

**Unofficial Translation  
of German Original**

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Eingetragen im Anwaltsregister

## **By registered mail**

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

Küsnacht, October 2017

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## **Swissair Swiss Air Transport Company Ltd. in debt restructuring liquidation; Circular no. 25**

Dear Sir or Madam

This Circular is to inform you of the liquidation bodies' waiver of the enforcement of a contested claim of Swissair Swiss Air Transport Company Ltd. in debt restructuring liquidation ("Swissair") against Sabena SA in bankruptcy liquidation ("Sabena") and of the collection of claims from insolvent companies of the former Swissair Group.

### **I. WAIVER OF ENFORCING THE CLAIM IN THE AMOUNT OF EUR 3,356,917.42 AGAINST SABENA**

#### **1. BACKGROUND**

In July 2000, Swissair and Sabena established Swissair Sabena Airline Management Partnership ("AMP"). This was a partnership under English law. From January 2001, the AMP participated in the cash pool of the Swissair Group. The cash pool leader was SAirGroup Finance (NL) B.V. ("FinBV"). Upon termination of the cash pool at the end of September 2001, the AMP had a negative balance with FinBV. In February 2003 FinBV registered a claim of EUR 21,897,414.45 with Swissair.

Swissair, in turn, had registered with FinBV a claim from the cash pool of EUR 126,852,655.12 in December 2002. This claim was finally recognised in January 2003. Only thereafter did FinBV claim that it is entitled to set off the claim of FinBV towards AMP with the recognised claim of Swissair. This was not accepted by the liquidator of Swissair. FinBV thereupon refused to make interim payments on the claim of Swissair.

The liquidator of Swissair dismissed the claim registered by FinBV in 2007. The rejection was particularly justified by the fact that, according to applicable English law, partners of an insolvent partnership are not directly liable for third-party claims against the partnership. FinBV thereupon filed an action to contest the schedule of claims against Swissair.

On 8 January 2009, Swissair and FinBV entered into a settlement. Under this settlement, the claim of FinBV against AMP in the amount of EUR 11,575,577.30 was set off with the claim of Swissair against FinBV in the amount of EUR 126,852,655.12. The claim of Swissair recognised by FinBV in the amount of EUR 115,277,077.82 was reduced accordingly (see Circular no. 14, section IV.4.).

In autumn 2013, Swissair made a claim against Sabena under the settlement with FinBV in the amount of EUR 3,356,917.42 (= 29% of EUR 11,575,577.30). Under the partnership agreement between Swissair and Sabena as regards AMP, Sabena had to cover 29% of the so-called indirect costs arising out of the operations of AMP. Sabena contested the claim by letter of 19 December 2014.

In a submission dated 8 January 2015 to the Brussels Commercial Court, Swissair therefore subsequently filed the claim of EUR 3,356,917.42 in the bankruptcy proceedings of Sabena. The bankruptcy administrator of Sabena thereupon claimed that the claim had been registered too late.

Proceedings before the Brussels Commercial Court followed. In its decision of 19 July 2017 the court held that the registration of Swissair's claim was late and no longer admissible. The registration of the claim should have been made within the deadline of three years after the opening of the bankruptcy proceedings against Sabena as provided under Belgian bankruptcy law, i.e. by 7 November 2004. Since February 2003 Swissair has been aware that FinBV was enforcing its claim against AMP in the composition proceedings of Swissair.

An appeal could be filed against the decision of the Brussels Commercial Court to the Court of Appeal of Brussels by 1 December 2017 and subsequently an appeal in cassation before the Belgian Court of Cassation. The chances of suc-

cess, however, seem low. A bankruptcy dividend of only approximately 14% can be anticipated at Sabena. At the same time, if the decision is appealed before probably two instances, costs of at least EUR 70,000 - 90,000 may incur.

For these reasons, the liquidation bodies decided to waive taking legal remedy against the decision of the Brussels Commercial Court and further enforcing the claim of EUR 3,356,917.42 in Belgium and to offer the creditors assignment of the right to take legal action.

## 2. REQUESTS FOR ASSIGNMENT BY INDIVIDUAL CREDITORS

Each creditor is entitled to request the assignment of the right to take legal action in respect of those legal claims which the Liquidator and the Creditors' Committee decide not to pursue any further (Article 325 in conjunction with Article 260, Swiss Debt Enforcement and Bankruptcy Law (SchKG)). Creditors who request assignment are then entitled to file the legal claim at their own risk and expense. In the event of winning, he may use the outcome to cover both, the costs incurred and his claims against Swissair. Any surplus would have to be surrendered to the liquidation assets. If the creditor loses the litigation, he/she shall be liable for any court costs as well as party costs incurred.

The right to take legal action regarding the claim of Swissair against Sabena resulting from the settlement with FinBV in the amount of EUR 3,356,917.42, the filing of which has been waived by the liquidation bodies (see section I.1. above), is herewith offered to creditors. Other claims of Swissair against Sabena are not the subject of the offer.

Requests for assignment within the meaning of Article 260 SchKG can be submitted to the undersigned liquidator **in writing** by **8 November 2017** (date of postmark of a Swiss post office) at the latest. The right to request assignment is deemed to have been **forfeited** if this deadline is not respected.

## II. COLLECTION OF CLAIMS FROM INSOLVENT COMPANIES OF THE FORMER SWISSAIR GROUP

Reciprocal claims exist between the various insolvency estates of the former Swissair Group companies. This sometimes gives rise to a circular flow of dividends. For instance, the following constellation exists at Swissair: Swissair has a finally recognised claim of CHF 1.5 billion against SAirGroup AG in debt restructuring liquidation (hereinafter "SAirGroup"). One of SAirGroup's last remaining unliquidated assets is a recognised claim of CHF 850 million against SAirLines AG in debt restructuring liquidation (hereinafter "SAirLines"). For its

part, SAirLines has a third-class claim against Swissair of CHF 64.85 million. Each instalment payment by Swissair results in a small proportion finding its way back to Swissair via this circular flow. If it is not possible to interrupt this cash flow, it will ultimately not be possible to conclude the Swissair proceedings. There are other analogous constellations among the insolvent former Swissair Group companies. My objective in the coming months will be to apply appropriate measures to break up these circular flows. This should make it possible to conclude various insolvency proceedings and to settle the open claims against each insolvent company to the extent possible.

In spring 2018, I will inform you by Circular of the 2017 report on activities.

Yours sincerely

Swissair Swiss Air Transport Company Ltd. in debt restructuring liquidation  
The Liquidator:

Karl Wüthrich

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**in debt restructuring liquidation**

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