

**Unofficial Translation  
of German Original**

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Inscrit au barreau

To the creditors of  
Swissair Schweizerische Luftverkehr-Aktiengesell-  
schaft in debt restructuring liquidation

Kusnacht, October 2022

## **Swissair Schweizerische Luftverkehr-Aktiengesellschaft in debt restructuring liquidation Circular No. 33**

Dear Sir or Madam,

in the following, I will inform you on the current status of the debt restructuring liquidation of Swissair Schweizerische Aktiengesellschaft ("Swissair") and the planned further course of the proceedings in the coming months.

### **I. REALISATION OF ASSETS**

#### **1. CLAIM AGAINST SAIRGROUP AG IN DEBT RESTRUCTURING LIQUIDATION**

Swissair filed claims of over CHF 4 billion against SAirGroup AG in debt restructuring liquidation (hereinafter "SAirGroup") based on various legal grounds. This amount includes a claim of CHF 195,593,132.86 arising from board members' liability under stock corporation law due to Swissair's participation in group cash pooling. For its part, SAirGroup filed claims against Swissair totalling CHF 172,967,647.24 based on various legal grounds.

On 26 April 2013, Swissair applied to the commercial court of the Canton of Zurich (hereinafter "Commercial Court") against former executive bodies to assert liability

claims in connection with the granting of loans to SAirGroup and Swissair's participation in group cash pooling. This application included the liability claim of CHF 195,593,132.86 filed by Swissair against SAirGroup on 8 December 2005.

In the course of 2016, Swissair and SAirGroup entered into an agreement. Therein, they settled the respective claims by mutual agreement and without court proceedings. The claims filed by Swissair were reduced to CHF 1.5 billion, taking into account the counter-claims of SAirGroup, and were registered against SAirGroup in the 3rd class. Only the liability claim due to Swissair's participation in group cash pooling was excluded from this arrangement in the amount of CHF 195,593,132.86; this claim was the subject of the action pending before the Commercial Court and brought against former executive bodies. This claim remained suspended in SAirGroup's schedule of claims.

In its ruling of 16 March 2018, the Commercial Court dismissed Swissair's liability claim against former executive bodies. Against this ruling, Swissair filed a civil law appeal with the Federal Supreme Court. On 18 November 2019, the Federal Supreme Court dismissed this appeal.

Following the Federal Supreme Court's ruling, it was a matter of dispute between Swissair and SAirGroup whether the dismissal of the liability claim against former executive bodies also removed the basis for the claim of CHF 195,593,132.86, filed by Swissair against SAirGroup and suspended, on the grounds of SAirGroup's liability as de facto executive body of Swissair due to Swissair's participation in group cash pooling. As Liquidator of SAirGroup, I took the view that the Commercial Court and the Federal Supreme Court denied both the illegality and the existence of a loss with regard to the liability claim. The Deputy Liquidator of Swissair, on the other hand, now also justified the claim with a "reach through" by SAirGroup Finance (NL) B.V. (hereinafter "FinBV") under Dutch law. As a shareholder of FinBV, SAirGroup, in breach of its duties, had failed to inform Swissair about the adverse financial situation of this company and had unlawfully deprived FinBV of substance.

At the beginning of May 2022, I, as the Liquidator of SAirGroup, provided the Deputy Liquidator of Swissair with a draft for the ruling on the schedule of claims to dismiss Swissair's claim of CHF 195,593,132.86.

In June 2022, a meeting took place between the Deputy Liquidator of Swissair and myself as Liquidator of SAirGroup. In addition, the president of Creditors' Committee was present at the meeting on behalf of Swissair. In the course of this meeting, a compromise agreement was reached on the settlement of Swissair's suspended claim against SAirGroup; this agreement contains the following key points:

- Swissair reduces its claim of CHF 195,593,132.86 filed in the debt restructuring liquidation of SAirGroup to an amount of CHF 10,000,000.
- SAirGroup acknowledges the claim in the amount reduced to CHF 10,000,000 and recognises it as a claim allocable to the third class.
- By executing this agreement, the parties declare to have settled all mutual claims on balance, subject to Swissair's entitlement to future dividends on the admitted claims.

This arrangement was formalised in a settlement agreement. The agreement was approved by the Creditors' Committees of Swissair and SAirGroup.

The claimed amount of CHF 10 million now recognised by SAirGroup adequately compensates Swissair for its opportunities through an action to contest the schedule of claims.

## **2. CLAIMS AGAINST SABENA SA IN BANKRUPTCY; PROCEEDINGS IN BELGIUM**

In the proceedings of Swissair against Sabena SA in bankruptcy (hereinafter "Sabena") in Belgium (see Circular No. 32, para. III.5.), Sabena filed an appeal with the Cour de Cassation against the interim judgment of the Cour d'Appel Bruxelles of spring 2021, which had attributed Swissair claims in the amount of EUR 16,059,064 and CHF 1,120,900.91. It remains to be seen when and with which result these proceedings will be completed in Belgium.

## **3. CLAIMS AGAINST FORMER SWISSAIR GROUP COMPANIES**

In addition to the claims against SAirGroup and Sabena, only recognised claims against Atrib Management Services AG in bankruptcy, against Swisscargo AG in debt restructuring liquidation and against FinBV remain with Swissair as assets not yet realised. I expect that final payments from these liquidation and bankruptcy proceedings will be received by spring 2023 at the latest.

## **II. SETTLEMENT OF LIABILITIES (SCHEDULE OF CLAIMS)**

On 1 June 2016, the Sabena Ancillary Debt Restructuring Liquidation Assets filed new claims of CHF 112,147,728.75 against Swissair. With ruling dated 31 May 2022, I dismissed the claims of the Sabena Ancillary Debt Restructuring Liquidation Assets. On 21 June 2022, Sabena Ancillary Debt Restructuring Liquidation Assets filed an action to contest the schedule of claims in the amount of CHF 68,598,992.50 against this ruling. This schedule of claims proceedings will now take its course.

### III. PLANNED NEXT STEPS IN THE PROCEEDINGS

With the exception of the dispute with Sabena in Belgium and the action to contest the schedule of claims of the Sabena Ancillary Debt Restructuring Liquidation Assets in Switzerland, the debt restructuring liquidation of Swissair is essentially complete. Only the final payments from the liquidation and bankruptcy proceedings of various companies of the former Swissair Group are still outstanding (see para. I.1. and para. I.3. above). However, the disputes with Sabena and the Sabena Ancillary Debt Restructuring Liquidation Assets may last for years.

Due to this initial situation, the Creditors' Committee has decided, at my request, to issue a further interim payment of 1.5 % to the creditors with third class claims; this interim payment will be made as soon as the final dividend of SAirGroup will be received. I expect this to be the case in the summer of 2023.

Creditors will be informed in spring 2023 about the progress of the liquidation in the current year.

Kind regards,

Swissair Schweizerische Luftverkehr-AG in debt restructuring liquidation  
The liquidator:

Karl Wüthrich

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

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