

**SAirGroup in
debt restructuring liquidation**

Circular No. 19

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in debt restructuring liquidation**

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**Unofficial Translation
of German Original**

To the creditors of SAirGroup in debt
restructuring liquidation

Küsnacht, May 2012 WuK/BoS

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**SAirGroup in debt restructuring liquidation;
Circular no. 19**

Dear Sir or Madam

This circular provides information on the current status of the SAirGroup debt restructuring liquidation proceedings, as well as on how these proceedings are scheduled to progress over the coming months.

I. REPORT ON ACTIVITIES AS OF 31 DECEMBER 2011

After having been acknowledged and approved by the Creditors' Committee on 14 March 2012, the 9th Liquidator's report on activities for 2011 was submitted to the debt restructuring judge at the District Court of Zürich. The report on activities will be available for inspection by creditors at the Liquidator's offices at Seestrasse 39, Goldbach Center, 8700 Küsnacht until 25 May 2012. Appointments should be made in advance with Christian Rysler (phone +41 43 222 38 00).

The following pages summarize the content of the report on activities.

II. OVERVIEW OF THE LIQUIDATION PROCESS

1. Activities of the Liquidator

The activities of the Liquidator in 2011 concentrated again on settling liabilities, including pursuing actions brought by creditors to contest the schedule of claims (see section VI.1 below), pursuing the avoidance claims that had been initiated (see section V.1 below), and investigating and conducting the legal proceedings relating to responsibility on the part of directors and officers (see section V.2 below). A number of assets were also realized (see section IV. below).

2. Activities of the Creditors' Committee

The Creditors' Committee held three meetings and two teleconferences in 2011. At its meetings the Committee discussed the proposals submitted by the Liquidator and passed resolutions accordingly. It also passed resolutions on various proposals submitted by the Liquidator in the form of circulars.

III. ASSET STATUS OF SAIRGROUP AS OF 31 DECEMBER 2011

1. Introductory remark

Enclosed is a report on the liquidation status of SAirGroup as of 31 December 2011 ([Enclosure 1](#)), containing a statement of assets of SAirGroup in debt restructuring liquidation as of 31 December 2011 according to the information currently available.

2. Assets

Court deposits: In recent years SAirGroup has had to make several court deposits in connection with the initiation of a number of avoidance and responsibility claims. As of 31 December 2011 these deposits totalled CHF 34,932,682. The settlement of avoidance claims reduced the total during 2011 (see section V.1 below).

Pending apportionment of proceeds from the sale of Swissport, Gate Gourmet, SR Technics and Nuance: It remained impossible in 2011 to apportion the proceeds of the sales of the Swissport Group, the Gate Gourmet Group, SR Technics Switzerland and the Nuance Group. The attendant complexities have been resolved by SAirGroup. However, an assessment by SAirLines has not yet been completed. As for the Swissport Group, negotiations have commenced with the parties concerned. Efforts will be made to resolve these outstanding matters in the course of this year.

Assets as yet unrealized: This item still consists primarily of claims against former Swissair group companies, shareholdings held by SAirGroup, the stake in the commercial property at Geneva Airport (the last property held within Switzerland), real estate abroad, insofar as it belongs to SAirGroup, and securities. 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 2011 relate to costs incurred during debt restructuring liquidation.

Provisions for interim payments: The liquidation status of SAirGroup as of 31 December 2011 includes the sum of CHF 589,446,652 as a provision for the first interim payment. Of this amount, CHF 7,677,028 relates to payments in respect of which creditors have not yet given the Liquidator payment instructions, or for payments that could not be effected for other reasons. CHF 2,516,275 relates to interim payments for contingent claims for which the condition concerned has not yet been met. A further CHF 166,884,616 relates to interim payments for claims for which an action to contest the schedule of claims is pending. The remainder of the provision – CHF 412,368,733 – relates to claims that are still suspended at present.

