

**Public report No. 10 pursuant to Article 73a Bankruptcy Act [Dutch: *Faillissementswet*] in the bankruptcy of the private company with limited liability ABENGOA BIOENERGY NETHERLANDS B.V.**

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in the matter of : the private company with limited liability **ABENGOA BIOENERGY NETHERLANDS B.V.** with its registered office in Amsterdam and its principal place of business in (3198 LH) Rotterdam (Europoort) at Merwedeweg 10 (port number 5629);

Bankruptcy number : F 16/264

Date of provisional suspension of payments : 26 April 2016

Date of bankruptcy : 11 May 2016

supervisory judges : *meester* C. de Jong

Bankruptcy trustee : *meester* C.F.W.A. Hamm

Reporting date : 4 January 2019

Reporting period : 25 September 2018 through 14 December 2018

Hours spent during reporting period : 136 hours and 20 minutes (excluding the time spent on the provisional suspension of payments: 341 hours and 30 minutes)

Total hours spent : 6.091 hours and 45 minutes (excluding the time spent on the provisional suspension of payments: 341 hours and 30 minutes)

Chamber of Commerce number : 34242041

Activities of the company according to description

in the Chamber of Commerce: Brokering trade in fuels, ores, metals and chemicals. Concluding contracts for the production of bio ethanol from grain products and the marketing of products on the biofuel market, as well as the provision of any related services.

Average number of employees: 82.

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## **PRELIMINARY REMARKS**

This is the *tenth* report in the bankruptcy of Abengoa Bioenergy Netherlands B.V. (hereinafter 'ABEN').

This report is based on information that the bankruptcy trustee received from the company and third parties. No guarantees are given concerning the accuracy and completeness of the data included. It is possible that figures or other data may at a later stage turn out to deviate from the content of this report.

No rights may be derived from this bankruptcy report and/or following reports.

## **INTRODUCTION**

08/06/16: ABEN is part of the Abengoa group, a Spanish multinational with its head office in Sevilla. See [www.abengoa.com](http://www.abengoa.com). Abengoa S.A. and a number of other Spanish group companies have been involved in Spanish pre-insolvency proceedings since 25 November 2015 pursuant to Article 5a of the Spanish Insolvency Act.

The Abengoa group has five factories in Europe producing bio ethanol: three in Spain, one in France and one in the Netherlands (Rotterdam, Europoort). The factory in Rotterdam is the largest of these five factories; of the 1,279 million litres of bio ethanol produced in total in Europe, 480 million litres are produced in Rotterdam. The factory covers 23 hectares.

The factory concerns a so-called 'first generation' factory. In other words, it produces bio ethanol from food commodities such as grain and corn. ABEN sells this bio ethanol to oil companies, who mix it with fossil fuels.

ABEN converts the waste product of the bio ethanol production into animal feed (so-called DDGS) and sells it to farms and trading houses. The CO<sub>2</sub> released in the production of bio ethanol and the electricity created in the process are also sold.

## **PERIOD OF SUSPENSION OF PAYMENTS**

08/06/16: On 26 April 2016, the Amsterdam District Court granted a provisional suspension of payments to ABEN, appointing *meester* V.M. de Winkel as supervisory judge and the undersigned as administrator. In addition, it ruled that the Rotterdam District Court perform all duties which have been entrusted to the district court by law and it proclaimed a cooling-off period.

A study by the administrator has shown that there was no prospect of satisfying ABEN's creditors as referred to in Article 242(1) under 5 of the Bankruptcy Act. For this reason, the administrator requested the district court to have ABEN's provisional suspension of payments withdrawn and, if the district court saw reason thereto, to have ABEN, which met the criteria laid down in Article 1 of the Bankruptcy Act, officially declared bankrupt. The district court proceeded to do so on 11 May 2016. In addition, it proclaimed a cooling-off period of two months.

## **PERIOD OF BANKRUPTCY**

08/06/16: At the start of the bankruptcy, the half-product still present in the production process was processed. Subsequently, the production process was shut down in a responsible manner pending a restart. The factory was kept running due to all kinds of process-specific circumstances that make it undesirable to (also) shut down the factory.

A number of important parties on the market have presented themselves for acquisition of the factory. These parties have received an information memorandum and access to a database, after which a number of prospective buyers have made an initial offer. Almost all parties had already obtained information on the sales process that the Spanish parent company had set up for the entire bio ethanol branch.

The bankruptcy trustee is currently negotiating with the two most suitable prospects. These are the parties that made the highest offers and that offer the best safeguards for a quick transaction and restart. The intention is to conclude an agreement with one of them in the near future. A transaction will depend on, among other things, the permission of the competition authorities in different countries and the cooperation of all kinds of parties involved in ABEN. In this context, meetings are held with the leasehold landlord Havenbedrijf Rotterdam, the

Environmental Department of Rijnmond (DCMR), the Labour Inspectorate and the most important partners, suppliers and customers.

