

**Swissair Swiss Air Transport Company  
Ltd in debt restructuring liquidation**

**Circular No. 14**

**[www.liquidator-swissair.ch](http://www.liquidator-swissair.ch)**

**Hotline Swissair Swiss Air Transport Company Ltd  
in debt restructuring liquidation**

**Deutsch: +41-43-222-38-30**

**Français: +41-43-222-38-40**

**English: +41-43-222-38-50**

**Unofficial Translation  
of German Original**

To the creditors of Swissair Swiss Air  
Transport Company Ltd. in debt  
restructuring liquidation

Küsnacht, April 2009 WuK/fee

DR. WERNER WENGER 1)  
DR. JÜRIG PLATTNER  
DR. PETER MOSIMANN  
STEPHAN CUENI 1)  
PROF. DR. GERHARD SCHMID  
DR. JÜRIG RIEBEN  
DR. DIETER GRÄNICHNER 1)  
KARL WÜTHRICH  
YVES MEILI  
FILIPPO TH. BECK, M.C.J.  
DR. FRITZ ROTHENBÜHLER  
DR. BERNHARD HEUSLER  
DR. ALEXANDER GUTMANS, LL.M. 1)  
PETER SAHLI 2) 6)  
DR. THOMAS WETZEL 5)  
DR. MARC RUSSENBERGER  
DR. MARC NATER, LL.M.  
BRIGITTE UMBACH-SPAHN, LL.M.  
ROLAND MATHYS, LL.M.  
MARTIN SOHM 5)  
DR. CHRISTOPH ZIMMERLI, LL.M.  
SUZANNE ECKERT  
PROF. DR. MARKUS MÜLLER-CHEN  
RETO ASCHENBERGER, LL.M.  
DR. DAVID DUSSY  
AYESHA CURMALLY 1) 4)  
DR. PHILIPPE NORDMANN, LL.M.  
CORNELIA WEISSKOPF-GANZ  
DR. REGULA HINDERLING  
DR. STEPHAN KESSELBACH  
MADLAÏNA GAMMETER WIESLI  
PD DR. PETER REETZ 5)  
DR. MAURICE COURVOISIER, LL.M.  
DR. RETO VONZUN, LL.M.  
MARTINA STETTLER, LL.M.  
CRISTINA SOLO DE ZALDÍVAR  
DANIEL TOBLER 2) 6)  
MILENA MÜNST BURGER, LL.M.  
DR. ALEXANDRA ZEITER 4)  
DR. ROLAND BURKHALTER  
PETER ENDERLI 6)  
DR. BLAISE CARRON, LL.M.  
VIVIANE BURKHARDT  
DR. OLIVER KÜNZLER  
ROBERT FRHR. VON ROSEN 3)  
ANDREA SPÄTH  
CORINNE LAFFER  
DR. EMANUEL JAGGI  
PLACIDUS PLATTNER  
YVES CRON  
STEFAN BOSSART  
DR. PHILIPP HÄSLER  
THOMAS SCHÄR, LL.M.  
DR. GAUDENZ SCHWITTER  
MICHÉLE BAUMANN 2) 6)  
MARCO KAMBER  
ANDRÉ EQUEY  
FRANZISKA RHINER  
MARTIN BERTHOLD  
STEFANIE HEID  
  
PROF. DR. FELIX UHLMANN, LL.M.  
ANDREAS MAESCHI  
KONSULENTEN

**Swissair Swiss Air Transport Company Ltd. in debt restructuring  
liquidation; Circular no. 14**

Dear Sir or Madam,

This Circular provides information on the progress of the Swissair Swiss Air Transport Company Ltd. ("Swissair") debt restructuring liquidation proceedings since April 2008, as well as on the next steps planned in these proceedings over the coming months.

**I. REPORT ON ACTIVITIES AS OF 31 DECEMBER 2008**

Having been acknowledged and approved by the Creditors' Committee on 16 March 2009, the sixth of the Liquidator's reports on activities for 2008 was submitted to the debt restructuring judge at the District Court of Bülach. The report on activities will be available for inspection by creditors at the Liquidator's offices at Wenger Plattner, Seestrasse 39, Goldbach Center, 8700 Küsnacht, until 24 April 2009. Appointments should be made in advance with Christian Rysler (phone +41 43 222 38 00).

**II. OVERVIEW OF THE LIQUIDATION PROCESS**

**1. Activities of the Liquidator**

The activities of the Liquidator and Deputy Liquidator in 2008 concentrated on publishing supplement I to the schedule of claims and pursuing actions to contest the schedule of claims (see section VI.1 below), as well as pursuing the avoidance claims that had been instigated (see section V below). In the area of responsibility, sufficient progress was made with the inquiries so that the liquidation bodies may decide in the course of 2009 about further steps to take, in particular regarding any instigation of legal action. A number of assets were also realised (see section IV below).

