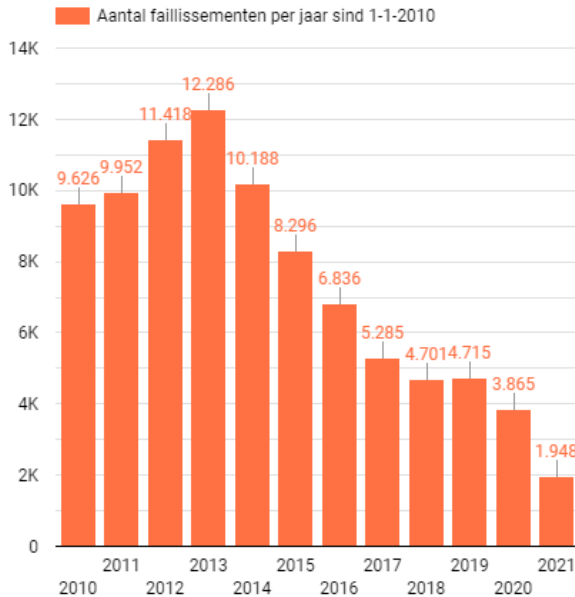


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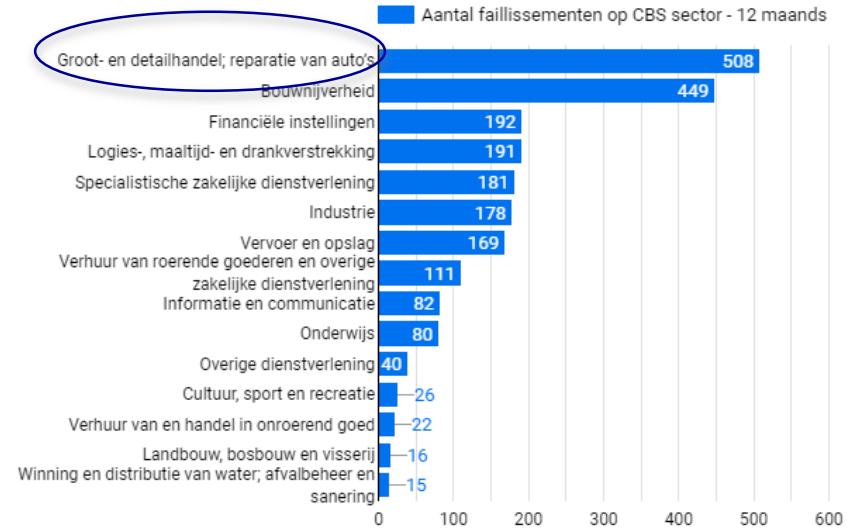
Retail and insolvency in the Netherlands

26th Annual IBA Global Insolvency and Restructuring Conference

Number of insolvencies



Number of insolvencies per sector 2021



Source: Faillissementen.com



Phone House

SUPERTRASH

SCHEER & FOPPEN
Installatietechnik



COOLCAT®

HUDSON'S BAY

kijkshop.nl

FNG
group

PROMISS

Doniger Fashion Group



FRED DE LA
BRETONIERE

MEXX

GAASTRA MCGREGOR
NEW YORK 1921

EXPRESSO

Miss
Etam



V&D

Steps

SISSY-BOY



MS
MODE



claudia sträter

Dixons

SCHOENEN
REUS



Intertoys

LA LIGNA

DIDI

Aktie
SPORT

PERRY
SPORT + OUTDOOR

halfords

Charles
Vögele
S w i t z e r l a n d

A modern office lounge with a 'florent' sign, large windows, and a potted tree. The room features dark blue armchairs, a small round table, and a large potted tree in the foreground. The background shows a cityscape through the windows.