In order to keep the factory running until the takeover, to preserve the value of the factory and to comply with the applicable laws and regulations, considerable costs must be incurred by the bankrupt estate. These might include the costs of security, compliance, inspection, expertise, IT, maintenance, repairs and staff. The bankruptcy trustee strives to limit the costs and the period in which these are incurred as much as possible.

22/09/16: The negotiations have been completed and with the permission of the supervisory judges, the bankruptcy trustee has sold the movable and immovable property and goodwill of the bankrupt company and supplied it to Alco Energy Rotterdam B.V. on 7 July 2016. See furthermore under 6 below.

The majority of the staff of the bankrupt company has entered the employment of Alco Energy Rotterdam B.V.

## **REPORTING IN CONFORMITY WITH RECOFA**

### **1. INVENTORY**

1.1 Management and organisation : ABEN was incorporated by deed dated 6 February 2006. Since 12 July 2012, ABEN's sole shareholder is the Spanish Abengoa Bioenergia Inversiones S.A.

Since 13 April 2016, ABEN's sole director is the Spanish Abengoa Bioenergia S.A. Until 13 April 2016, Mr T. Blanco Parra, Mr F.A. Morillo León, Mr A.J. Vallespir Gregorio and Mr S. Martos Barrionuevo were ABEN's directors under its articles of association.

1.2 Profit and loss : Result for the financial year 2015 after taxes: EUR 5,181,107 negative (data based on the provisional balance sheet for 2015).

Result for the financial year 2014 after taxes: EUR 389,989 (data based on the annual accounts for 2014).

Result for the financial year 2013 after taxes: EUR 54,460,943 negative (data based on the annual accounts for 2013).

1.3 Pending proceedings : under investigation. The bankruptcy trustee's provisional findings are as follows:

**Proceedings under civil law**

a. 08/06/16: HSBC Bank Plc. Sucursal and Espana (hereinafter 'HSBC Spain') claims EUR 31.5 million plus interest and costs from ABEN. The proceedings are scheduled for judgment in, inter alia, the motion contesting jurisdiction on 8 June 2016.

22/09/16: the district court has rejected the claim in the motion contesting jurisdiction; has allowed in the motion proceedings an advance on the principal sum claimed in the original proceedings; and for the rest has suspended the original proceedings pursuant to Article 29 of the Bankruptcy Act.

b. 08/06/16: HSBC Bank Plc. (hereinafter 'HSBC UK') claims EUR 49 million plus interest and costs from ABEN. These proceedings are scheduled for a judgment in the motion proceedings on 5 October 2016.

22/09/16: the district court has given an early judgment and has rejected the claim in the motion contesting jurisdiction and has suspended

the original proceedings pursuant to Article 29 of the Bankruptcy Act.

**Proceedings under administrative law**

- c. 08/06/16: ABEN conducted appeal proceedings against ISZW on account of an administrative penalty imposed for not having an approved Hazard and Operability-Study (HAZOP) available. The District Court found ABEN partly in the right. Currently, it is being assessed whether to lodge appeal regarding the remainder of the penalty.

22/09/16: The bankruptcy trustee has not lodged an appeal.

- d. 08/06/16: ABEN is conducting appeal proceedings against DCMR (the province) on account of incurred penalties for violations regarding odour nuisance. The District Court found ABEN partly in the right. It is expected that in these proceedings a hearing at the Council of State will be scheduled.

22/09/16: The hearing has not yet been scheduled.

23/12/16: On 14 December 2016 the hearing at the Administrative Jurisdiction Division of the Council of State ('Raad van State') took place. The case is scheduled for a decision on 25 January 2017.

23/03/17: The case has been deferred. The case is scheduled for a decision on 19 April 2017.

23/09/17: The Council of State has confirmed the decision of the District Court.

**Proceedings under criminal law**

e. 08/06/16: ABEN is conducting appeal proceedings against the Public Prosecution Service on account of a penal fine of EUR 500,000 imposed by the Rotterdam District Court for odour nuisance in 2013 and 2014. A hearing is likely to be scheduled in these proceedings.

22/09/16: The hearing has not yet been scheduled.

23/12/16: For this purpose, the bankrupt estate was summoned to appear at a hearing on 26 January 2017. A defence will be put forward.

23/03/17: The Hague Court of Appeal ('Het Hof Den Haag') has reduced the imposed penalty from EUR 500,000 to EUR 100,000 in its decision of 24 February 2017. No (appeal in) cassation has been lodged.

1.4 Insurances

: 08/06/16: under investigation. The management board has announced that the insurances have been paid and provide cover. As the factory is still running, these have not been cancelled.

22/09/16: The insurances have been terminated. The bankruptcy trustee submits a return of premium, if applicable.

23/12/16: The bankrupt estate has received a return of premium of EUR 115,120.