**2. Activities of the Creditors' Committee**

The Creditors' Committee held five meetings in total in the course of 2008. At its meetings, the Creditors' Committee discussed the various proposals submitted by the Liquidator or Deputy Liquidator, and passed resolutions accordingly. It also passed circular resolutions on various proposals submitted by the Liquidator.

**III. ASSET STATUS OF SWISSAIR AS OF 31 DECEMBER 2008**

**1. Introductory remark**

Enclosed is a report on the liquidation status of Swissair as of 31 December 2008, containing a statement of the assets of Swissair as of that date, according to present information.

**2. Assets**

As-yet unrealised assets: This item still consists primarily of bank deposits abroad which are frozen, outstanding accounts receivable arising from flight operations, claims against former Swissair Group companies, shareholdings held by Swissair, and real estate abroad (insofar as it is owned by Swissair). Furthermore, any responsibility and avoidance claims are carried pro memoria.

**3. Debts incurred in the course of the liquidation process**

Accounts payable: The accounts payable reported as of 31 December 2008 relate to costs incurred during the debt restructuring liquidation.

Provision for open statements: With regard to the status of the statement on the federal government loans, please refer to section VI.2 below. In negotiations with Swisscargo AG in debt restructuring liquidation, an agreement has been reached in principle about the settlement of reciprocal claims. This agreement also affects the statement on the federal government loans, however. This means that reciprocal claims with Swisscargo AG cannot be definitively settled until the statement on the federal government loans has been finalised. The Swissair liquidation status report as of 31 December 2008 continues to show provisions for open statements of 83.12 million Swiss francs.

Provision for first interim payment: The liquidation status as of 31 December 2008 includes the sum of 67,535,101 Swiss francs as provision for the first interim payment. Of this amount, 3,106,829 Swiss francs are reserved for payments for which the creditors have not yet given the Liquidator payment instructions, or for payments that could not be effected for other reasons. An amount of 6,172,712 Swiss francs is for interim payments for conditional claims for which the condition concerned has not yet been met. Another 13,064,865 Swiss francs concern interim payments for claims for which an action to contest the schedule of claims is pending. The remainder of the provision – 45,190,695 Swiss francs – is for claims that are still suspended at present.

**4. Creditors' claims**

The enclosed overview of the schedule of claims proceedings states the total of claims that have been registered in the respective classes, those claims which have been recognised, those which have ultimately been rejected, those which are in dispute (actions to contest the schedule of claims, see section VI.1 below) and those for which schedule of claims entries are still suspended. The claim amounts in all

classes are still subject to change as work to settle the schedule of claims proceeds.

**5. Estimated dividend**

The disposable assets reported in the liquidation status as of 31 December 2008 give a maximum dividend of 11.7% for third-class claims, providing all of the still pending actions to contest the schedule of claims are pursued successfully. This calculation factors in 60% of the third-class claims that have been suspended or included pro memoria in the schedule of claims. Should all of the actions be admitted and the suspended claims have to be recognised in full, however, the minimum dividend would be 9.5%. Of this, 2% has already been paid out in an initial interim payment. The remaining dividend that may be expected, therefore, is between 7.5% and 9.7%.

**IV. REALISATION OF ASSETS**

**1. Real estate in Istanbul**

On 5 May 1965, the former Swissair Schweizerische Luftverkehr-Aktiengesellschaft (Swissair Swiss Air Transport Company Ltd.), with registered domicile at Hirschengraben 84, 8001 Zurich, Switzerland, acquired real estate in Istanbul. The purchase price was 675,000 Turkish lira. The land register cites Swissair İsviçre Havayollari anonim şirketin as owner. This translation into Turkish corresponds to the French translation of the former company within the present-day SAirGroup in debt restructuring liquidation. No amendments were made to the entry in the land register since the acquisition was made in 1965. At the time the Swissair Group was reorganised into a holding in 1997, the name change from Swissair Swiss Air Transport Company Ltd. to SAirGroup was not recorded in the land register in connection with the property in Istanbul, nor was ownership of the property transferred from SAirGroup to the newly formed Swissair. Since the restructuring that was completed in 1997, the property was used by the newly formed Swissair. Swissair carried the property as an asset in its balance sheet, and also bore the associated maintenance costs.

At the beginning of 2008, the property was assessed by REMAX and Vakif Ekspertiz, who declared that its market value was between 1,350,000 and 1,650,000 Turkish lira. Based on the applicable exchange rate at that time, this is equivalent to between 1,235,250 and 1,509,750 Swiss francs.

