

**ADVICE PURSUANT TO ARTICLE 140 OF THE DUTCH
BANKRUPTCY ACT
IN THE BANKRUPTCY OF:
SLOTTERVAARTZIEKENHUIS B.V. ("MCS")**

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| Name of company: | Slotervaartziekenhuis B.V. |
| Bankruptcy number: | F.13/18/340 |
| Date of (provisional) suspension of payments: | 23 October 2018 |
| Date of bankruptcy: | 25 October 2018 |
| Court: | Amsterdam |
| Bankruptcy Trustees: | M.R. van Zanten and M.N. de Groot |
| Supervisory Judge: | I.M. Bilderbeek and K.M. van Hassel |
| Date: | 16 March 2020 |

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1. INTRODUCTION

1.1 Suspension of payments and bankruptcy of MCS

1.1.1 By application of 23 October 2018, MCS requested the Amsterdam District Court to grant MCS provisional suspension of payments.

1.1.2 By decision of 23 October 2018 the District Court of Amsterdam granted MCS provisional suspension of payments and appointed mr. Van Zanten and mr. De Groot as administrators.

1.1.3 By judgment of 25 October 2018, the District Court of Amsterdam withdrew the provisional suspension of payments and declared MCS bankrupt, and appointed mr. Van Zanten and mr. De Groot as bankruptcy trustees (the **Bankruptcy Trustees**).

1.2 Information in public reports and on the website

1.2.1 As regards the background to the application for suspension of payments filed by MCS, MCS's activities and the events and developments since 23 October 2018, including the bankruptcy order, the Bankruptcy Trustees refer to the public reports pursuant to Article 227 and Article 73a of the Dutch Bankruptcy Act (*Faillissementswet*, hereinafter **DBA**), which have been published and can be consulted, for example at www.cmslaw.nl/slotervaartziekenhuis (the **Website**).

1.2.2 Unless indicated otherwise below, terms defined in this opinion pursuant to Article 140 DBA have the same meaning as those in the Composition (as defined hereinafter) or assigned to them by the Bankruptcy Trustees in the public reports.

1.2.3 The information and documents relevant to the creditors of MCS in relation to the developments concerning MCS have also been made available on the Website. The majority of the documents referred to by the Bankruptcy Trustees in this advice can be consulted on the Website.

1.3 Composition; the Bankruptcy Trustees' role

1.3.1 On 16 March 2020, MCS filed a draft composition and the accompanying explanation (jointly: the **Composition**) with the registry of the Amsterdam District Court. This is the composition that will be the subject of the consultation and vote which will take place on 2 April 2020 at 10:00 a.m. at the Amsterdam District Court. The Composition was also published on the Website and the website opened by MCS specifically for that purpose: www.akkoordslotervaart.nl.

1.3.2 The Bankruptcy Trustees are not MCS's legal advisors. Dutch lawyers and other advisors have assisted MCS in the context of the preliminary suspension of payments, the bankruptcy, the preparation of the Composition, the verification meeting of 2 April 2020 and the consultation and vote on the Composition.

- 1.3.3 The Bankruptcy Trustees' role in the process leading up to the consultation and vote regarding the Composition of 2 April 2020 was primarily limited to consultation regarding the request pursuant to Article 108 DBA submitted by the Bankruptcy Trustees to the Supervisory Judge concerning matters including the determination of the date of the verification meeting and the date for the submission of claims, and consultation with MCS and its advisors regarding logistical matters concerning the verification meeting and the consultation and vote on the Composition.
- 1.3.4 By decision of 29 October 2019 (the **Decision**), the Supervisory Judge in the bankruptcy of MCS ruled, inter alia, that creditors must have submitted their claims to the Bankruptcy Trustees no later than on 16 December 2019, and that the verification meeting in the bankruptcy of MCS will be held on 12 March 2020 at 10.00 a.m. at the Amsterdam District Court (Parnassusweg 220, Amsterdam). The Decision was published on the Website.
- 1.3.5 By further decision of 27 February 2020 (the **Further Decision**), the Supervisory Judge ruled that the verification meeting in the bankruptcy of MCS will be held at 10:00 on 2 April 2020 at the District Court of Amsterdam (Parnassusweg 220, Amsterdam). The Further Decision was also published on the Website.
- 1.3.6 All the creditors known to the Bankruptcy Trustees were informed of the Decision and the Further Decision via letters to that end of 11 and 18 November 2019, respectively, and 28 February 2020. By letter of 13 March 2020, the known creditors were also sent another convening letter for the verification meeting of 2 April 2020.
- 1.3.7 Prior to the verification meeting of 2 April 2020, the lists of (provisionally) acknowledged preferential and unsecured creditor claims and (provisionally) disputed creditor claims (the **Lists**) are filed with the registry of the Amsterdam District Court. There, these lists will be available for inspection to all those concerned during a period of seven days prior to the meeting of creditors, and therefore as from Thursday, 26 March 2020. Due to privacy legislation, the Lists will not be published on the Website.