1.5 Lease : 08/06/16: The management board has announced that ABEN is leasing various movable property (vehicles, work clothes, office furniture and equipment, machines etc.). Insofar as possible and desirable, these agreements will be terminated.

22/09/16: The lease agreements have been terminated.

1.6 Cause of bankruptcy : the management board has announced that ABEN's bankruptcy was caused by the fact that Abengoa S.A. and a number of other Spanish group companies have been involved in Spanish pre-insolvency proceedings since 25 November 2015. As a result of this, certain credit facilities were frozen and/or cancelled and ABEN, too, ended up in financial problems.

The bankruptcy trustee is investigating the causes of the bankruptcy.

23/03/17: See under 7.5.

## 2. STAFF

2.1 Number of employees at the time of the bankruptcy : 82.

2.2 Number of employees in the year before the bankruptcy : according to the management board: 94.

2.3 Date of notice of dismissal : 18 May 2016



Activities : 08/06/16: the dismissal procedure for employees in bankruptcy was followed. The employees received notice of dismissal after permission was obtained from the supervisory judges. The UWV (Dutch Employee Insurance Agency) and the trade unions were informed immediately.

The employees will perform activities during the notice period for the maintenance of the factory.

If, after expiry of the notice period, a restart has not yet been achieved, part of the staff will continue to work for the factory through payroll bureaus until a restart has been formalised. If a restart proves impossible, the factory will be shut down and dismantled as soon as possible. Any staff required in this respect will be hired.

Since January 2016, the UWV no longer pays any excess above EUR 6,107.22 gross per month under the wage guarantee scheme. The bankruptcy trustee will fulfil the bankrupt estate's obligations to continue to pay wages in this regard.

The bankruptcy trustee maintains contact with the director, the plant manager and the Works Council.

22/09/16: In order to keep the factory running, the bankruptcy trustee has hired the majority of the staff through payroll bureaus after expiry of the notice periods up to and including 7 July 2016. After 7 July 2016, the majority of the staff entered the employment of the restarter.

The bankruptcy trustee has fulfilled the bankrupt estate's obligations to continue to pay the wages to a number of former employees in the context of the maximum payments made by the UWV under the wage guarantee scheme.

23/12/16: Former employees have submitted EUR 367,871.82 in preferential claims in the bankruptcy. The bankruptcy trustee will assess these claims.

The UWV has submitted a claim to the bankrupt estate of EUR 1,012,969.99 and a preferential claim of EUR 349,196.56. The bankruptcy trustee will assess these claims.

23/03/17: Former employees have up to and including this reporting period submitted EUR 503,855.33 in preferential claims. The bankruptcy trustee will assess these claims.

25/09/17: Former employees have submitted claims to the amount of EUR 463,578.94. The trustee assesses these claims.

04/01/18: The estate claim of the UWV amounting to EUR 1,012,969.99 has been paid. The preferential claims of the UWV of EUR 349,196.56 and of the employees of EUR 358,330.32 were validated on the creditors' meeting of 20 December 2017.

The bankruptcy trustee disputed the claim of EUR 127,439.96 of a former employee. This claim will presumably be referred to the claim validation proceedings.

04/04/18: The bankruptcy trustee has reached the following amicable settlement with the former employee: an amount of EUR 20,000.— of the submitted claim has been admitted and the remaining amount has been withdrawn by the former employee.

### 3. ASSETS

#### Immovable properties

- 3.1 Description : 08/06/16: under investigation. As evidenced by the land register, ABEN holds a right of ground lease for the immovable property with appurtenances (industrial site with mains services and structures) situated at, briefly put, Merwedeweg 10 in Europoort, Rotterdam.
- 22/09/16: With the permission of the supervisory judges, the immovable property was sold to Alco Energy Rotterdam B.V.
- 3.2 Sales proceeds : 22/09/16: see under 6.2 below.
- 3.3 Mortgage amount : n/a The management board has announced that there is no mortgage right on the immovable property.
- 3.4 Percentage or amount paid to the trustee in his capacity as estate administrator for work done : n/a
- Activities : none.

#### Vehicles/Operating assets

3.5 Description : 08/06/16: under investigation. ABEN owns all kinds of (office) furniture and equipment, installations, equipment, tools etc. that are located in, on, at and around the factory. These movable properties will be sold in the context of a restart. Troostwijk values and advises.

The RDW (National Vehicle and Driving Licence Registration Authority) has announced that ABEN has no vehicles registered in its name.

22/09/16: with the permission of the supervisory judges, the (office) furniture and equipment, installations, equipment, tools etc. were sold to Alco Energy Rotterdam B.V.

3.6 Sales proceeds : 22/09/16: see under 6.2 below.

3.7 Right of seizure by the tax authorities of property found on the premises : 04/01/18: irrelevant.

Activities : none.