On 18 December 2007, the Liquidator had received an offer from a potential buyer in the amount of over 2 million Turkish lira. The offer was declared valid until the end of March 2008, and was well above the amount cited by the valuers. In subsequent negotiations, the purchase price was increased to 2.075 million Turkish lira. The deal was concluded and executed in August 2008 with the approval of the Creditors' Committees of SAirGroup and Swissair.

The question of ownership has not yet been settled between SAirGroup and Swissair, and for this reason the proceeds from the sale were deposited on a joint account at the Zürcher Kantonalbank in the name of the Liquidator of SAirGroup. The amount deposited on this account for the sale of the property in Istanbul is 1,909,000 Swiss francs. The sum of approximately 350,000 Swiss francs still has to be deducted for taxes and costs. SAirGroup and Swissair are to agree at a later date on how the net proceeds from the sale are to be apportioned.

## **2. Real estate in Tel Aviv**

Since the 1950s, SAirGroup has been registered in Israel as "Swissair Swiss Air Transport Company Ltd." (registration number, 56-000478-0). In 1986 it acquired office premises on the 14th floor of Migdalor Tower in Ben Yehuda Street, Tel Aviv. The premises concerned include three parking spaces in the neighbouring multi-storey car park, plus a storage room on the 17th floor (collectively referred to below as the "property"). The size of the property, depending on the applied method of calculation, is between 812 and 1,034 square metres. The property was recorded in the land register in Israel in January 1997. The land register lists Swissair Swiss Air Transport Company Ltd. (company number 56-000478-0) as the owner of the property.

The change of name of SAirGroup and the subsequent formation of Swissair carried out in 1997 within the scope of the restructuring process were not recorded in Israel; neither in the commercial register nor in the land register. However, the property was used exclusively by Swissair in the period from May 1997 to 31 March 2002. The office premises were then rented for a very brief period by Swiss International Air Lines AG, and since then the property has remained vacant.

In November 2006 the value of the property was assessed by an Israeli property valuer, who cited the current market value at 1 million US dollars (i.e. approximately 1.15 million Swiss francs). In mid-2007 a real estate agent in Israel was entrusted with the task of selling the property. After extensive and complex negotiations, the property was sold in autumn 2008 with the approval of the Creditors' Committees of SAirGroup and Swissair for 1.5 million US dollars. The sale has since been executed.

The question of ownership has not yet been settled between SAirGroup and Swissair, and for this reason the proceeds from the sale were deposited on a joint account at the Zürcher Kantonalbank in the name of the Liquidator of SAirGroup. The amount deposited on this account for the sale of the property in Tel Aviv is 1,551,842.90 Swiss francs. The sum of 200,000 Swiss francs is still being held on a blocked account in Tel Aviv, and taxes and costs still have to be deducted from this amount. SAirGroup and Swissair are to agree at a later date on how the proceeds from the sale are to be apportioned.

**3. Apportionment of proceeds from the sale of Polygon Group, Guernsey**

In Circular 11 (section III.2) dated 24 August 2007, we reported on the sale of shares of Polygon Group. The apportionment of the proceeds from this deal still had to be agreed at that time between SAirGroup, SAirLines and Swissair. In June 2008, the Co-Liquidator of SAirlines (Professor Dr. Roger Giroud), the Deputy Liquidator of Swissair (Dr. Niklaus Müller) and the Liquidator of SAirGroup (Karl Wüthrich) agreed on the apportionment of the proceeds from the



liquidation of the stake in Polygon Group, and concluded a corresponding agreement. The proceeds are to be apportioned as follows:

- SAirGroup is to receive 950,000.00 US dollars from the sale, and 1,032,463.77 Swiss francs from the proceeds of the liquidation of SAirGroup Trust;
- SAirLines is to receive 1,240,000.00 US dollars from the sale, and 1,032,463.77 Swiss francs from the proceeds of the liquidation of SAirGroup Trust;
- Swissair is to receive 240,000.00 US dollars from the sale, and 1,032,463.77 Swiss francs from the proceeds of the liquidation of SAirGroup Trust.

The agreement was approved by the Creditors' Committees of SAirGroup, SAirLines and Swissair, and the apportionment has meanwhile been executed.

**4. Settlement of claims with SAirGroup Finance (NL) B.V.**

SAirGroup Finance (NL) B.V. ("FinBV") and Swissair had a business connection via the cash pool system of the Swissair Group, whereby FinBV was cash pool leader, and Swissair was a "normal" member of the cash pool. Along with Sabena, Swissair was also a partner in the Airline Management Partnership, an English partnership with registered domicile in London ("AMP") and a branch office in Switzerland. On 27 March 2002, the Amsterdam District Court declared FinBV insolvent. The business relations of the two former group companies have resulted in various claims still remaining to be settled at the time of insolvency.

