## **7. Lawfulness**

### **7.1 Accounting**

: Art 2:10 Civil Code. The management is obliged to keep the accounts showing the rights and obligations of the legal entity at any time.

Whether this obligation was met will be investigated by the trustees.

**During the period under review an internationally operating office with forensic accountants has been order to carry out a “quick scan” of the way in which the accounting records were kept. Before this “quick scan” can be carried out the physical and digital records have to be secured.**

#### **Physical records**

**At different places in the premises in Holten a considerable amount of records were found, comprising among other things financial records, management information, annual accounts, minutes but also detailed (project) records of certain departments of Oad c.s., like Group Travel, Sports & Incentives, Disney, etc.**

**Apart from that there is a large quantity of records stored in the premises in Holten (e.g. “Oad files” and management files). As the trustees cannot assess at this moment which files are or may be relevant in the winding-up it has been decided to keep most of the files and to ensure that the relevant records can be traced easily and fast. It has been established that there is a large quantity of material to be archived, which makes storage and indexing a complex task resulting in high costs. The trustees asked three parties to make a quotation for securing, indexing and storage of the records.**

**Finally, Vada Archieven B.V. in Nijverdal was given the order to carry out these activities. As regards the indexation the trustees will receive a list stating the file and location (file spine/file name). Photographs will be taken of the arrangement of the record as it was so as to be able to reconstruct the location of the records (which room/ where in the room/cabinet). In this way the trustees try to secure that relevant records can be traced back. Furthermore the trustees made arrangements with Vada Archieven B.V. about consulting the archived information either at Vada’s or by (digital/physical) forwarding the relevant documents.**

### **Digital records**

**Furthermore the trustees are busy securing the digital records of Oad c.s. This is important for collecting receivables, invoicing work in progress (in as far as not done) and for regular examination of the records.**

**In order to map the ICT infrastructure a session was convened with 1) a representative of the trustees, 2) 3 former Oad ICT employees and 3) forensic accountants who will make a back-up of the digital records for the trustees. During those discussions it appeared that the ICT structure and infrastructure is rather extensive and complex which is among other things due to the fact that different systems (partly self-made, partly packages available on the market) were/are used and linked. Another aspect is that the server park is partly located in the premises in Holten and partly with an external party in Enschede.**

**As it is not clear so far which data are relevant for the winding-up, it has been decided to divide the process in stages. During stage 1 the data are only secured. In stage 2 essential business information, like e.g. the financial records, will be made accessible for consultation.**

**During the following stages relevant data can be disclosed and consulted in as far as may be necessary. Securing the data (and viewing the data during the next stage) will lead to high costs considering the complexity and size of the system and data. However, since a proper settlement of the bankruptcies is important such investment will be necessary.**

7.2 Filing of the annual accounts (publication requirements)

: The Financial year of Oad runs from 1 November to 31 October. From the online trade register of the Chamber of Commerce it appears that the consolidated accounts for the Financial year 2010-2011 were filed by the OAD Groep Holding B.V. on the 6th of December 2012. That means the legal term was exceeded by 6 days. In administrative justice such exceeding is not considered mismanagement which is considered an important cause of the bankruptcy. The annual accounts of the financial year 2011-2012 had not been published at the time of the bankruptcy order. The trustees examine whether the legal publishing term for the annual accounts 2011-2012 has been exceeded and if so what would be the consequences.

- 7.3 Unqualified audit opinion : As regards the annual accounts for the Financial year 2010-2011 an audit report was issued by an independent auditor. As regards the annual accounts for 2011-2012 no audit report had been issued by an independent auditor at the time of the bankruptcy order.
- 7.4 Compulsory payment on shares : The trustees will investigate whether the paying up commitment has been fulfilled.
- 7.5 Mismanagement : The trustees will investigate whether the managers failed to properly fulfill their duties and if so, whether it may be assumed that this was an important cause of the bankruptcy (as referred to in article 2:248 Civil Code), or whether the managers may be considered responsible otherwise. The trustees will carry out the usual investigations within the framework of the bankruptcy. In view of the size of the company and the interests involved in the bankruptcy, the trustees will engage forensic accountants and external lawyers in their investigations. It is to be expected that the investigations will take quite some time.  
**As mentioned above to 7.1., an external office has been ordered to make a “quick scan” of the way in which the records were kept. At the same time an external firm of lawyers has been engaged to carry out an investigation into the cause of the bankruptcies.**
- 7.6 Fraudulent acting in respect of creditors : The trustees will investigate whether there have been legal actions which may have damaged one or more creditors. If necessary, such legal actions will be nullified by an out of court statement.  
**This aspect will be incorporated in the examination of the records.**
- Activities in the period under review : **Correspondence, discussions and coordination archiving companies, former Oad ICT employees (for making an inventory), forensic accountants (for making a back-up).**
- 8. Creditors**
- 8.1 Claims against assets : UWV claim against the assets(not yet known), various claims against the assets in respect of energy costs, Insurance costs, etc. The total amount is not yet known.
- 8.2 Pref. tax receivable : **A tax consultant, practicing in the office of one of the trustees, mr. G.W. Luesink, is busy establishing the fiscal position of the companies in consultation with the tax authorities. There is a dispute about the question as to whether one or more of the bankrupt companies enjoyed tax deductible training.**

- Furthermore it should be examined if there is a claim for turnover tax abroad. Besides aspects regarding corporation tax still have to be examined.**
- 8.3 Pref. claim UWV : The UWV has not yet submitted its claim.
- 8.4 Other pref. creditors : As far as known there are no other preferential creditors.
- 8.5 Number of ordinary creditors : **So far there is no list of claims from creditors. The claims submitted in all OAD companies, over 10.000, are sorted and listed. Besides the claims are summarily checked if they are claims on a company in which a payment can be expected. The trustees expect they can give a preliminary review of all claims submitted and the respective amounts in the next report. The trustees consider it too early to make an interim list because, considering the fact that many claims still have to be assessed, this would give a wrong picture of the number and amount of the claims submitted. For activities connected with creditors, two employees have been engaged for a period of 6 months.**
- 8.6 Amount ordinary cred. : According to the list of creditors from the accounting system of the bankrupt companies, the outstanding balance amounts to approximately € 465,000.00. The creditors have been requested by letter to submit their claims.
- 8.7 Will it be a closure : No
- 8.8 Simplified settlement : Probably not
- 8.9 Will there be a distribution to ordinary creditors : At this stage it is not yet known whether a distribution to ordinary creditors is possible. Based on the currently known information, the trustees come to the conclusion that a distribution to the ordinary creditors is not excluded.
- Activities during the period under review : **Discussions and correspondence with the tax authorities. Correspondence and telephone discussions with creditors.**
- 9. Other issues**
- 9.1 Winding up the bankrupt's estate : The winding up of the OAD estates is expected to take some years.
- 9.2 Approach : Debt collection, carry out the usual investigations in bankruptcy matters.
- 9.3 Next report : **July 1, 2014**

The following annexes are attached to this report.

Public:

1. Legal group structure
2. Interim financial report
3. Review of time recording per time recording group

Confidential:

4. Movements estate account in the period under review
5. List of hours

Zwolle/Holten, 1 April 2014

Mr. D. Meulenberg      Mr. J.T. Stekelenburg  
(Trustee)                      (Trustee)

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