Stocks / projects in hand

3.8 Description : a. 08/06/16: with permission from the supervisory judges, 2,912 tonnes of DDGS was sold at a purchase price of EUR 611,520, excluding VAT. This stock was unencumbered and the sales proceeds are paid into the bankrupt estate;

22/09/16: on delivery, an expert established the amount of sold DDGS at 2,760 tonnes. Further to this, the final purchase price was established at EUR 579,757.50, excluding VAT. This amount was received from the buyer;

b. 08/06/16: the bankruptcy trustee is negotiating the sale of approximately 11,000 m<sup>3</sup> of bio ethanol produced by ABEN, which are currently stored at a third party. This third party is exercising rights of pledge and retention;

22/09/16: with permission from the supervisory judges, the bio ethanol was sold for an amount of EUR 6,574,750, excluding VAT. Of this amount, EUR 1,527,427.15, excluding VAT, was paid directly by the buyer to the entitled third party; the remainder was received by the bankrupt estate;

c. 08/06/16: ABEN's own tanks hold 571 m<sup>3</sup> of bio ethanol. These must remain in the tanks in order to prevent damage to the factory. This bio ethanol will be involved in the sale of the factory in the context of the restart;

22/09/16: with the permission of the supervisory judges, this bio ethanol was sold to the restarter. The parties disagree regarding the quality of this bio ethanol and the amount of the purchase price. The parties are corresponding about this;

23/12/16: the parties have reached agreement. The restarter has paid the bankrupt estate EUR 138,185.93 in connection with the purchase of this bio-ethanol.

d. 08/06/16: the bankruptcy trustee is negotiating the sale of a stock of corn (1,500 tonnes). This corn is held by a third party which is exercising

rights thereon. The bankruptcy trustee has crossed these rights;

22/09/16: with the permission of the supervisory judges, the stock of corn was sold at EUR 276,097.84, excluding VAT. Of this amount, EUR 27,684.25, excluding VAT, was paid directly to the retentor; the remainder was received by the bankrupt estate;

e. 08/06/16: aforementioned third party has also claimed and exercised rights of pledge regarding approximately 3,800 tonnes of DDGS. Whether this occurred in a legally valid manner is currently being investigated;

22/09/16: the bankruptcy trustee is corresponding with the lawyer of this third party regarding the legal validity of the rights of pledge and the manner in which the rights of pledge were exercised;

23/12/16: The third party has not demonstrated the legal validity of the claimed rights of pledge. The bankruptcy trustee has served a writ of summons on the third party, claiming damages.

23/03/17: with the permission of the supervisory judges, the bankruptcy trustee has reached an amicable settlement in which the third party has paid EUR 950,000 into the bankrupt estate in connection with this dispute and the dispute mentioned under 5.8., The court proceedings have been revoked.

f. 22/09/16: with the permission of the supervisory judges, the usable stock of raw materials present (including chemicals) was sold to the restarter. The bankruptcy trustee is corresponding with the restarter regarding the settlement thereof.

23/12/16: the parties have reached agreement. The restarter paid EUR 567,890 excluding VAT to the bankrupt estate in connection with the purchase of the chemicals.

3.9 Sales proceeds : EUR 7,531,569.87

3.10 Percentage or amount paid to the trustee in his capacity as estate administrator for work done : n/a

Activities : none.

#### Other assets

3.11 Description : under investigation. The provisional findings are as follows:

a. 08/06/16: ABEN holds a bank account with Rabobank N.V., the balance of which amounted to EUR 3,139,692.64 on the date of bankruptcy;

23/12/16: Rabobank N.V. has also transferred the balance of the bank account as per the date of the provisional suspension of payments, EUR 15,118.19, and EUR 15.43 which was in a savings account;

- b. 08/06/16: In addition, ABEN holds accounts with various foreign banks. The bankruptcy is investigating these;

22/09/16: the bankruptcy trustee is corresponding with these foreign banks. The investigation has not yet been completed;

23/12/16: one foreign bank has transferred the balance of EUR 806.80 that was in ABEN's bank account per the bankruptcy date, to the liquidation account;

25/09/17: From a foreign bank an amount of EUR 7,437.67 was received;

- c. 08/06/16: ABEN has CO2 rights. These are being investigated and will be involved in the negotiations regarding the restart.

22/09/16: the CO2 rights were also sold to the restarter (see also under 6.1)

- d. 22/09/16: ABEN had paid an advance to its energy supplier. Matters have been settled with the energy supplier; it has paid the remaining advance at EUR 1,685,025.85 into the liquidation account.