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Some highlights from a Dutch IP's perspective

Maximization of proceeds

- Sale through the shops i.e. continue operation
- Challenges:
 - Position of secured creditors (e.g. financing banks)
 - Position of suppliers of goods
 - Position of essential suppliers of services (e.g. IT-infrastructure, cash system, stock management)
 - Employees
 - Lessors

Position secured creditors

- Pledges (and mortgagees) may exercise their rights as if there were no bankruptcy
- Agree upon percentage or amount paid to the trustee in his capacity as estate administrator for work done
- Alternative for the banks: sell by execution → public auction → negative impact on proceeds



Position suppliers of goods

- Retention of title
- Right of reclamation
- Case law: the trustee is entitled to sell goods of third parties in case of major interests that prevail over the interests of the individual creditors
- Agree upon percentage or amount paid to the trustee in his capacity as estate administrator for work done



Position essential suppliers of services

- Save in exceptional cases: no obligation for suppliers to continue their services
- Some suppliers are only willing to continue their services in case all outstanding pre-insolvency invoices are paid in full
- In legal literature: plea for obligation to continue services



Employees

- Notice to terminate employment contracts may be given by the trustee, subject to the agreed or statutory notice periods, provided that the contracts of employment may always be terminated with 6 weeks' notice
 - Maximum of 6 weeks to continue operation
- From the date of the bankruptcy order the wages and premiums relating to the employment contract are debts of the estate.
- In case of "restart": buyer may "cherry-pick" but: successive term of employment:
 - Employment contract: fixed term or open-ended
 - Amount of statutory transition payment



Lessors

- The trustee (and the lessor) may terminate the lease before expiry, provided notice of termination is given, effective at a date which is in accordance with the contract and local custom. The agreed or customary notice periods must be observed, provided however that three months' notice will in any case be sufficient.
- The rent will be a debt of the estate as from the date of the bankruptcy order.
- Maximum of 3 months to continue operation
- Often: prohibition to sublet or give the leased property in use

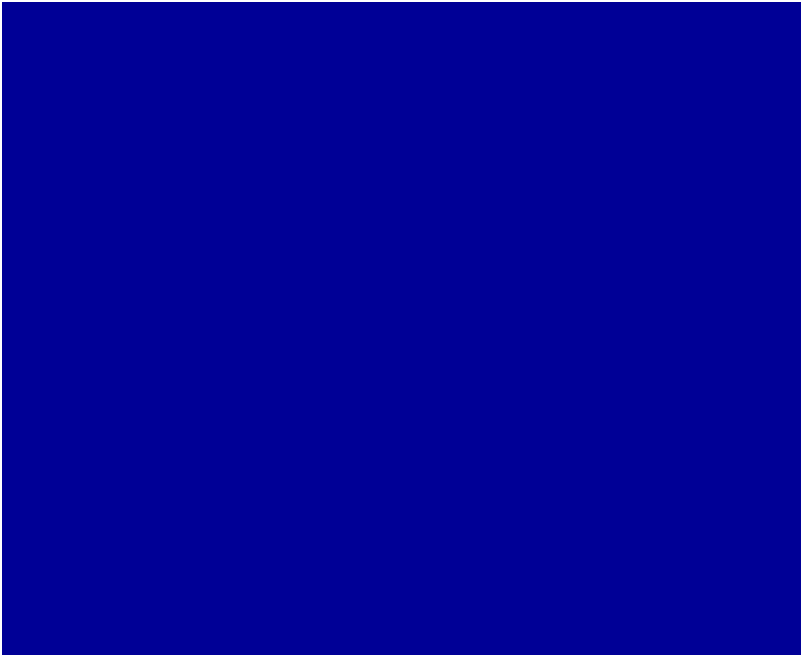


Final remarks

- As a result of the large number of retail bankruptcies: more difficult to find parties that are willing to buy the assets and continue the business
 - It has appeared that the sale of the full stock through the stores often results in higher proceeds than the sale of the assets (mainly stock) to a “restarter”
 - After a bankruptcy more and more traditional shops are continued just online
 - Highest value more often in the brands instead of stock
- more liquidations sales, less “restarts” and less preservation of employment



Questions?



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