On 16 December 2002, Swissair lodged claims in the FinBV insolvency proceedings for a total amount of 126,852,655.12 euros for net assets from the cash pool. On 16 January 2003, a "claims allowance meeting" was held before the competent District Court in Amsterdam, whereby the Court ruled on inclusion of the lodged claims in the schedule of claims as proposed by the receiver. At this meeting, the Swissair claim

of 126,852,655.12 euros was definitively admitted in the FinBV schedule of claims ("list of admitted claims").

On 24 January 2002, FinBV lodged a claim from the cash pool in the amount of 2,006,695.39 euros in the Swissair debt restructuring proceedings. On 12 February 2003, FinBV asserted an additional claim from the cash pool in the amount of 21,897,414.45 euros. The documentation submitted revealed that the claim for 21,897,414.45 euros lodged on 12 February 2003 was directed against Swissair Sabena Airline Management Partnership, London, Klotten branch ("AMP Switzerland"). AMP held counterclaims of 5,360,865 euros against FinBV. At the claims allowance meeting before the Amsterdam District Court, the receiver did not assert any offset pleas on the part of FinBV. The Swissair Liquidator was only alerted to the possibility of offsetting on the part of FinBV at the beginning of April 2003. FinBV therefore declined to pay Swissair interim payments of 19.4% on the amount of 126,852,655.12 euros.

In the ruling on the schedule of claims of 13 February 2007, the Swissair Liquidator rejected the FinBV claims in their entirety. The rejection of the claim amounting to 2,006,695.39 euros (or 3,096,331.00 Swiss francs) was justified by the offsetting of Swissair counterclaims. The rejection of the claim amounting to 21,897,414.45 euros (or 33,787,710.50 Swiss francs) was justified in particular by the fact that, according to applicable English law, partners in an insolvent partnership are not directly liable for third-party claims on the partnership. This would therefore abnegate Swissair's liability for AMP Switzerland debts.

On 6 March 2007, FinBV filed in due time an action to contest the schedule of claims in opposition to the decision of the Swissair Liquidator. In its action to contest the schedule of claims, FinBV requested that its claim against AMP Switzerland in the Swissair debt restructuring proceedings be settled in the third class in the amount of 33,787,710.50 Swiss francs (or 21,897,414.45 euros).

In autumn 2008, the parties held negotiations for the purposes of settling their reciprocal claims. They ultimately concluded the following agreement:

- FinBV is to recognise a Swissair claim amounting to 115,277,077.82 euros net (following offsetting of 11,575,577.30 euros) in the FinBV insolvency proceedings.
- Insofar as dividend payments were already made in the FinBV insolvency proceedings, FinBV is to pay Swissair corresponding dividends plus interest on the amount of 115,277,077.82 euros starting from the relevant due date.
- FinBV is to withdraw its action to contest the schedule of claims regarding the claim asserted in the Swissair debt restructuring proceedings and is to bear the relevant court costs.

This settlement has been approved by the Swissair Creditors' Committee and by the competent insolvency judge in Amsterdam.

## **V. PURSUIT OF AVOIDANCE CLAIMS**

### **1. Forfeiture period**

In its initial ruling dated 22 June 2007 concerning the case of ExxonMobil Aviation International Ltd., the Commercial Court of the Canton of Zurich ("Commercial Court") found that, in accordance with Article 292 of the Swiss Federal Debt Enforcement and Bankruptcy Act, the forfeiture period for the debt restructuring agreement with assignment of assets only commenced at the time of confirmation of the debt restructuring agreement, i.e. in June 2003, and not at the time of the granting of the debt restructuring moratorium, i.e. on 5 October 2001. The Commercial Court thus ruled that the action had been initiated within the designated period. On 4 February 2008, the Swiss Federal Supreme Court confirmed the ruling of the Commercial Court. It is thus established that all avoidance claims in the case of Swissair were submitted within the set time limits.

**2. Hongkong Sinopec/Caosc Co. Ltd.**

On 24 February 2006, Swissair submitted an avoidance action to the Commercial Court against Hongkong Sinopec/Caosc Co. Ltd. This action contested the Swissair payment of 380,878.80 US dollars to Hongkong Sinopec/Caosc Co. Ltd. on 4 October 2001 for a fuel invoice dated 1 October 2001. In its ruling of 17 January 2008, the Commercial Court approved the action. This ruling has now become enforceable. Hongkong Sinopec/Caosc Co. Ltd has not yet fulfilled its obligations arising from this ruling. Options for enforcing the ruling are currently being examined.