- e. 22/09/16: the Amsterdam district court mitigated a penalty of EUR 125,000 previously imposed on and paid by ABEN to EUR 75,000. ABEN was furthermore awarded payment of the costs of the proceedings. Further to this decision, an



amount of EUR 54,263.86 has been reimbursed;

- f. 23/12/16: during the reporting period:
- EUR 115,120 in insurance premiums was reimbursed to the bankrupt estate (see under 1.4).;
  - EUR 256,044 was distributed to the bankrupt estate under the damage insurance with regard to damage claimed under the insurance policy before the bankruptcy date;
  - EUR 7,704.58 was received from a debtor as compensation for out-of-court debt collection costs and interest; and
  - EUR 5,872.49 was received from a credit account maintained at a third party.
- g. 23/03/17: in this reporting period an amicable settlement has been reached regarding a dispute relating to cargo damage sustained by the bankrupt company before the date of bankruptcy. The liable third party has paid EUR 24,000 into the bankrupt estate;
- h. 04/01/18: in this reporting period an amount of EUR 36,599.23 has been received regarding the restitution of water board tax (*waterschapsbelasting*);
- i. 23/12/16: thus far, up to and including this reporting period, an amount of EUR 1,866.96 in interest has been received in the liquidation account;

23/03/17: thus far, up to and including this reporting date, an amount of EUR 5,935.70 in interest has been received in the liquidation account;

25/09/17: thus far, up to and including this reporting date, an amount of EUR 8,695.14 in interest has been received in the liquidation account;

04/01/18: thus far, up to and including this reporting date, an amount of EUR 10,012.89 in interest has been received in the liquidation account;

04/04/18: a negative interest rate is being charged. As a result, thus far, up and including this reporting date, on balance an amount of EUR 21,625.49 in interest has been charged to the bankrupt estate. An objection was lodged and the bankruptcy trustee is now corresponding with the bank about this matter.

04/07/18: an amicable settlement was reached with the bank: the charged negative interest rate will be refunded.

04/10/18: the bank has refunded the charged negative interest rate to the bankrupt estate. Thus far, up to and including this reporting date, an amount of EUR 12,340.69 in interest has been received.

*04/01/19: thus far, up to and including this reporting date, an amount of EUR 12,399.50 in interest has been received in the liquidation account;*

3.12 Proceeds : 25/09/17: EUR 5,319,796.65 + PM  
  
04/01/18: EUR 5,357,713.63 + PM  
  
04/04/18: EUR 5,338,658.29 + PM  
  
04/07/18: EUR 5,327,962.07 + PM  
  
*04/10/18: EUR 5,360,041.43 + PM*  
  
*04/01/19: EUR 5,360,100.24 + PM*

3.13 Percentage or amount paid to the trustee in his capacity as estate administrator for work done : n/a

Activities : none.

#### **4. DEBTORS**

4.1 Number of debtors : under investigation.

22/09/16: the bankrupt company has claims against trade debtors and Spanish group companies. These group companies are involved in Spanish pre-bankruptcy proceedings.

The bankruptcy trustee is conducting an investigation in that respect and has claimed payment from the parties involved.

23/12/16: The bankrupt estate has collected EUR 2,522,234.06.

The collection of outstanding claims against trade debtors (approximately EUR 410,000 of which approximately EUR 250,000 is still disputed) and from Spanish and French group companies (EUR 114 million) is still ongoing.

These claims against the group companies are left unpaid because of the Spanish pre-insolvency proceedings and due to alleged liquidity problems. The bankruptcy trustee investigates, corresponds with the parties involved and has engaged the services of a lawyer in Spain to represent the interests of the bankrupt estate.

23/03/17: in the last reporting period the bankrupt estate has collected EUR 72,055.36 in relation to claims against trade debtors. The collection of outstanding claims will be continued.

The investigation of the claims against the group companies has not yet been completed.

25/09/17: in the last reporting period the bankrupt estate has collected EUR 684,143.35 in relation to claims against trade debtors. The collection of outstanding claims will be continued.

The investigation of the claims towards group companies has not yet been completed.

04/01/18: in the last reporting period the bankrupt estate has collected EUR 1,218,503.28.

The investigation of the claims towards group companies has not yet been completed.

4.2 Proceeds : 22/09/16: EUR 1,669,632.69 + PM

23/12/16: EUR 2,522,234.06 + PM

23/03/17: EUR 2,584,539.55 + PM

25/09/17: EUR 3,268,682.90 + PM

04/01/18: EUR 4,487,186.18 + PM

4.3 Percentage or amount to be paid  
to the trustee in his capacity as  
estate administrator for work  
done : n/a.

Activities : see under 4.1.

## 5. BANK / SECURITIES

5.1 Bank claims : under investigation.

HSBC Bank has a claim of at least EUR 100 million.

23/12/16: (the insurer of) Eurofactor GmbH has submitted a claim of EUR 13.8 million + PM in the bankruptcy.

23/03/17: Santander Facoring y Confirming S.A. E.F.C. has submitted a claim of EUR 6.2 million.

04/01/18: The claim of Eurofactor of EUR 13,847,818.88 was validated on the creditors' meeting of 20 December 2017.

The claims of HSBC of EUR 88,342,332.25 and Santander Factoring y Confirming S.A. E.F.C. of EUR 6,263,182.60 were disputed by Abengoa Bioenergía S.A. (hereinafter: 'ABSA').

