

**Public report pursuant to Article 73a Bankruptcy Act [Dutch: Faillissementswet]**

Number: 1

Date: 02-03-2023

**General information**

**Company name**

HES Hartel Tank Terminal B.V.

**Company details**

The private company with limited liability HES Hartel Tank Terminal B.V., with its registered office in Rotterdam and its principal place of business at (3199 LM) Maasvlakte, Rotterdam at Beerweg nr. 101.

**Activities of the company**

HES Hartel Tank Terminal B.V. (hereafter: 'HHTT') is part of the HES-group. The HES-group operates logistic port companies in Northern Europe. HHTT's sole shareholder is HES Hartel Tank Terminal Holding B.V. The shareholder of HES Hartel Tank Terminal Holding B.V. is HES International B.V.

HHTT was established to build and operate the HES Hartel Tank Terminal (hereafter: 'the Terminal'). The construction of the Terminal has not yet been completed and the Terminal is not in use yet.

According to the description in the Trade Register of the Chamber of Commerce the activities of HHTT are: developing and operating a wet bulk terminal, and holding and financing activities.

**Financial data**

Year	Turnover	Profit and loss	Balance-sheet total	
2019		0	-/- 3,184,169	170,089,468
2020		0	-/- 2,269,862	377,878,580
2021		0	-/- 187,584,497	401,069,713

**Explanation financial data**

Under investigation.

**Average number of employees**

76

**Explanation**

In 2020: 13 (according to annual accounts);  
In 2021: 31 (according to annual accounts),  
at the date of bankruptcy: 76.

#### Funds of the estate

€ 0.

#### Explanation

#### Reporting period

9 January 2023 up to and including 24 February 2023

#### Hours spent

Reporting period:	Hours spent:
1	763:35
<b>total</b>	<b>763:35</b>

#### Explanation hours spent

Preliminary remarks

This is the first report in the bankruptcy of HES Hartel Tank Terminal B.V.

This bankruptcy report is based on information obtained by the bankruptcy trustee from the management board of the company and from third parties. No guarantee can be given as to the accuracy and completeness of the data recorded. It is possible that at a later stage, figures or other data may differ from what is contained in this report.

No rights can be derived from this bankruptcy report and/or subsequent reports.

Further information can be obtained from Mr. C.F.W.A. Hamm and Mr. S.C. Louer:

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#### PERIOD OF SUSPENSION OF PAYMENTS

On 29 December 2022 the Court of Rotterdam granted provisional suspension of payments to HHTT with the appointment of Mr. C.G.E. Prenger and Mr. M. Aukema as supervisory judges and Mr. C.F.W.A. Hamm as administrator. A cooling-off period was announced.

The investigation by the administrator and the discussions he had with all the parties concerned revealed that there was no prospect of satisfaction of HHTT's creditors as provided for in Article 242(1)(5) of the Bankruptcy Act. For this reason, the administrator asked the court to withdraw HHTT's provisional suspension of payments and, if the court saw reason for this, to declare on its own initiative the bankruptcy of HHTT, who met the requirements of Article 1 of the Bankruptcy Act. The court declared HHTT's bankruptcy on 9 January 2023.

In the period of suspension of payments 179:55 hours were spent.

### **PERIOD OF BANKRUPTCY**

At the start of the bankruptcy, a plan was made in consultation with the financiers to pause the construction of the terminal, to take measures to maintain, prevent or limit loss of value and security ('to mothball') and to prepare the terminal for sale. Credit has been provided by the financiers to cover for the cost of this.

Many parties (both from the Netherlands and from abroad) have showed interest in acquiring the Terminal. These parties will be involved in the sales process initiated in consultation with the financiers. The sales process is expected to take three to six months.

## **1. Inventory**

### **1.1 Management and organisation**

HHTT was incorporated by a notarial deed dated 26 May 2016.

HHTT's directors are Mr D.J.L. Vos (since 1 October 2020) and Mr O.A. Eggink (since 1 October 2022).

HHTT's sole shareholder since 19 December 2016 is HES Tank Terminal Holding B.V. The sole shareholder of HES Tank Terminal Holding B.V. is HES International B.V.

### **1.2 Pending proceedings**

Under investigation.

### **1.3 Insurances**

Under investigation. Certain insurances have not been cancelled during the downscaling of the terminal and the sales process. Current premiums are paid out of the estate financing.

### **1.4 Lease**

Under investigation.

### **1.5 Cause of bankruptcy**

The bankruptcy trustee is investigating the causes of the bankruptcy.

## **2. Staff**

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

#### **Employees**

76

#### **Explanation**

According to the board of management: 76.

## 2.2 Number of employees in the year before the bankruptcy

### Employees

31

### Explanation

According to the board of management: 76 in 2022.

