

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

**Circular No. 26**

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

**Hotline Swissair Swiss Air Transport Company Ltd  
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**Unofficial Translation  
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To the creditors of  
Swissair Swiss Air Transport Company Ltd.  
in debt restructuring liquidation

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Küsnacht, May 2018

## **Swissair Swiss Air Transport Company Ltd. in debt restructuring liquidation; circular no. 26**

Dear Sir or Madam

This circular provides information on the current status of the debt restructuring liquidation proceedings of Swissair Swiss Air Transport Company Ltd. ("Swissair"), and on how these proceedings are scheduled to progress over the coming months.

### **I. REPORT ON ACTIVITIES AS AT 31 DECEMBER 2017**

After having been acknowledged and approved by the Creditors' Committee, the 15th Liquidator's report on activities for 2017 was submitted to the debt restructuring judge at the district court of Bülach on 19 March 2018. The report on activities is available for inspection by creditors at the offices of the Liquidator at Wenger Plattner, Seestrasse 39, Goldbach Center, 8700 Küsnacht, Switzerland until 14 May 2018. If you wish to inspect the report, please call the hotline at +41 (0)43 222 3850.

Below you will find a summary of the report on activities, unless the creditors have already been informed by circulars no. 24 of June 2017 and no. 25 of October 2017.

## II. OVERVIEW OF THE LIQUIDATION PROCEEDINGS

### 1. ACTIVITIES OF THE LIQUIDATOR

In 2017, the main aspects of the work of the Liquidator and the Deputy Liquidator concerned a liability claim against former directors and officers of Swissair (see section V.1 below), the pressing of claims against Sabena SA in liquidation in Belgium (see circular no. 25 section I), the pursuit of an action to contest the schedule of claims (see section VI below), making the third interim payment to creditors with third class claims (see circular no. 24 section I) and defining the basis to be used for the division of revenues from the liquidation of properties and participations abroad (see section III.2 below). Finally, various assets were also realised (see section IV below).

### 2. ACTIVITIES OF THE CREDITORS' COMMITTEE

The Creditors' Committee held no meetings in 2017. It passed resolutions by circular on three proposals submitted by the Liquidator and two submitted by the Deputy Liquidator.

## III. STATUS OF ASSETS OF SWISSAIR AS AT 31 DECEMBER 2017

### 1. INTRODUCTORY REMARKS

Enclosed is a report on the liquidation status of Swissair as at 31 December 2017 (Annex 1). It contains a statement of the assets of Swissair as at 31 December 2017 in accordance with the information currently available.

### 2. ASSETS

Liquid funds: The liquid funds of Swissair are mainly held at Zürcher Kantonalbank ("ZKB"). Since 1 March 2015, ZKB has been charging negative interest on the assets of Swissair. In 2017, negative interest of CHF 1,424,060 was charged. The average negative interest that was charged was slightly less than 0.7%. Settlement of the third interim payment enabled the credit balances with ZKB to be reduced massively. As a result, less negative interest will accrue in 2018.

Claims against third parties: The position "Claims against third parties" mainly contains Swissair's claims against various former Swissair Group companies that are subject to insolvency proceedings at home and abroad. This position

has been assessed conservatively in accordance with the information currently available.

Pending division of the repayment of SITA certificates: Swissair and SAirGroup AG in debt restructuring liquidation (hereinafter referred to as "SAirGroup") disagreed on who was entitled to the repayment of about CHF 2.4 million from the SITA certificates. The parties were able to agree on the division of this repayment. However, the relevant agreement must still be approved by the creditors' committees.

Real estate: The division of the revenues from the liquidation of properties in Singapore, Mumbai, Tel Aviv, Istanbul, Madrid, Sao Paolo and Rio de Janeiro between SAirGroup and Swissair is still pending. The aim is to reach an agreement on this division by the end of 2018. The value of this position may therefore still change.

Other assets as yet unrealised: In addition to the aforementioned assets, the participation in Swissair Training Center Ltd. in liquidation is still available and the distribution of the revenues from the liquidation of a participation abroad is pending. Furthermore, the liability claims being pursued by litigation and any other responsibility claims asserted are carried pro memoria. Cautious estimates have been given for assets that have not yet been liquidated.

