

Media Release

Legal position of the provisional debt-restructuring moratorium – notices from the provisional administrator of Swissair Group to current employees and those taking early retirement

Küsnacht, Zurich, 25 October 2001. The provisional administrator of Swissair Group, Mr Karl Wüthrich, an attorney at the law firm Wenger Plattner, has written to the Group's employees, and those who have taken early retirement, enclosing the following note on the legal position:

1. Situation at start

On 5 and 8 October 2001 the competent judges granted a provisional debt-restructuring moratorium to the companies SAir-Group, SAirLines, Swissair Schweizerische Luftverkehrs AG, Flightlease AG, Swisscargo AG and Cargologic AG in response to petitions by their management. This moratorium will last until 5 or 8 December 2001 respectively. By this deadline the debt restructuring judges will have to decide, from the provisional administrator's reports, whether the individual companies can be granted a definitive debt-restructuring moratorium of six months in the first instance. If it is not possible for the debt restructuring to continue, the company concerned will inevitably have to open bankruptcy proceedings.

The definitive debt-restructuring moratorium ends either with restructuring of the company's debt, liquidation of its assets or opening of bankruptcy proceedings. If a company's debts are successfully restructured, all claims of serving employees can be met. For legal reasons, liquidation of assets can only take place once privileged claims have been secured. Privileged claims include the claims of employees under their contracts of employment which arose in the six months prior to the granting of the provisional debt-restructuring moratorium or through premature dissolution of their contracts of employment as part of the debt-restructuring proceedings.

2. Effect of the provisional debt-restructuring moratorium on claims of employees and those taking early retirement

In the event both of bankruptcy or liquidation of assets, a distinction must be made between the assets in bankruptcy or liquidation and the original company. The bankruptcy or liquidation assets are the company's assets which have to be liquidated. The authorities administering the company in bankruptcy or liquidation manage these assets, and the set of assets as such can acquire rights and incur debts. The latter, known as "bankrupt's debts", include debts incurred with the administrator's consent during the debt-restructuring moratorium. On the other hand, claims against the company arising from contracts concluded before the debt-restructuring moratorium was granted are claims against the assets in bankruptcy or liquidation, unless the administrator is specifically subrogated in such contracts for the assets. "Bankrupt's debts" are paid during the proceedings on an ongoing basis. In bankruptcy or liquidation proceedings, however, payments of claims against the assets in bankruptcy or liquidation can only be made in compliance with the procedures prescribed by law (the ranking of creditors and distribution list).

3. Non-subrogation of the assets now in debt restructuring in existing contracts of employment and welfare plans/creditor protection

For the employees and those retiring early, this means that claims under their contracts of employment or under a welfare plan only become debts of the assets in liquidation or bankruptcy if the debt-restructuring administrator or subsequent liquidator or administrator in bankruptcy is subrogated for those assets in the employment contract or welfare plan.

One of the things the administrator must ensure, to protect creditors, is that the company's assets are not encumbered by avoidable "bankrupt's debts" during the debt-restructuring moratorium. He can therefore only be subrogated in the company's employment relations when this is necessary for the continuation of the business. In order to protect the creditors, therefore, subrogation in contracts of employment is only possible in justified, exceptional cases. Subrogation in welfare plans is not possible at all.

For further information

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