A provision of CHF 167,899,127 for the second interim payment was included in the liquidation status of SAirGroup as per 31 December 2011. Of this amount, CHF 3,341,080 relates to payments in respect of which creditors have not yet given the Liquidator payment instructions, or to

payments that could not be effected for other reasons. CHF 997,015 relates to interim payments for contingent claims for which the condition concerned has not yet been met. A further CHF 66,124,093 relates to interim payments for claims for which an action to contest the schedule of claims is pending. The remainder of the provision – CHF 97,436,939 – relates to claims that are still suspended at present.

These provisions guarantee the maximum amounts for both interim payments with respect to all claims which have not yet been settled.

4. Creditors' claims

For the current status of the schedule of claims proceedings, reference is made to section VI.1 below. The overview of the schedule of claims proceedings (Enclosure 2) lists the claim amounts according to their classes and specifies whether they are currently registered, recognized, definitively rejected, in dispute (actions to contest the schedule of claims), or still suspended. The claim amounts in all classes are still subject to change as efforts to settle the schedule of claims proceed.

5. Estimated dividend

The disposable assets reported in the liquidation status give a maximum dividend of 18.1%, provided all of the still pending actions to contest the schedule of claims are dismissed and no more than 40% of suspended claims have to be recognized. Should all of the actions be upheld and the suspended claims have to be recognized in full, however, the minimum dividend would be 10.8%. Of this, 7.4% has already been paid out by way of previous interim payments. The future dividend that may be expected, therefore, is between 3.4% and 10.7%.

IV. REALIZATION OF ASSETS

1. General

The Liquidator continued to collect accounts receivable both in Switzerland and abroad during the period under review. The total amount collected was

some CHF 28.5 million; particularly from the settlement of avoidance claims against Deutsche Bank AG and PricewaterhouseCoopers AG (see sections V.1.2 and V.1.3).

2. Assignment of the right to take legal action in respect of contested claims

2.1 General

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 further pursue (Article 325 in conjunction with Article 260, Swiss Federal Debt Enforcement and Bankruptcy Act). Creditors who request assignment are then entitled to assert the legal claim at their own risk and expense. In case of successful litigation, the creditor is entitled to use any award to cover both the costs incurred and his or her claim against SAirGroup. Any surplus would have to be surrendered to the liquidation estate. Should the creditor lose the action, he or she is liable for any court costs and legal fees.

2.2 Non-pursuit of contested claims

In the course of the settlement of the accounts receivable accounting of SAirGroup, the Liquidator and the Creditors' Committee decided not to pursue various claims since these are poorly documented or their enforceability is questionable or would incur disproportionate costs. This relates to the following claims:

- A.F.S. Aviation Financial Services AG	CHF	1,247.45
- Air Littoral S.A.	CHF	218,407.64
- DLS Lehrmittel AG	CHF	9,706.70
- Atraxis Africa	CHF	1,200.00
	CHF	6,343.00
- Atraxis Belgium	CHF	337,350.30
	CHF	15,000.00
- Debitoren Lernzentrum	CHF	4,111.90

- E-commerce Summit	USD	2,000.00
- Galileo Switzerland AG	CHF	68,225.90
- South African Airways	CHF	10,000.00
	CHF	750.00
- Verein Sports & Loisirs GVA	CHF	96,249.70
- Swissair Sabena Airline Management Partnership (branch in Belgium)	CHF	8,992,160.05
- TAP Air Portugal	CHF	1,200.00

2.3 Requests for assignment from individual creditors

The right to sue regarding the claims of SAirGroup, which will not be pursued by the liquidation bodies (cf. section IV.2.2 above), is herewith offered to creditors.

Requests for assignment according to Article 260 of the Swiss Federal Debt Enforcement and Bankruptcy Act must be submitted to the undersigned Liquidator **in writing and no later than 4 June 2012** (date of postmark, affixed by a Swiss post office). The right to request assignment will be deemed to be **forfeited** if this deadline is not met.

V. PURSUIT OF CONTESTED CLAIMS

1. Avoidance claims

1.1 Introduction

In 2011 four avoidance claims were resolved, either by settlement or by legally binding rulings. There is still one avoidance claim pending as of now.