### **3. LIABILITIES OF THE ESTATE**

Accounts payable: The liabilities of the estate i as reported on 31 December 2017 consist of liquidation costs incurred during 2017.

Provisions for the first three interim payments: Swissair's liquidation status as at 31 December 2017 includes the following provisions for the first three interim payments:

Reason for provision	First interim payment in CHF	Second interim payment in CHF	Third interim payment in CHF
No payment instructions or payments not made for other reasons	540,112	5,109,237	2,511,147
Contingent claims where conditions are not yet met	5,209,060	15,887,633	21,878,051
Claims in pending proceedings regarding the schedule of claims	2,267,189	6,914,926	9,522,193
<b>Total provision</b>	<b>8,016,361</b>	<b>27,911,796</b>	<b>33,911,391</b>

These provisions ensure that the maximum amounts for the first three interim payments with respect to all unsettled claims are secured.

#### 4. CLAIMS OF CREDITORS

The overview of the proceedings regarding the schedule of claims ([Annex 2](#)) states the current total of claims that have been registered in the respective classes, those claims that have been recognised, those that have been definitively rejected, those that are in dispute and those that are still suspended in the schedule of claims. The claim amount in the third class is still subject to change as efforts to settle the schedule of claims proceed.

#### 5. ESTIMATED DIVIDEND

The disposable assets reported in the liquidation status as of 31 December 2017 give a maximum dividend of 20.3% for third class claims. However, should the pending action to contest the schedule of claims be upheld, the minimum dividend would be 20%. Of this, 16.5% has already been paid out by way of the first three interim payments. The future dividend that may be expected, therefore, is between 3.5% and 3.8%.

#### **IV. LIQUIDATION OF ASSETS**

During the reporting period, the Liquidator was able to realise assets in the amount of CHF 284,038,527. In 2017, Swissair mainly received the three interim payments (CHF 277.5m) on its claims against SAirGroup, which was finally registered in relation to the settling of the mutual claims with SAirGroup (see circular no. 23 section I.1).

#### **V. PURSUIT OF LIABILITY CLAIMS**

##### **1. GROUP FINANCING**

With the statement of claim of 26 April 2013, Swissair lodged a liability claim against 14 former de jure and de facto corporate bodies before the Commercial Court of the Canton of Zurich. Subject of this statement of claims is the financing of the SAirGroup by Swissair. The total size of the claim amounts to about CHF 208 million.

In the summer of 2017, the Commercial Court told the parties that it considered the case ready for judgement. The parties waived the right to a main hearing.

By decision of 16 March 2018 the Commercial Court dismissed the statement of claim of Swissair. Even though the continuation of the loan in the amount of billions, the further participation of Swissair in the Cash Pool and the granting of fixed-term deposits by Swissair from 1 January 2001 was unlawful, because they were distributions which violated the regulations on the protection of capital, the Commercial Court however held that the respondents did not violate their duty of care and loyalty. Besides, the Commercial Court held further that Swissair did not incur any damages in this regard. Currently, the Deputy Liquidator and the creditors' committee are assessing whether an appeal against the decision should be lodged at the Federal Supreme Court.

##### **2. FURTHER LIABILITY ISSUES**

With regard to further liability issues, Swissair reserves the right to submit claims against the responsible parties.

#### **VI. PROCEEDINGS REGARDING THE SCHEDULE OF CLAIMS**

Over the course of 2017, the schedule of claims was settled further by the rejection of a pending third class claim.

At the end of 2017, all that was pending was the action to contest the schedule of claims of the Swiss ancillary bankruptcy estate of Sabena SA, the masse en faillite ancillaire de Sabena SA, regarding the third class claim of over CHF 113,359,441 (see circular no. 24 section VII.2). A main hearing, restricted to procedural questions (the right to pursue legal action of the Swiss ancillary insolvency estate in the proceedings regarding the action to contest the schedule of claims and the legitimisation of Sabena SA in bankruptcy liquidation to file claims), was held in late February 2018.