According to ABSA a total amount of EUR 13 million of these claims was already paid before the date of bankruptcy by means of enforcement of security interests provided by the Abengoa-group. ABSA stated that in this respect it was subrogated to the claims of HSBC and Santander Factoring y Confirming S.A. E.F.C, and therefore submitted a claim of approximately EUR 13 million on the date of the creditors' meeting. The claim of ABSA was disputed on the creditors' meeting.

The creditors' meeting was deferred until 17 January 2018 for further investigations by and consultation between ABSA, HSBC and Santander. During this meeting the parties will discuss whether an agreement regarding these claims can be reached. If not, the claims will be referred to the claim validation proceedings. During the meeting no other topics other than aforementioned will be addressed.

04/04/18: the creditors' meeting was closed. Santander withdrew its claim of EUR 6,263,182.60. Furthermore, see under 8.9 below.

5.2 Lease agreements

: under investigation.

08/06/16: ABEN leases, among other things, two vehicles and computers. As long as the factory is running, these agreements cannot be terminated.

22/09/16: The agreements have been terminated.

5.3 Description of securities : under investigation.

08/06/16: The management board has announced that no mortgage rights have been issued and that ABEN has issued to Eurofactor Hispania S.A. rights of pledge on claims against debtors. Some creditors are claiming rights of pledge on stocks (cf. under 3.8). These are under investigation.

22/09/16: The investigation has not yet been completed;

23/12/16: See under 3.8. The creditor has failed to demonstrate the right of pledge. The bankruptcy trustee has served a writ of summons on the creditor.

23/03/17: See under 3.8. An amicable settlement was reached with the pledgee.

The investigation in to the (security) rights of Eurofactor is still ongoing. The bankruptcy trustee has requested further documents and information from Eurofactor.

23/03/17: the investigations with regard to Eurofactor have not yet been completed.

25/09/17: the investigations have not yet been completed.

04/01/18: The investigations do not show that ABEN gave Eurofactor Hispania S.A. a right of pledge on claims against debtors.

5.4 Position as secured creditor : 04/01/18: n/a.

5.5 Percentage or amount to be paid to the trustee in his capacity as estate administrator for work done : 04/01/18: n/a.

5.6 Retention of title : 08/06/16: creditors have come forward invoking retention of title. These claims are being identified and investigated. If possible, property will be returned.

22/09/16: A number of creditors invoked a retention of title in a legally valid manner. To the extent that properties subject to a retention of title were present, these have been returned or bought out. Correspondence is still ongoing with one creditor regarding this creditor's entitlements.

23/12/16: This has been completed.

5.7 Rights of recovery : 08/06/16: creditors have come forward invoking the right of recovery. These claims are being identified and investigated. If possible, property will be returned.

22/09/16: The properties which were reclaimed by invoking the right of recovery had already been consumed.



5.8 Rights of retention : 22/09/16: none. The bankruptcy trustee is corresponding with one creditor who wrongly did not release the properties on which it exercised a right of retention when the bankruptcy trustee crossed the right of retention. As a result, the bankrupt estate has suffered considerable damage. This damage is being identified, after which compensation will be claimed.

23/12/16: The bankruptcy trustee claimed compensation of the damage suffered. This issue has been included in the writ of summons referred to under 3.8 e.

23/03/17: an amicable settlement has been reached. See under 3.8 e.

Activities : see under 5.1.

## **6. CONTINUATION / RESTART / ASSET TRANSACTION**

6.1 Description : 08/06/16: the bankruptcy trustee is attempting to sell the company in the interest of a restart.

22/09/16: with the permission of the supervisory judges, the immovable and movable properties and goodwill (including CO2 rights) of the bankrupt company were sold, and were transferred on 7 July 2016 to Alco Energy Rotterdam B.V.

The purchase price at EUR 50 million has been received by the bankrupt estate.

Currently, a number of matters are still being settled with the buyer on account of:

- the stock of raw materials referred to under 3.8.f (a.o. chemicals);
- the acquired bio ethanol referred to under 3.8.c;
- property charges paid before the date of bankruptcy which pertain to the period after the date of bankruptcy;
- *operational* costs incurred in the period between the sale of the assets and the delivery of the assets; and
- damage the buyer alleges to have suffered on account of the alleged contamination of production water prior to the delivery.

23/12/16: An amicable settlement was reached with the purchaser. The purchaser paid a total of EUR 706,073 excluding VAT in connection with the purchase of the stock of raw materials and the stock of bio-ethanol (see under 3.8 c. and 3.8.f.).

In connection with the settlement of the operational costs and property charges, a total of EUR 146,181.40 excluding VAT was received.

23/03/17: in connection with the retroactive settlement of the operational costs incurred in the period between the sale of the assets and the delivery of the assets, a total of EUR 2,052.90 excluding VAT has been charged and was received in this reporting period .