1.2 Deutsche Bank AG

The avoidance action against Deutsche Bank AG with respect to an equity swap was upheld by the Commercial Court in its judgment of 27 October 2010 in the amounts of CHF 1,583,333.33 and EUR 20,170,176.81. However, the amount of CHF 83,750,000.00 was rejected. Both parties filed civil appeals against the decision with the Federal Supreme Court.

The Federal Supreme Court dismissed both appeals in a ruling dated 22 August 2011, thus making the Commercial Court's ruling binding. Deutsche Bank AG has met its obligations arising from the ruling.

1.3 PricewaterhouseCoopers AG

On 19 July 2010 the Court of Cassation of the canton of Zürich had overturned the decision of the Commercial Court with respect to the avoidance action against PricewaterhouseCoopers AG ("PwC"). The Court of Cassation instructed the Commercial Court to hold evidence hearings regarding the issue of the intention to cause loss of SAirGroup at the time of the contested payments and to deliver a new ruling on this basis. At a (second) settlement conference before the Commercial Court on 30 June 2011, the parties reached an agreement. The settlement was subsequently approved by the Creditors' Committee and confirmed by PwC. In fulfilment of the settlement, which relates solely to the resolution of the avoidance claims lodged by SAirGroup against PwC, PwC paid SAirGroup a net CHF 1,700,000.00, waiving the claim revived in accordance with Article 291, paragraph 2 of the Swiss Federal Debt Enforcement and Bankruptcy Act.

1.4 Credit Suisse Securities (Europe) Ltd.

On 24 January 2011 the Commercial Court rejected the avoidance action against Credit Suisse Securities (Europe) Ltd. relating to an equity swap. SAirGroup filed a civil appeal against this with the Federal Supreme Court, which dismissed the appeal in its ruling of 10 August 2011. The avoidance action has thus been resolved with legally binding effect.

1.5 Roland Berger AG

In the avoidance action against Roland Berger AG, the Federal Supreme Court rejected the SAirGroup's appeal in a ruling dated 9 March 2011. The principal finding of the Court's ruling was that the consultancy services, payment for which was the subject of the action, had been delivered to SAirGroup by Roland Berger AG in a restructuring context. The Federal Court considered it to be unproven that there was an intention to cause loss of SAirGroup in connection with the contested payments. The avoidance action has thus been resolved with legally binding effect.

1.6 Additional comments

The avoidance action against Credit Suisse AG with regard to fee payments is the last one currently still pending. In the spring of 2011 the Court of Cassation of the canton of Zürich had overturned the Commercial Court's ruling of 3 November 2009 and referred the case back to it for a retrial. A settlement conference was subsequently conducted before the Commercial Court in December 2011. The settlement negotiations failed to reach agreement.

To date, the avoidance proceedings concluded have yielded approximately CHF 458 million (net, after deduction of costs).

2. Pursuit of responsibility claims

2.1 Roscor transaction

In the responsibility proceedings against various former directors and officers of SAirGroup relating to the Roscor transaction, the High Court of the canton of Zürich (the court of the second instance, hereinafter referred to as the "High Court") dismissed SAirGroup's action in a ruling of 16 May 2011. SAirGroup filed a civil appeal against this decision with the Federal Supreme Court on 24 June 2011. Following receipt of the respondent's responses, the Federal Court ordered a second exchange of pleadings, which has now been conducted. The Federal Court has yet to deliver a ruling.

2.2 Recapitalization of Sabena in 2001

SAirGroup delivered its replication on 31 March 2011 and the respondents their rejoinders on 30 September 2011. On 21 October 2011 SAirGroup filed its comments on the rejoinders, whereupon the respondents submitted their comments in turn at the beginning of November 2011. The proceedings are still pending before the High Court.

2.3 Further responsibility issues

SAirGroup reserves the right to bring further actions against persons responsible for other areas.

2.4 Claim against "Homburger Rechtsanwälte"

The claims proceedings brought by SAirGroup against Homburger AG and Riesbach Services GmbH in connection with the advice given by Homburger lawyers in the context of the 2001 restructuring are pending before the Commercial Court. The respondents filed their defence on 30 June 2011. The deadline for SAirGroup's replication, which is being prepared, is approaching.