1.4 **Independent assessment of the Composition by creditors**

- 1.4.1 The Bankruptcy Trustees are not advisors of any individual creditor or the joint creditors of MCS. Each creditor has the responsibility to form an independent opinion on the merits of the Composition and to obtain external legal and/or financial advice if necessary.
- 1.4.2 The Bankruptcy Trustees were not materially involved in the negotiations regarding and the realisation of the Composition. Each MCS creditor that is entitled to vote must personally weigh up and decide on the substance of the Composition and the consequences related its acceptance or rejection.

1.5 **Advice pursuant to Article 140 DBA**

- 1.5.1 This advice concerns the Bankruptcy Trustees' advice within the meaning of Article 140 DBA. Pursuant to this article, the Bankruptcy Trustees must issue a written advice at the

meeting with regard to the substance and plausibility of a composition offered by a debtor to its creditors.

- 1.5.2 The Bankruptcy Trustees have given MCS, Zadelhoff and their counsel the opportunity to familiarize themselves with the substance of this advice and the Bankruptcy Trustees' interpretation of the Composition before issuing this advice.
- 1.5.3 The Bankruptcy Trustees do not guarantee that the information contained in this advice is complete and correct in all respects. Nor is this advice intended to give a complete overview of assessments of MCS's financial position and the Composition made by the Bankruptcy Trustees. It is merely intended to outline the Bankruptcy Trustees' findings.
- 1.5.4 This advice is published in the Dutch language, but the Bankruptcy Trustees will also publish an (uncertified) English-language translation of the advice. If there is any inconsistency or difference of interpretation between the Dutch and the English version, the Dutch version will prevail. Both the Dutch-language version and the English-language version of this advice will be published on the Website.
- 1.5.5 No rights can be derived from this advice.

2. MCS'S OBLIGATION TO PROVIDE INFORMATION; EXPLANATION AND DEFENCE OF THE COMPOSITION; VOTE ON AND CONFIRMATION OF THE COMPOSITION

- 2.1 The vote and consultation regarding the Composition will take place during the verification meeting of 2 April 2020, starting at 10:00 at the District Court of Amsterdam (Parnassusweg 220, Amsterdam).
- 2.2 The creditors are authorised to request the Supervisory Judge to ask MCS to provide information on specific matters to be indicated by them during that meeting. MCS's management is obliged to attend the verification meeting and to provide all information regarding the causes of the bankruptcy and the condition of the estate upon request of the Supervisory Judge during the verification meeting.
- 2.3 MCS is also entitled to explain and defend the Composition at the verification meeting.
- 2.4 If the Composition is adopted by the creditors (entitled to vote), the supervisory judge will, pursuant to Article 150(1) DBA, set the date on which the District Court will address the confirmation of the composition.
- 2.5 In the context of the confirmation decision, the District Court must, pursuant to Article 153 DBA, assess, *among other things*:
 - (a) whether the proceeds of MCS's estate do not considerably exceed the payment offered to the creditors through the Composition; and
 - (b) whether performance of the Composition is sufficiently safeguarded; and
 - (c) whether the Composition is not the result of fraud, favouring of one or more creditors

or using other unfair means, regardless of whether the bankrupt or another party has cooperated with that.