## 2.3 Notice of dismissal

Date	Number	Explanation
10-01-2023	76	

## 2.4 Activities

The dismissal procedure for employees in bankruptcy was followed. The employees received notice of dismissal after the supervisory judges' approval was obtained. The UWV (Dutch Employee Insurance Agency) and the trade unions were informed in advance.

With a small number of HHTT-employees agreements were made pursuant to which these employees will assist the bankruptcy trustee several more months in connection with the sales process of the terminal and with preserving the terminal's good condition.

## 3. Assets

### 3.1 Immovable property

Description	Sales proceeds	Mortgage amount	Estate contribution
	0,00	0,00	0,00
	0,00	0,00	0,00
Total	0,00	0,00	0,00

### Explanation immovable property

The land register shows that HHTT has a right of (sub-)ground lease [Dutch: (onder-)erfpacht] on real estate with accessories (e.g. a tank terminal with accessories, commercial and office buildings, paving and ground works and utilities) standing and situated on, in short, the Beerweg 101 in (3199 LM) Maasvlakte, Rotterdam. The financiers claim a mortgage and a leasehold [Dutch: opstalrecht] on the property.

### 3.2 Activities immovable property

Sale of the immovable property in consultation with the financiers.

### 3.3 Operating assets

Description	Sales proceeds	Estate contribution
	0,00	0,00
	0,00	0,00
Total	0,00	0,00

#### Explanation operating assets and vehicles

HHTT owns all kinds of (office) inventory, installations, equipment, tools etc. that are located in, on and around the terminal. Moreover, the *Rijksdienst voor het Wegverkeer* (RDW) has stated that HHTT has three vehicles and one trailer in its name.

The financiers claim rights of pledge on all assets.

### 3.4 The tax authorities' privilege of attachment [Dutch: bodemvoorrecht]

Under investigation.

### 3.5 Activities operating assets and vehicles

Sale of operating assets in consultation with the financiers.

### 3.6 Inventory / work in progress

Description	Sales proceeds	Estate contribution
See explanation.		0,00
	0,00	0,00
Total		0,00

#### Explanation Inventory/work in progress

None. The terminal is under construction and has not yet been put into service.

### 3.7 Activities Inventory/work in progress

None.

### 3.8 Other assets

Description	Sales proceeds	Estate contribution
	0,00	0,00

	0,00	0,00
Total	0,00	0,00

#### Explanation Other assets

Under investigation.

#### 3.9 Activities Other assets

See sub 3.8.

### 4. Debtors

#### 4.1 Debtors

Description	Amount	Proceeds	Estate contribution
See explanation.	0,00		0,00
	0,00	0,00	0,00
Total	0,00		0,00

#### Explanation Debtors

Under investigation. The financiers claim rights of pledge on the claims on debtors of HHTT and have notified those rights of pledge. These claims are under investigation.

#### 4.2 Activities Debtors

See sub 4.1.

### 5. Bank/Collateral

#### 5.1 Bank claims

#### Explanation Bank claims

Under investigation.

#### 5.2 Lease contracts

At the time of bankruptcy, HHTT rented one car which has been returned. In addition, HHTT leased four cars based on operational lease. The contracts of three lease cars have been taken over by companies within the HES group, the fourth lease car has been returned.

#### 5.3 Description collateral

Under investigation.

The financiers claim rights of pledge on the operational assets, inventory, IP-rights and claims on debtors of HHTT, as well as a mortgage on the right of leasehold on the real estate. These claims are under investigation.

#### **5.4 Position as a secured creditor**

Under investigation.

#### **5.5 Retention of title**

Several creditors claim a retention of title.

In close consultation with the engaged expert TWA Waardering en Advies these claims are identified and investigated. If the claims are justified, the respective property will be returned after payment of a contribution to the estate to cover for the costs involved with returning the property.

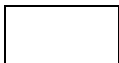
#### **5.6 Rights of retention**

Certain creditors claim a right of retention. In close consultation with TWA Waardering en Advies these claims are identified and investigated.

#### **5.7 Rights of recovery**

Under investigation.

#### **5.8 Contributions to the estate**



#### **Explanation contributions to the estate**

When returning the property to the parties who have claimed a retention of title, the bankruptcy trustee demands, where possible, an estate contribution to cover for the costs involved with returning the property.

#### **5.9 Activities Bank/collateral**

See sub 5.1 t/m 5.7.

### **6. Continuation/restart/asset transaction**

#### **6.1 Continuation: Exploitation / collateral**

In consultation with the financiers the bankruptcy trustee is preparing the sale of the terminal.

The terminal has been put in pause mode and a plan has been made to ensure that the terminal remains in good condition.