VI. SETTLEMENT OF LIABILITIES

1. Schedule of claims proceedings

First-/second-class claims: No actions to contest the schedule of first- or second-class claims were still pending in 2011.

Third-class claims: Three actions in respect of third-class claims, involving a total of CHF 3,148,766,346.85, were still pending at the beginning of 2011.

The action by the *Belgian state and companies controlled by it*, which was dismissed in the court of the first instance in a ruling dated 22 February 2011, is currently pending on first instance before the High Court. As ordered by the Court on 14 September 2011, the SAirGroup gave its standpoint in advance on the various procedure-related petitions of the claimants. The High Court has yet to rule on these petitions and on the further procedural process.

On 16 December 2011, in the schedule of claims proceedings brought by *Sabena SA in liquidation ("Sabena")* the sole presiding judge at the Zürich District Court set SAirGroup a deadline for filing its defence after Sabena had paid an additional deposit. Sabena subsequently filed a suspension petition, which was dismissed by the High Court on second instance on

6 March 2012. SAirGroup filed its defence on 10 April 2012. The deadline for Sabena's replication, which is being prepared, is approaching.

In the parallel proceedings brought by the Belgian state and Sabena et al. against SAirGroup and SAirLines in Belgium, SAirGroup and SAirLines, together with other parties involved, filed an appeal with the Belgian Court of Cassation against the ruling of the Court of Appeals in Brussels dated 27 January 2011. This appeal is still pending. Sabena also petitioned the Zürich District Court to recognize the ruling of the Court of Appeals in Brussels of 27 January 2011 as valid for the territory of Switzerland and to declare it enforceable. In a ruling of 25 March 2011, without hearing SAirGroup or SAirLines, the court of the first instance partly granted this petition. The Brussels ruling was declared enforceable to the extent that SAirGroup and SAirLines were obligated to pay Sabena EUR 18,290,800.60. The remaining aspects of the petition were dismissed on procedural grounds. Sabena, SAirGroup and SAirLines all appealed this exequatur ruling to the High Court, which has yet to deliver its decision. In the opinion of SAirGroup and SAirLines, a decision on Sabena's claims against them should be reached exclusively in the pending actions contesting the schedule of claims.

In the action brought by the *Société d'Exploitation AOM-Air Liberté* ("AOM") against SAirGroup and Holco SAS, which was still being stayed, AOM withdraw on 3 January 2012 its action against SAirGroup and requested of the court a dismissal ruling on the grounds of lack of jurisdiction, insofar as the action was brought against Holco SAS. The sole judge at the Zürich District Court issued a cancellation order on 26 January 2012. These proceedings are thus finished.

2. Settlement with Andreas Simmen

In the debt restructuring proceedings of SAirGroup, Andreas Simmen had registered privileged claims arising from his contract of employment totalling CHF 341,808, one for CHF 70,975 in connection with registered shares/options and one for CHF 270,833 under the severance plan. With the decree of 10 October 2006, SAirGroup had suspended the schedule of

claims related decision on these claims pending investigation into possible claims on grounds of responsibility.

The investigations that followed had established that pursuing claims against Andreas Simmen on grounds of responsibility offered poor prospects of success. This nullified the grounds for suspending the decision, requiring a decision to be reached on the action on the schedule of claims.

There was, however, legal uncertainty regarding the claim lodged by Andreas Simmen under the severance plan. In earlier analogous cases SAirGroup had rejected claims under the severance plan by members of SAirGroup's senior management. In the course of the subsequent actions to contest the schedule of claims, SAirGroup, however, conceded in view of the existing risks sums of 70-80% of the full severance-plan benefits. On this basis SAirGroup and Andreas Simmen agreed a settlement with the following key points on 31 August/1 September 2011:

1. Andreas Simmen withdraws his claim regarding registered shares/options totalling CHF 70,975 and reduces his severance-plan claim from CHF 270,833 to CHF 203,125 (75% of the full severance-plan benefit);
2. SAirGroup recognizes the reduced claim and includes it as a first-class privileged claim;
3. By fulfilment of the terms of the settlement, SAirGroup and Andreas Simmen shall declare all reciprocal claims to be settled. This also includes any claims of SAirGroup against Andreas Simmen on the grounds of responsibility.