**3. ExxonMobil Aviation International Ltd. and other Exxon/Esso Group companies**

ExxonMobil Aviation International Ltd. and other Exxon/Esso Group companies supplied Swissair with fuel at Zurich Airport and at other airports abroad. On 5 October 2001, Swissair made a payment of 2,500,000 US dollars to ExxonMobil Aviation International Limited to settle invoices for deliveries which had already been made.

On 2 November 2005, Swissair filed an avoidance action amounting to 2,500,000 US dollars with the Commercial Court against various Exxon/Esso companies.

The court conference conducted on 22 June 2006 did not result in the conclusion of a settlement. Subsequent to the ruling by the Swiss Federal Supreme Court regarding compliance with time limits (see section V.1 above) new settlement negotiations were initiated. In August 2008, the parties ultimately reached the following agreement regarding the settlement of Swissair actions:

- Swissair is to lower the avoidance claims it had filed from 2,500,000 US dollars to USD 1,800,000 US dollars.
- The Exxon/Esso companies are to recognise the claim for this amount and undertake to pay the sum of 1,800,000 US dollars to Swissair.

- The Exxon/Esso companies are to waive their claim in connection with the payment of 1,800,000 US dollars, which would be revived in accordance with Article 291, paragraph 2 of the Swiss Federal Debt Enforcement and Bankruptcy Act, as well as the other third-class claims of ExxonMobil Aviation International Limited already recognised in the amounts of 2,890,076.45 Swiss francs and 10,558.50 Swiss francs.
- The court costs are to be borne by the Exxon/Esso companies. Neither party will seek a court award.
- Once the agreement is fulfilled, the parties are to declare all reciprocal claims to have been settled.

The settlement was approved by the Creditors' Committee. Swissair received the payment of 1,800,000 US dollars from the Exxon/Esso companies in September 2008.

#### **4. Flughafen Zürich AG**

On 17 November 2005, Swissair filed an avoidance action with the Commercial Court against Flughafen Zürich AG. This action contested the Swissair payment of 21,832,491.70 Swiss francs to Flughafen Zürich AG on 4 October 2001. In its ruling of 19 November 2007, the Commercial Court rejected the action. Swissair lodged an appeal in civil matters against the decision with the Swiss Federal Supreme Court. In its ruling dated 4 September 2008, the Swiss Federal Supreme Court fundamentally overturned the Commercial Court ruling and approved the Swissair claim in the amount of 18,587,907.50 Swiss francs. It only rejected that part of the payment (in the amount of 3,244,584.20 Swiss francs) which Flughafen Zürich AG received to settle outstanding Skyguide invoices. With respect to this amount, the Swiss Federal Supreme Court found that Flughafen Zürich AG was not the proper party to which to address the claim.

Flughafen Zürich AG has fulfilled its obligations arising from the ruling of the Swiss Federal Supreme Court in September 2008. Swissair has received payments totalling 21,331,149.05 Swiss francs for capital, interest and compensation for court costs, after deduction of the first

interim payment of 2% from the claim by Flughafen Zürich AG thus revived in accordance with Article 291, paragraph 2 of the Swiss Federal Debt Enforcement and Bankruptcy Act. This matter has thus been concluded.

**5. Air Total (Suisse) SA / Air Total International SA**

On 23 May 2005, Swissair submitted an avoidance action to the *Tribunal de Première Instance* in Geneva against Air Total (Suisse) SA and Air Total International SA in the amount of 5,483,840.19 US dollars plus interest of 5% from 23 May 2005. This action contested the Swiss air payment of 483,840.19 US dollars to Air Total (Suisse) S.A. on 20 September 2001, as well as Swissair payments to Air Total International SA in the amount of 500,000 US dollars on 2 October 2001 and 4,500,000 US dollars on 4 October 2001. The ruling of the *Tribunal de Première Instance* in Geneva on 9 November 2006 approved this claim in the amount of 4,300,000 US dollars. The respondents appealed against this decision to the *Cour de Justice* in Geneva. The *Cour de Justice* in Geneva upheld the appeal in its ruling of 22 June 2007, and rejected the Swissair claim. Swissair lodged an appeal in civil matters against the decision with the Swiss Federal Supreme Court. The Swiss Federal Supreme Court ruling of 4 September 2008 fundamentally overturned the ruling of the *Cour de Justice* in Geneva and approved the Swissair claim in the amount of 4,300,000 US dollars.

Air Total International SA has fulfilled its obligations arising from the ruling by the Swiss Federal Supreme Court in October 2008. Swissair has received a payment of 5,025,502.27 US dollars for capital and interest, and a payment of 50,000 Swiss francs for court costs and compensation. This matter has thus been concluded.