3. RELEVANT DOCUMENTATION IN RELATION TO THE COMPOSITION AND THE FINANCIAL POSITION OF MCS

- 3.1 The Bankruptcy Trustees assume that the MCS creditors with voting rights, in the context of the considerations to be made by them on the merits of the Composition, have read the Composition (including all accompanying annexes) and other relevant documentation – including third party documentation – as it was published by MCS. MCS publishes information it considers relevant via the website www.akkooordslotervaart.nl.
- 3.2 In the bankruptcy of MCS there were (acknowledged) estate claims (*boedelvorderingen*) in the amount of approximately EUR 20.5 million on the date of this advice. Of this amount, approximately EUR 5.1 million relates to amounts drawn by the estate of MCS under the funds provided by virtue of a (supplementary) estate credit facility made available to the estate of MCS by Cymburga International VIII B.V. (part of the Zadelhoff Group). This allowed the Bankruptcy Trustees to pay the current expenses.
- 3.3 On the date of this advice, there is a provisionally acknowledged debt burden of approximately EUR 10.4 million (excluding a claim from ING (now Zadelhoff) as pledgee and mortgagee of (rounded) EUR 7.7 million), a provisionally acknowledged unsecured debt burden of approximately EUR 20.9 million (546 creditors), a provisionally acknowledged subordinated debt burden of EUR 4,679,375 and an amount of approximately EUR 4.8 million in disputed claims. Of the latter amount, a claim of approximately EUR 2 million will still lapse if the Composition is confirmed, which leaves an amount of approximately EUR 2.8 million in disputed unsecured claims.
- 3.4 For completeness' sake, the Bankruptcy Trustees point out that the amounts mentioned above may still change. The Lists will reflect the status known to the Bankruptcy Trustees as at 25 March 2020, but the amounts may also still change at the verification meeting of 2 April 2020.

4. SUBSTANCE OF THE COMPOSITION

4.1 Proposed payments to creditors

- 4.1.1 In conjunction with the Composition – also with the help of financing in the amount of EUR 45 million provided to MCS by an entity from the Zadelhoff Group (**Zadelhoff**) – the estate claims and claims of preferential creditors will be paid in full.
- 4.1.2 The Composition further provides for a partial payment (in phases) of the claims of unsecured creditors who will have been definitively acknowledged during the verification meeting of 2 April 2020 or after a settlement reached with MCS afterwards and/or after claim validation proceedings.

4.1.3 As mentioned in article 4 of the Composition, the provisional estimate is that an (estimated) percentage of 40% of the claims of unsecured creditors with an Acknowledged Claim A (as defined in the Composition). This applies to virtually all unsecured creditors who have submitted their claims. Depending on the possible release of reserved amounts and expenses still to be incurred, this percentage is subject to change.

4.1.4 However, given that the first part of EUR 5,000 of each unsecured claim is integrally paid or, if the amount is lower, the entire claim, many of these unsecured creditors who have submitted their claims will receive a higher percentage of their claims.

On the basis of the information that is known on the date of this advice, a total of 50% of the number of unsecured creditors who have submitted their claims – approximately 273 creditors – will receive a 100% payment. In addition, it is expected that approximately 115 unsecured creditors with claims in excess of EUR 5,000 – i.e. approximately 42% of this group of unsecured creditors – will receive a payment of more than 60% of their claims.

4.1.5 With regard to disputed claims, a reserve will be set aside pending an amicable settlement with MCS or pending the outcome of claim validation proceedings to be conducted.

4.1.6 Creditors with as yet disputed claims and creditors with claims communicated after the verification meeting, if any, are also entitled to payment of the percentage under the Composition, such after acknowledgement by MCS or insofar as their claims are established at law.

However, MCS has informed the Bankruptcy Trustees that payment of the Acknowledged Claims A will be made soon after the Confirmation Decision has become binding and irrevocable (which also arises from the Composition itself). As the Foundation is provided with a fixed amount, the consequence of that payment will be that there are no, or possibly insufficient, funds available for payment of claims communicated after the verification meeting or of Acknowledged Claims B. The consequence is that even though creditors in this category of claims are formally entitled to the same percentage of payment as the creditors with Acknowledged Claims A, in practice they will receive no, or possibly only a lower, payment.