The settlement was approved by the Creditors' Committee of SAirGroup.

VII. PLANNED NEXT STEPS IN THE PROCESS

The next phase of the proceedings will involve resolving the schedule of claims and liquidating the remaining assets, particularly the last remaining properties in Switzerland and abroad.

The liquidation bodies will continue their investigations into responsibility claims and initiate further legal action if necessary. The avoidance action that is still pending will continue to be pursued. It is not possible at present to estimate how long it will take for these two issues to be resolved.

In line with how the proceedings progress, creditors will continue to receive information about important developments in the form of circulars. A report on the progress of the liquidation process in the current year will be issued by spring 2013 at the latest.

Yours faithfully

SAirGroup in debt restructuring liquidation

The Liquidator

Karl Wüthrich

- Enclosures:
1. Liquidation status of SAirGroup as at 31 December 2011
 2. Overview of the schedule of claims proceedings of SAirGroup

LIQUIDATION STATUS as of 31 December 2011

	31.12.2011	31.12.2010	Change
	CHF	CHF	CHF
ASSETS			
Liquid funds			
UBS AG CHF	362'610	277'689	84'921
CREDIT SUISSE CHF	25'960	26'003	-43
ZKB CHF	1'132'913'985	1'069'264'763	63'649'222
ZKB USD	27'965	47'915	-19'950
ZKB EUR	98'808	1'482	97'326
Total liquid funds	1'133'429'328	1'069'617'852	63'811'476
Liquidation positions:			
Accounts receivable	249'186	548'744	-299'558
Prepaid court expenses	34'932'682	36'391'182	-1'458'500
Open apportionment of proceeds on sale of Swissport, Restorama, RailGourmet, and Nuance	37'184'700	37'184'700	0
Open apportionment of costs relating to Swissair, SAirLines, T Group and SAir Services Invest AG accrued during debt restructuring moratorium	6'870'523	6'870'523	0
Receivables from third parties	86'112'208	86'262'109	-149'901
Real estate	73'100'001	73'100'001	0
IT-Equipment	2	2	0
Shareholdings, securities	364'003	376'509	-12'506
Responsibility claims	p.m.	p.m.	
Pauliana claims	0	39'624'618	-39'624'618
Total liquidation positions	238'813'305	280'358'388	-41'545'083
TOTAL ASSETS	1'372'242'633	1'349'976'240	22'266'393
LIABILITIES			
Debts of the estate			
Accounts payable	1'179'981	1'226'127	-46'146
Provision, 1st interim payment	589'446'652	599'354'660	-9'908'008
Provision, 2nd interim payment	167'899'127	172'656'158	-4'757'031
Provisions for liquidation costs	10'000'000	10'000'000	0
Total debts of the estate	768'525'760	783'236'945	-14'711'185
TOTAL DISPOSABLE ASSETS	603'716'873	566'739'295	36'977'578

Summary of schedule of claims status

Category	Registered		Schedule of claims					Dividend				
	Amount in CHF		Recognized	Admitted subject to conditions	Schedule of claims appeal pending	Suspended / New registration	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	-	-	-	-	-	-	-	-	-	-	-	-
First class	467'115'199.72	73'405'583.84	-	-	166'231'886.84	227'477'729.04	100%	-	-	100%	100%	100%
Second class	828'861.67	502'720.95	-	-	224'571.12	101'569.60	100%	-	-	100%	100%	100%
Third class ^{1) 2)}	48'432'959'819.94	10'081'317'620.30	47'476'882.95	3'148'766'346.85	4'639'854'242.43	30'563'021'610.36	7.4%	3.4%	10.7%	10.8%	18.1%	18.1%
Total creditors' claims	48'900'903'881.33	10'155'225'925.09	47'476'882.95	3'148'766'346.85	4'806'310'700.39	30'790'600'909.00						

¹⁾ The minimal dividend calculation factors in 5% of conditional claims.

²⁾ The maximum dividend calculation factors in 40% of suspended third-class claims and 5% of conditional claims.