**6. BP (Switzerland) and other BP Group companies**

BP (Switzerland) and other BP Group companies supplied Swissair with fuel at the Zurich airport and at other airports abroad. Via payment orders dated 2 and 4 October 2001, Swissair made payments of 4,000,000 US dollars and 7,200,000 US dollars respectively to BP

(Switzerland). These payments were primarily used by BP (Switzerland) to settle invoices for deliveries which had already been made.

On 23 May 2005, Swissair filed an avoidance action in the amount of 11,200,000 US dollars with the Commercial Court of the Canton of Zug against BP (Switzerland). On 21 November 2005, Swissair also filed a further avoidance action with the Commercial Court for around 2.2 million US dollars against various foreign BP companies, as there was some uncertainty about which BP company had actually benefited from the Swissair payments. This claim was immediately suspended until conclusion of the proceedings in Zug.

Subsequent to the ruling by the Swiss Federal Supreme Court in the matter of Air Total (Suisse) SA and Air Total International SA (see section V.5 above) settlement negotiations were initiated. In December 2008, the parties ultimately reached the following agreement regarding the settlement of Swissair claims:

- Swissair is to lower the avoidance claims it had lodged from 11,200,000 US dollars to 8,400,000 US dollars.
- BP (Switzerland) is to recognise the claim for this amount and undertakes to pay the sum of 8,400,000 US dollars to Swissair.
- BP (Switzerland) is to waive its claim for the payment of 8,400,000 US dollars, which would be revived in accordance with Article 291, paragraph 2 of the Swiss Federal Debt Enforcement and Bankruptcy Act.
- The parties are each to pay half of the court costs for the proceedings in Zug. Swissair is to pay the court costs for the proceedings in Zurich. Neither party will seek a court award.
- Once the agreement is fulfilled, the parties shall declare all reciprocal claims to have been settled.

The settlement was approved by the Creditors' Committee. Swissair received the BP payment of 8,400,000 US dollars in January 2009.

**7. Additional comments**

Three avoidance actions against oil suppliers are still pending in the Commercial Court and the Cantonal Court in Zug. It may be assumed that rulings of first instance shall be made in these proceedings in the course of 2009.

To date, the concluded avoidance proceedings have yielded approximately 37 million Swiss francs plus approximately 16.6 million US dollars (net, after deduction of costs).

**VI. SETTLEMENT OF LIABILITIES / SCHEDULE OF CLAIMS PROCEEDINGS**

**1. Schedule of claims proceedings**

*First-class claims:* Of the 165 actions worth a total of 29,764,857.35 Swiss francs pending with the District Court of Bülach at the beginning of 2008, 141 claims were resolved by means of a settlement by the end of 2008. In 2008, former US employees of Swissair, all of whom transferred to Swiss International Air Lines Ltd. in the spring of 2002, submitted new claims for social compensation plan payments. These claims were rejected by the Liquidator. In opposition to the rejection decisions, 25 former US employees filed actions to contest the schedule of claims with the District Court of Bülach, worth a total of 908,617 Swiss francs. As of 31 December 2008, 49 actions were therefore pending worth a total of 13,037,013.59 Swiss francs. Of the filed claims totalling 708,062,460 Swiss francs, only 3,216,693 Swiss francs have needed to be recognised as of present.

*Third-class claims:* At the start of 2008, 21 actions worth a total of 158,949,523.39 Swiss francs were still pending with the District Court of Bülach. 19 of these actions worth a total of 129,769,243.73 Swiss francs were settled by the end of 2008. Therefore, as of 31 December 2008, two actions were still pending worth a total of 35,180,279.66 Swiss francs. The FinBV claim in the amount of 33,787,710.50 Swiss francs will be withdrawn under the settlement concluded with FinBV (see section IV.4 above). One claim therefore remains worth



1,392,569.16 Swiss francs. Of the filed claims totalling 8,316,079,404 Swiss francs, only 50,783,617 Swiss francs have so far needed to be recognised as definitive claims and 35,861,138 Swiss francs as conditional claims.

**2. Statement on the loans from the Swiss federal government in the amount of 1.15 billion Swiss francs**

In connection with the implementation of the Phoenix and Phoenix Plus projects, on 5 October 2001 the Swiss federal government granted Swissair a loan of 450,000,000 Swiss francs and, on 25 October 2001, a further loan of 1 billion Swiss francs. On the basis of these loan agreements, the Swiss federal government paid out loan amounts totalling 1,150,000,000 Swiss francs between 5 October 2001 and 30 March 2002 during the period of continued Swissair flight operations.