In consultation with the financiers and their advisors, among which PricewaterhouseCoopers B.V. ('PwC'), a sales process is being prepared.

## 6.2 Continuation: Financial reporting

The bankruptcy trustee shall keep a financial record of the costs incurred for the pausing and maintenance in good condition of the terminal during the sales process. Expenditure is incurred in consultation with the financiers, who provide a credit for it.

## 6.3 Continuation: Activities

See sub 6.1.

## 6.4 Restart: Description

The sale of the terminal is being prepared. See above sub 6.1.

## 6.5 Restart: Accountability

## 6.6 Restart: Proceeds

### Explanation proceeds

## 6.7 Restart: Estate contribution

EUR 500,000

### Explanation estate contribution

The financiers will pay to the estate a fixed contribution of EUR 500.000 plus VAT for the efforts made by the estate in connection with the sales process in the interest of the financiers. In addition, a variable estate contribution was agreed, which depends on the level of the proceeds of the sale of the terminal.

## 6.8 Restart: Activities

See sub 6.1.

## 7. Lawfulness

### 7.1 Accounting obligation

Under investigation.

### 7.2 Filing of annual accounts



The annual accounts were filed in time:

- the annual accounts 2021 were filed on 31 May 2022;
- the annual accounts 2020 were filed on 4 June 2021; and
- the annual accounts 2019 were filed on 2 June 2020.

### 7.3 Unqualified audit opinion

Under investigation.

### 7.4 Share payment obligation

Under investigation.

### 7.5 Mismanagement

***Tick the box***

- Yes**
- No**
- Not completed**

**Explanation mismanagement:**

Under investigation.

### 7.6 Fraudulent preference

***Tick the box***

- Yes**
- No**
- Under investigation**

**Explanation fraudulent preference:**

Under investigation.

### 7.7 Explanation lawfulness

Under investigation.

### 7.8 Activities lawfulness

Investigation of/into the (financial) administration, the obligation to pay up shares, any fraudulent preference and unlawful transactions, withdrawals and group transactions as well as possible directors' liability and third-party liability.

## 8. Creditors

### 8.1 Claims against the bankrupt estate

Amount claims against the bankrupt estate

EUR 8,307.96

**Explanation**

EUR 8,307.96 + p.m. (report 1)

**8.2 Preferential claim of the tax authorities**

**Amount**

EUR 495,131.00

**Explanation**

EUR 495,131.00 + p.m. (report 1)

**8.3 Preferential claim of the UWV**

**Amount**

EUR 7,089.44

**Explanation**

EUR 7,089.44 + p.m. (report 1)

**8.4 Other preferential creditors**

**Amount**

EUR 360,000.00

**Explanation**

EUR 360,000.00 + p.m. (report 1)

**8.5 Number of unsecured creditors**

180

**Explanation**

**8.6 Amount of unsecured creditors**

**Amount**

EUR 78,545,110.03

**Explanation**

EUR 78,545,110.03 + p.m. (report 1).

### **8.7 Expected way of settlement**

Yet unknown.

### **8.8 Activities creditors**

Investigation accountants payable records; inventory of creditors and inform creditors on the state of affairs with regard to the bankruptcy; investigation preferences.

## **9. Proceedings**

### **9.1 Name counterparty**

Randridge International Ltd. (hereafter: 'Randridge').

### **9.2 Nature of proceedings**

Randridge claimed in summary proceedings the return and release by the bankruptcy trustee and ING Bank N.V. of a performance guarantee issued by ABN AMRO on behalf of Randridge. ING Bank N.V. and the bankruptcy trustee have defended their positions during a hearing that took place on 20 February 2023.

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

On 7 March 2023 the preliminary relief judge shall render a decision in the summary proceedings initiated by Randridge.

### **9.4 Activities Proceedings**

See sub 9.2.

## **10 Miscellaneous**

### **10.1 Plan of action**

The following activities are yet to be performed:

- sale of the immovable property, the operational assets and other assets, if any;
- investigation into claimed property, retention of title and rights of recovery and the settlement thereof;
- examination of the (financial) administration;
- investigation into the management and the cause of the bankruptcy;
- investigation into the financing and collateral;
- investigation into fraudulent preference and/or unlawful transactions, constructions, withdrawals and group transactions, if any, and into possible directors' liability and liability of third parties;
- inventory of creditors;
- determination of the tax position;
- informing creditors in the state of affairs with regard to the bankruptcy;
- investigation preferences, and
- the winding up of the bankruptcy.

#### **10.2 Term for winding up the bankruptcy**

At this moment no predictions on the winding up of the bankruptcy can be made.

#### **10.3 Submission of the next report**

02-06-2023.

#### **10.4 Miscellaneous activities**

See sub 10.1.