This situation can only arise if there are in fact future claims after the verification meeting, which, after careful review, turn out to qualify for acknowledgement. MCS has informed the Bankruptcy Trustees that based on the information it currently has it has no reason to assume that there will be any claims submitted after the verification meeting.

4.2 Execution of the Composition

4.2.1 As is stated in the Composition, the foundation Stichting Akkoord Slotervaartziekenhuis (the **Foundation**) will execute the Composition. After the Confirmation Decision becomes final and irrevocable, unsecured creditors will have a claim against the Foundation and MCS will

ensure that the Foundation will receive the required funds to execute the Composition, either or not with financing to be provided by Zadelhoff.

- 4.2.2 The Bankruptcy Trustees will become members of the Supervisory Council of the Foundation and as such will be able to supervise the Board of the Foundation, which is primarily responsible for a correct execution by the Foundation of its activities in relation to the Composition.
- 4.2.3 MCS has committed to the Bankruptcy Trustees that the Foundation will be formed within one week after the date of this advice, and that it will indicate its willingness in writing vis-à-vis MCS and its unsecured creditors to fulfil its obligations to execute the Composition. MCS will provide the Bankruptcy Trustees with a copy of the deed of formation of the Foundation and of this statement within one week after the date of this advice.

5. EXPECTATIONS FOR UNSECURED CREDITORS OF MCS IN THE EVENT OF FURTHER LIQUIDATION OF ASSETS OF MCS

- 5.1 The expectations for creditors in the event of liquidation of MCS's assets are considerably less favourable than those in the event of acceptance and confirmation of the Composition.
- 5.2 On the basis of the financial details they are now aware of (the amount of MCS's debts and the expected value to be realised from the sale under execution of MCS's assets and the costs related to the further liquidation and settlement of the MCS bankruptcy), the Bankruptcy Trustees estimate that in the most favourable scenario unsecured creditors will receive a maximum – and in a much longer term – of approximately EUR 2 million.
- 5.3 However, the Bankruptcy Trustees clearly do not rule out the possibility that – especially given the existent contingent liabilities with regard to the policy excess under the medical liability insurance policy taken out for MCS – unsecured creditors will not receive any payment on their claims and that estate creditors and/or preferential creditors will not be paid in full either.
- 5.4 In the framework of the Composition, the Foundation will receive from MCS an amount of approximately EUR 15 million (see article 1 of the Composition). Of that amount, after deduction of the necessary reservations, an amount of approximately EUR 10.6 million is available to make payments to creditors with Acknowledged Claims. As indicated above, this concerns virtually all unsecured creditors who have submitted their claims.

Compared to the fictitious – most favourable – scenario set out above at 5.2, unsecured creditors who have submitted their claims therefore can look forward to a considerably higher payment if the Composition is executed. Of course, this applies all the more if a continued liquidation of MCS's assets would prevent unsecured creditors from receiving any payment at all.