In Article 6 of the loan agreement dated 25 October 2001, the following provision was established for repayment of the federal government loans:

*"Provided the continuation of flight operations according to Article 2, paragraph 2 does not put the creditors in a worse position than would be the case in the event of immediate insolvency proceedings, the federal government may demand at any time that the loan be paid back in full or in part from the revenue earned. The remaining balance shall not represent a debt incurred in the course of the liquidation process, but rather a normal third-class claim.*

*The provision according to paragraph 1 shall replace Article 4, paragraphs 3 and 4 of the basic agreement dated 5 October 2001.*

*The parties acknowledge that the present contractual provision represents an essential condition for the Administrator's approval of the present agreement."*

The objective of the federal government loans was to ensure Swissair's flight operations up to its transfer to the present Swiss International Air Lines Ltd. on 31 March 2002. As part of the effort to sustain its flight operations, Swissair had to implement all possible measures to reduce its fleet to a target of 26 long-haul aircraft and 26 medium-

range aircraft. The federal government funds could only be used for these purposes. During the initial phase, compliance with these stipulations was monitored by BDO Visura, as commissioned by the federal government, and later by the Swiss Federal Audit Office ("SFAO"). Article 6 cited above expressly stipulates that the loans may only be repaid from the revenues earned from the Swissair flight services financed by the loans.

The accounting for Swissair was highly complicated and sometimes difficult to understand, not only due to the differing software platforms in use, but also due to the actual circumstances – settlement of payments among airline companies via the IATA Clearing House ("ICH"), a worldwide network of outstations with their own monetary transactions, settlement of payments for aviation-related undertakings, particularly Swisscargo, via Swissair through ICH, settlement with travel agencies via the IATA Bank and Settlement Plan ("BSP"). A straightforward statement on the federal government loans would have necessitated restructuring of the accounting system for that purpose. That was not possible then for reasons of time, staff and finances. In October 2001, the first priority was to start up Swissair flight operations again in order to fulfil the objectives of the Phoenix Plus project.

These circumstances severely complicated preparation of the statement on the federal government loans. From mid-2003 to mid-2005, Swissair made several attempts to prepare the statement on the federal government loans in consultation with the SFAO. No consensus could be reached, however. Due to the varying approaches and methods employed by Swissair and the SFAO, there were accounting differences in the statement of up to 200 million Swiss francs. In mid-2005, in order to resolve the problem, the Liquidator appointed Ernst & Young AG to examine the Swissair statement then available, as well as the objections from the SFAO, and to prepare a report. This report from Ernst & Young AG dated 23 December 2005 was received by the Liquidator at the end of December 2005. The Liquidator delivered the report to the SFAO. The SFAO did not comment on the report.

Swissair prepared the current statement based on the Ernst & Young AG report of 23 December 2005. In addition to the items contained in the Ernst & Young AG report, this statement also contains further items based on new knowledge and events. In particular, the Swissair payments to kerosene suppliers and to Flughafen Zürich AG, on 4 and 5 October 2001, were incorporated into the statement on the federal government loans. There is debate between the SFAO and Swissair about whether these payments, which were made before payment of the initial portion of the first federal government loan on 5 October 2001, may be charged to the federal government loans. The problem has been mitigated in the meantime to the extent that considerable amounts have flowed back to Swissair through the successful avoidance actions for these payments (see section V.7 above). Accordingly, these amounts no longer need to be charged to the statement on the federal government loans. Swissair also integrated the outstanding value added tax statements from the second quarter of 2002 to the third quarter of 2008 into the statement on the federal government loans. The balance of the present statement on the federal government loans comes to approximately 9.5 million Swiss francs in favour of Swissair. Further avoidance actions are currently still pending with regard to payments on 4 and 5 October 2001. Should these actions have a successful outcome for Swissair, the balance of the statement shall accordingly be modified in favour of the federal government.

The Creditors' Committee has approved the present Swissair statement on the federal government loans. The statement was submitted to the SFAO in March 2009. It remains to be seen whether an agreement can be reached regarding this statement. If this should not prove possible, a dispute will arise between Swissair and the federal government regarding this statement, in the first instance before the Swiss Federal Administrative Court. The action must be instigated by the party which asserts a claim arising from the statement against the other party. A ruling by the Swiss Federal Administrative Court can subsequently be brought before the Swiss Federal Supreme Court. For this reason, it is currently difficult to anticipate the probable course of events, and the time needed until a definitive settlement is reached.

**VII. PLANNED NEXT STEPS IN THE PROCESS**

The next phase of proceedings will involve further finalisation of the schedule of claims and liquidation of the remaining assets, particularly real estate abroad.