6.2 Proceeds : in total: EUR 50,148,234.27.

Activities : none.

## 7. LAWFULNESS

7.1 Accounting obligation : under investigation.

22/09/16: The bankruptcy trustee has engaged Grant Thornton Forensic & Investigation Services B.V. to secure the administrative accounts of ABEN.

The digital administration of ABEN turns out to be largely interwoven with the digital administration of the Spanish group. Consequently, securing the administrative accounts is a highly complex and time-consuming matter.

23/12/16: Grant Thornton has not yet completed its activities.

23/03/17: Grant Thornton has not yet completed its activities.

25/09/17: Grant Thornton has completed its activities.

7.2 Filing of annual accounts : in time:

- the annual accounts for 2014 were filed on 24 December 2015;
- the annual accounts for 2013 were filed on 04 November 2014;

late:

- the annual accounts for 2012 were filed on 4 November 2014.

7.3 Unqualified audit opinion : 04/01/18: the auditor has provided an unqualified opinion in relation to the financial statements for

2012, 2013 and 2014. The bankruptcy trustee is investigating these.

7.4 Share payment obligation

: 04/01/18: The shares are fully paid-up.

7.5 Mismanagement

: under investigation.

23/12/16: Based on his preliminary findings, the bankruptcy trustee is presently of the opinion that the current and former direct and indirect directors of ABEN have managed ABEN in a manifestly improper manner. Among other things to safeguard the claim term provided by the Directors' and Officers' Liability insurance policy, the bankruptcy trustee has therefore held the directors personally liable for the negative balance of the bankrupt company. The bankruptcy trustee will conduct a further investigation and has reserved the right to change, supplement and/or withdraw any reproaches and claims at a later stage.

The directors have dismissed any liability in general terms.

23/03/17: the investigation is still ongoing.

25/09/17: the investigations have not yet been completed.

04/01/18: the investigations have not yet been completed.

04/04/18: the investigations continue.

04/07/18: the investigations continue.

04/10/18: the investigations continue.

*04/01/19: the investigations continue.*

- 7.6 Fraudulent acts in respect of creditors : under investigation.
- Activities : securing the administrative accounts, investigating the (financial) accounts, the share payment obligation, any fraudulent and unlawful transactions, abstractions and group transactions as well as possible directors' and officers' liability and third-party liability.
- 8. CREDITORS**
- 8.1 Claims against the bankrupt estate : EUR PM (EUR 1,115,358.63 has been paid)
- 8.2 Preferential claim of the tax authorities : EUR 1,443,126.--.
- 8.3 Preferential claim of the UWV : EUR 349,196.56 (has been paid)
- 8.4 Other preferential creditors : EUR 1,943.88 (EUR 1,071,979.89 has been paid).
- 8.5 Contested amount preferential creditors : n/a.
- 8.6 Number of unsecured creditors : approximately 186.
- 8.7 Amount unsecured creditors : EUR 116,609,633.35 (EUR 47,565,953.76 has been paid).
- 8.8 Contested amount unsecured creditors : EUR 27,999,701.81.
- 8.9 Expected way of settlement : full payment of estate creditors and preferential creditors; partial distribution to unsecured creditors.
- Activities : investigating the accounts payable records; taking stock of creditors and informing creditors of the state of affairs with regard to the bankruptcy; investigating preferences.

23/03/17: the bankruptcy trustee is preparing the so-called creditors' meeting.

25/09/17: the District Court has been asked to set a date for the creditors' meeting.

04/01/18: The creditors' meeting took place on 20 December 2017. Eleven claims of creditors were disputed and the other submitted claims were validated. The supervisory judge referred the bankrupt estate and the creditors whose claims were disputed to the claim validation proceedings of 14 February 2018.

No creditor agreement has been submitted.

On 17 January 2018 the creditors' meeting will be continued exclusively with regard to the consultation between ABSA on the one hand and HSBC and Santander on the other hand. During the meeting no other disputes or claims will be taken in consideration.

After the closure of the creditors' meeting, an interim distribution of assets will be prepared.

04/04/18: On 27 January 2018 the creditors' meeting was closed. The submitted claims by creditors were validated, except for the following claims which were disputed by the bankrupt estate and/or by the other creditors and which were referred to claim validation proceedings:

- a. a claim submitted by ABSA of EUR 3.5 million with regard to claims that arose before the declaration of bankruptcy;

- b. a claim submitted by ABSA of EUR 10.5 million with regard to an alleged subrogation to a part of the claim of HSBC Bank;
- c. a claim submitted by ABSA of EUR 2.5 million with regard to an alleged subrogation to a part of the claim of Santander Factoring;
- d. a claim submitted by HSBC Bank of EUR 10.8 million; and
- e. a claim submitted by a former employee of EUR 23,160.49.

In the proceedings sub a through d, the statement of claim will be delivered on 23 May 2018.