6. INVESTIGATION INTO THE CAUSES AND REGULARITY

- 6.1 Initially, it was the intention that creditors of MCS would be paid in full in the context of a composition to be offered by MCS and to be funded by Zadelhoff. This principle still applied in October 2019.
- 6.2 Where creditors of MCS would be paid in full, the Bankruptcy Trustees have taken the position that there was no necessity to conduct an investigation – as is customary and one of their tasks (cf. Article 68(2)(a) DBA) – into the causes of the bankruptcy of MCS and possible irregularities that have caused or helped cause the bankruptcy of MCS. Among other things to prevent unnecessary burden to the estate assets, the Bankruptcy Trustees therefore did not develop any initiatives in this direction.
- 6.3 However, further developments in the month of November 2019 – among other things the additional debts of MCS that have meanwhile become known – made it clear that a 100% payment would no longer be feasible.
- 6.4 Especially the Municipality of Amsterdam initially insisted on the Bankruptcy Trustees to carry out an investigation into the causes and regularity of the bankruptcy, and even instituted a legal action against the Bankruptcy Trustees in the context of an Article 69 DBA action.
- 6.5 In a decision of 10 July 2019, in the context of an appeal lodged by the Municipality of Amsterdam pursuant to Article 67 DBA, the Amsterdam District Court confirmed the correctness of the Bankruptcy Trustees' position. The decision was published on the Website and can also be found at www.rechtspraak.nl (ECLI:N:RBAMS:2019:4889; *JOR* 2019/238).
- 6.6 Afterwards – as the Bankruptcy Trustees have understood from MCS and Zadelhoff – intensive negotiations between the Municipality of Amsterdam and Zadelhoff have led to agreement about the implementation of *Zorgplan Zadelhoff* ("Zadelhoff Care Plan, see at Articles 2.3 to 2.5, inclusive, of the explanation to the Composition), in the context of which the Municipality of Amsterdam has abandoned its wishes with regard to an investigation into the causes and regularity of the bankruptcy by the Bankruptcy Trustees. For completeness' sake, the Bankruptcy Trustees remark that they were not involved in these negotiations.
- 6.7 In the meantime, due to the passing of time and the initial date for the verification meeting and the vote on the Composition, determined in the interim (12 March 2020) it was no longer possible for the Bankruptcy Trustees to carry out what, given the nature and size of the MCS bankruptcy, would have been a complex and time-consuming investigation into the causes and regularity of the bankruptcy. This is not altered by the slight postponement of the verification meeting and the vote on the Composition to the current date of 2 April 2020.
- 6.8 All of this means that the Bankruptcy Trustees now refrain from expressing any opinion on regularity as well as any opinion about the causes of the MCS bankruptcy.
- 6.9 In this framework, the Bankruptcy Trustees point out that in the meantime two external investigation reports have been published into the downfall of MCS and the IJsselmeer hospitals. This concerns the investigation report of the Dutch Safety Board (*Onderzoeksraad voor de Veiligheid*) of 19 December 2019 (to be consulted on www.onderzoeksraad.nl) and

the Report of the Dutch Corporate Governance Code Monitoring Committee (*Commissie van Manen*) dated 6 March 2020 (to be consulted on <https://www.rijksoverheid.nl/onderwerpen/faillissement-mc-slotervaart-en-mc-ijsselmeerziekenhuizen/onafhankelijke-onderzoekscommissie>). Especially the latter report shows that a multitude of interrelated facts and circumstances played an important role in the downfall of both hospitals.

7. PERFORMANCE OF THE COMPOSITION SAFEGUARDED

- 7.1 In order to allow the Foundation to meet its obligations to execute the Composition and to allow the Bankruptcy Trustees to fully pay the claims of estate creditors and preferential creditors, MCS will enter into a financing agreement with Zadelhoff, on the basis of which MCS can borrow an amount of EUR 45 million from Zadelhoff (the **Financing Agreement**). The only condition for this is that the Confirmation Decision becomes final and irrevocable.
- 7.2 Zadelhoff has confirmed in writing to the Bankruptcy Trustees (i) that it will enter into the Financing Agreement with MCS, and provide the Bankruptcy Trustees with a copy of the signed Financing Agreement, within one week after the date of this advice and (ii) that the lender under the Financing Agreement has sufficient funds and is therefore capable of meeting the obligations vis-à-vis MCS under the Financing Agreement.
- 7.3 In the opinion of the Bankruptcy Trustees, it is therefore properly demonstrated that the funds required for the execution of the Composition by the Foundation and for the payment in full of the claims of estate creditors and preferential creditors will become available within a short period of time after the Confirmation Decision has become final and irrevocable.
- 7.4 In view of the above, the Bankruptcy Trustees are of the opinion that the performance of the Composition is sufficiently safeguarded.

8. CONCLUSION

- 8.1 All things considered, the Bankruptcy Trustees are of the opinion that the unsecured creditors of MCS would benefit from voting in favour of the Composition and from the subsequent confirmation, given that this leads to a considerably higher payment than they would receive in the event of a continued liquidation of the assets of MCS.
- 8.2 The Bankruptcy Trustees therefore advise the unsecured creditors with voting rights of MCS to vote in favour of the Composition.

Amsterdam, 16 March 2020

M.R. van Zanten
Bankruptcy Trustee

M.N. de Groot
Bankruptcy Trustee