The liquidation bodies will also conclude their investigations into responsibility claims and institute further legal action as necessary. Avoidance claims that are still pending will continue to be pursued. It is also important to resolve the matter of the statement on the federal government loans. It is not possible at present to estimate how long it will take before these two issues are settled.

Creditors will continue to receive information about important developments in the form of circulars, depending on how things proceed. A report on the progress of the liquidation process in the current year will be issued by no later than spring 2010.

Yours Faithfully,

Swissair Swiss Air Transport Company Ltd. in debt restructuring liquidation

The Liquidator

Karl Wüthrich

Enclosures: 1. Liquidation status as of 31 December 2008 of Swissair Swiss Air Transport Company Ltd. in debt restructuring liquidation

2. Overview of the schedule of claims proceedings

## LIQUIDATION STATUS AS OF 31 DECEMBER 2008

	31.12.2008 CHF	31.12.2007 CHF	Change CHF
<b>ASSETS</b>			
<b>Liquid funds</b>			
Postal cheque Switzerland	0	887	-887
UBS ZRH CHF	214'672	228'104'085	-227'889'413
UBS ZRH USD 1)	1'038'392	4'782'983	-3'744'591
UBS ZRH CHF	0	7'790'875	-7'790'875
UBS ZRH CHF Higma	0	180'863	-180'863
ZKB CHF	187'268'789	0	187'268'789
ZKB EUR	70'039	0	70'039
ZKB USD	48'854	0	48'854
ZKB-Fixed-term deposits	192'000'000	160'000'000	32'000'000
<b>Total liquid funds</b>	<b>380'640'746</b>	<b>400'859'693</b>	<b>-20'218'947</b>
<b>Liquidation positions</b>			
Banks/cash abroad	1'061'788	656'058	405'730
Accounts receivable by the estate	1'103'376	3'074'220	-1'970'844
Deposits/Guarantees	124'319'949	131'259'298	-6'939'349
Receivables from third parties	991'865	991'864	1
Claims from proceeds of sale of operating equipment	3'033'004	2'650'159	382'845
Real estate	p.m.	p.m.	
Participations	2'000'000	2'000'000	0
Responsibility claims	p.m.	p.m.	
Pauliana claims	9'601'200	0	9'601'200
<b>Total liquidation positions</b>	<b>142'111'182</b>	<b>140'631'599</b>	<b>1'479'583</b>
<b>TOTAL ASSETS</b>	<b>522'751'928</b>	<b>541'491'292</b>	<b>-18'739'364</b>
<b>LIABILITIES</b>			
<b>Debts of the estate</b>			
Accounts payable to the estate	659'670	444'576	215'094
Provision, 1st interim payment	67'535'101	0	67'535'101
Provisions for liquidation costs	2'355'261	2'355'261	0
Provisions for outstanding statements	83'120'000	83'120'000	0
<b>Total debts of the estate</b>	<b>153'670'032</b>	<b>85'919'837</b>	<b>67'750'195</b>
<b>TOTAL DISPOSABLE ASSETS</b>	<b>369'081'896</b>	<b>455'571'455</b>	<b>-86'489'559</b>

1) USD 949'700.00 is assigned as collateral for contingent liabilities at UBS AG

**Summary of schedule of claims status**

Category	Registered Amount in CHF	Schedule of claims				Dividend						
		Recognized Amount in CHF	Appeal lodged Amount in CHF	Decision suspended Amount in CHF	Rejected Amount in CHF	Future dividend		Total				
						minimal	maximal	minimal	maximal			
Secured by right of lien	4'758'963.80	2'326'251.20	-	-	2'432'712.60	-	-	-	-	-	-	-
First Class	902'655'767.50	17'622'627.60	13'037'013.59	5'190'363.60	866'805'762.71	-	-	100%	100%	100%	100%	100%
Second Class	934'534.80	619'804.51	-	-	314'730.29	-	-	100%	-	100%	100%	100%
Third Class <sup>1)</sup>	27'054'685'526.55	2'409'268'674.65	1'392'569.16	2'000'016'590.03	22'644'007'692.71	7.5%	9.7%	2.0%	9.7%	9.5%	11.7%	11.7%
<b>Total</b>	<b>27'963'034'792.65</b>	<b>2'429'837'357.96</b>	<b>14'429'582.75</b>	<b>2'005'206'953.63</b>	<b>23'513'560'898.31</b>							

<sup>1)</sup> The third-class claims for which decisions have been suspended are factored into this calculation at 60%.

**[www.liquidator-swissair.ch](http://www.liquidator-swissair.ch)**

**Hotline Swissair Swiss Air Transport Company Ltd  
in debt restructuring liquidation**

**Deutsch: +41-43-222-38-30**

**Français: +41-43-222-38-40**

**English: +41-43-222-38-50**