In the proceedings sub e, a statement of claim was delivered, after which on behalf of the bankrupt estate a statement of defence was presented. The court is planning a court hearing.

04/07/18:

Interim distribution of assets

On 5 June 2018 the interim distribution list became irrevocable.

On the basis of this distribution list the claims of the secured creditors were fully paid and the claims of the unsecured creditors were paid for 40.79%. For the aforementioned claims that are subject to claim validation proceedings a reservation has been made.

At this moment most of the payments to the creditors have been made. In total an amount of EUR 48,123,905.82 has been distributed until now.

Prior to the interim distribution list becoming irrevocable, two former employees objected to the interim distribution list becoming irrevocable and submitted preferential claims in the bankruptcy. Their subsequent preferential claims were correct.

To prevent any further delay and costs with regard to the interim distribution of assets, these claims were – after consultation with the supervisory judge – considered to be claims against the bankrupt estate and were paid. After this payment, the objections against the interim distribution list becoming irrevocable were withdrawn.

#### Claim validation proceedings

Aforementioned claim validation proceedings sub a through d were deferred to the docket list of 15 August 2018 for statements of claim (conclusies van eis tot verificatie).

Regarding the proceedings sub e, a court hearing has been scheduled for 18 September 2018. Also, the bankruptcy trustee is consulting with the opposing party about an amicable settlement.

04/10/18:

#### Interim distribution

The interim distribution of assets has been finished and the bankruptcy trustee has rendered account to the supervisory judge.

#### Subsequent claims

In the last reporting period, two creditors came forward with subsequent claims. The bankruptcy



trustee has noted one subsequent claim on the list of provisionally admitted preferential claims and the other one on the list of provisionally disputed unsecured claims. As to the latter claim, correspondence is still ongoing. The bankruptcy trustee will ask the District Court to set a date for a second creditors' meeting pursuant to Article 178 of the Bankruptcy Act in due course.

#### Claim validation proceedings

In the claim validation proceedings sub a and sub c, the lawyer of ABSA has withdrawn from representation. The proceedings were referred to the docket list of 3 October 2018 for appointment of a new lawyer.

In the claim validation proceedings sub b, the District Court recorded that ABSA has failed to file a statement of claim. The bankruptcy trustee has requested the District Court to deliver judgment.

In the claim validation proceedings sub d, HSBC Bank has delivered its statement of claim. The case is referred to the docket list of 31 October 2018 for the statement of defence on behalf of the bankruptcy trustee. In these proceedings, the lawyer of ABSA has also withdrawn from representation.

In the claim validation proceedings sub e, an amicable settlement was reached on the basis of which EUR 10,000.-- of the claim of the former employee has been noted on the list of provisionally admitted unsecured claims. The

interim distribution to this creditor has been made.

04/01/19:

Claim validation proceedings

*In the claim validation proceedings sub a and sub c, no new lawyer was appointed on behalf of ABSA.*

*At the request of the bankruptcy trustee the District Court delivered judgment on 28 November 2018 and ruled that ABSA has withdrawn its claim. As a result, the claim validation proceedings sub a and sub c have ended.*

*In the claim validation proceedings sub b, the District Court will deliver judgment on 13 February 2019.*

*In the claim validation proceedings sub d, the parties are discussing an amicable settlement.*

The objection proceedings Municipality of Rotterdam

22/09/16: On behalf of the bankrupt estate, an objection was lodged to the assessments imposed by the Municipality of Rotterdam under the Valuation of Immovable Property Act [*Wet waardering onroerende zaken*]. On 30 August 2016, the substantiated objections were filed by the expert engaged by the bankrupt estate (KPMG).

23/12/16: The objection proceedings are pending.

23/03/17: the objection proceedings have not yet been completed.

25/09/17: the objection proceedings are pending.

04/01/18: the objection proceedings were closed due to an amicable settlement.

## **9. GUARANTEE**

9.1 Guarantee : n/a

9.2 Amount : n/a

9.3 Date issued : n/a

Activities : none.

## **MISCELLANEOUS**

9.4 Term for the settlement of the bankruptcy : at this time it is not yet possible to make a prediction.

9.5 Plan of action : the following activities must still be performed:

- investigating the policy and the cause of the bankruptcy;
- investigation into claims against group companies and, if possible, collection of claims;
- investigating the (financial) accounts;
- investigating any fraudulent and/or unlawful transactions, abstractions and group transactions as well as possible directors' and officers' liability and third-party liability;
- correspondence with the board regarding the notice of liability;
- conducting the claim validation proceedings mentioned under 8.9;

- verification of the subsequent claims by means of a creditors' meeting pursuant to Article 178 of the Bankruptcy Act;
- informing creditors of the state of affairs; and
- settling the bankruptcy.

9.6 Submission of the next report : *April 2019*.

Further information can be obtained from the undersigned and from *meester* S.C. Louer; see the address below.

Rotterdam, *4 January 2019*

Carl Hamm,  
trustee