## VII. NEXT STEPS IN THE ONGOING PROCEEDINGS

In the upcoming months, the aim will be to reach agreement with SAirGroup about the division of the revenues from the sale of properties abroad and from the sale of a participation abroad. The basic principles have been drawn up already. The liquidation estates are currently negotiating. The collection of the debts of insolvent companies of the former Swissair Group companies will also continue. In so doing, the primary aim will be to break the circular flows of dividends that partially exist (see circular no. 25 section II).

Finally, the liquidation bodies will continue the proceedings regarding the liability claim against former directors and officers of Swissair in 2018 and decide whether further liability claims are to be submitted. It is not yet possible at present to estimate how long it will take for these liability issues to be completed.

Depending on how the proceedings progress, creditors will continue to receive information about important developments by circulars. A report on the progress of the liquidation proceedings this year will be issued by spring 2019 at the latest.

Yours sincerely

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

Karl Wüthrich

- Annexes: 1. Liquidation status of Swissair as at 31 December 2017  
2. Overview of the schedule of claims proceedings



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**LIQUIDATION STATUS AS OF 31 DECEMBER 2017**

	<b>31.12.2017</b>	<b>31.12.2016</b>	<b>Change</b>
	<b>CHF</b>	<b>CHF</b>	<b>CHF</b>
<b>ASSETS</b>			
<b>Liquid funds</b>			
ZKB CHF	42'502'438	2'628'244	39'874'195
ZKB EUR	1'299'032	1'165'798	133'234
ZKB USD	2'666'037	549'331	2'116'705
ZKB Money Market Time CHF	50'000'000	80'000'000	-30'000'000
<b>Total liquid funds</b>	<b>96'467'507</b>	<b>84'343'373</b>	<b>12'124'134</b>
<b>Liquidation positions</b>			
Banks/cash abroad	2'693	46'490	-43'797
Accounts receivable by the estate	2'148	0	2'148
Receivables from third parties	85'756'000	291'973'974	-206'217'974
Prepaid court expenses	6'733'409	6'733'409	0
Deposits/Guarantees	1'450'000	655'363	794'637
Claims from proceeds of sale of operating equipment	2	2	0
Real estate	8'000'000	1	7'999'999
Participations	1	1	0
Responsibility claims	p.m.	p.m.	
<b>Total liquidation positions</b>	<b>101'944'253</b>	<b>299'409'240</b>	<b>-197'464'987</b>
<b>TOTAL ASSETS</b>	<b>198'411'759</b>	<b>383'752'612</b>	<b>-185'340'853</b>
<b>LIABILITIES</b>			
<b>Debts of the estate</b>			
Accounts payable to the estate	272'492	268'386	4'105
Provision, 1st interim payment	8'016'361	9'358'855	-1'342'494
Provision, 2nd interim payment	27'911'796	32'120'793	-4'208'997
Provision, 3rd interim payment	33'911'392	0	33'911'392
Provisions for liquidation costs	5'000'000	5'000'000	0
Provisions for outstanding statements	0	0	0
<b>Total debts of the estate</b>	<b>75'112'041</b>	<b>46'748'035</b>	<b>28'364'006</b>
<b>TOTAL DISPOSABLE ASSETS</b>	<b>123'299'718</b>	<b>337'004'578</b>	<b>-213'704'859</b>

## Overview of the schedule of claims proceedings

Category	Registered	Schedule of claims				Dividend				
		Recognized	Appeal lodged	Decision suspended	Rejected	interim payments	Future dividend		Total	
	Amount in CHF	Amount in CHF	Amount in CHF	Amount in CHF	Amount in CHF		minimal	maximal	minimal	maximal
Secured by right of lien	4'758'963.80	1'074'339.35	-	-	3'684'624.45	-	-	-	-	-
First Class	902'655'767.50	17'975'081.90	-	-	884'680'685.60	100%	-	-	100%	100%
Second Class	939'006.50	932'671.09	-	-	6'335.41	100%	-	-	100%	100%
Third Class	27'062'407'411.15	3'450'791'810.94	113'359'440.90	-	23'498'256'159.31	16.5%	3.5%	3.8%	20.0%	20.3%
<b>Total</b>	<b>27'970'761'148.95</b>	<b>3'470'773'903.28</b>	<b>113'359'440.90</b>	<b>-</b>	<b>24'386'627'804.77</b>					

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