

**SAirGroup in  
debt restructuring liquidation**

**Circular No. 20**

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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, 5 December 2012 WuK/hea

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**SAirGroup in debt restructuring liquidation;  
Circular no. 20**

Dear Sir or Madam

This circular provides you with information on the current status of the  
SAirGroup debt restructuring liquidation since May 2012.

**I. APPORTIONMENT OF PROCEEDS FROM THE SALE OF THE  
SWISSPORT GROUP**

Swissport International AG ("Swissport") was a wholly owned subsidiary  
of SAirLines. SAirLines is a wholly owned subsidiary of SAirGroup.  
During the debt-structuring moratorium of SAirLines and SAirGroup, the  
Swissport group (excluding the Swissport group's debts to the Swissair  
group) and the "Swissport" brand were sold to the Candover group for  
an adjusted purchase price of around CHF 400 million in a contract of  
sale dated 19 December 2001.

The purchase price gained was insufficient to pay off the debts of around  
CHF 820 million owed by the Swissport group to the Swissair group.  
Beside SAirGroup (around CHF 705 million), SAirGroup Finance (US)  
Inc. (hereinafter "FinInc", around CHF 27 million), SAirGroup Finance  
(NL) B.V. (hereinafter "FinBV", around CHF 30 million), SAirLines  
(around CHF 19 million) and Swissair Swiss Air Transport Company Ltd.  
(hereinafter "Swissair", around CHF 39 million) had claims totalling

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ALLE ANWÄLTE SIND AN IHREM STANDORT IM ANWALTSREGISTER BZW. IN DER EU/EFTA ANWALTSLISTE EINGETRAGEN  
1) NOTAR IN BASEL 2) INHABER ZÜRCHER NOTARPATENT 3) AUCH DEUTSCHER RECHTSANWALT 4) FACHANWÄLTIN SAV ERBRECHT  
5) FACHANWALT SAV BAU- UND IMMOBILIENRECHT 6) FACHANWÄLTIN SAV ARBEITSRECHT 7) DIPL. STEUEREXPERTE  
8) DIPL. WIRTSCHAFTSPRÜFER 9) EidG. Dipl. IMMOBILIENTREUHÄNDER 10) ALS RECHTSANWALT NICHT ZUGELASSEN

around CHF 115 million against companies of the Swissport group. To secure the claims of FinInc, FinBV, SAirLines and Swissair (hereinafter "minority lenders"), the sum of CHF 114,636,257 was paid from the purchase price into an escrow account. The remainder of the purchase price of around CHF 285 million went directly to SAirGroup. To settle their claims, SAirGroup and the minority lenders agreed to apportion the purchase price among the parties, essentially with reference to the following criteria:

- the nominal value of the respective claim;
- the net assets of the respective Swissport debtor company; and
- the value of the respective Swissport debtor company.

In February 2002, the parties agreed an initial interim payment to the minority lenders. On 21 February 2002, the following payments were made from the escrow account to the minority lenders:

<b>Company</b>	<b>Interim payment (CHF)</b>
FinBV	8,108,310
FinInc	7,347,413
SAirLines	5,159,834
Swissair	3,162,479
<b>TOTAL</b>	<b>23,778,036</b>

By an agreement dated 6 March 2002 the parties and FinInc agreed its share of the purchase price for the Swissport Group. FinInc only had claims against Swissport North America, which had no other claims against it from the other Swissair companies. Swissport North America was in good financial shape. Applying the agreed criteria, the parties agreed that FinInc should have a share of the purchase price for the Swissport group equivalent to 100% of its claims against Swissport North America (CHF 27,212,349). After deducting the interim payment of CHF 7,347,413 plus the prorated interest, FinInc received from the escrow account a payment of CHF 19,948,386 in settlement of all claims.

After the final payment to FinInc, the remaining sum in the escrow account was CHF 771,544,264. On 30 March 2012, the escrow account balance, including accrued interest and after deducting the costs for the escrow agent, was CHF 76,395,000.

The minority lenders remaining after FinInc's exit and SAirGroup could not reach agreement as to how the various criteria should be applied to the respective Swissport debtor company. Several models were drawn up with the aid of consultants. In the summer of 2012, after protracted negotiations, the parties finally agreed to apportion the escrow account balance as follows:

<b>Company</b>	<b>Nominal amount (CHF)</b>	<b>Escrow account interest (CHF)</b>	<b>Amount paid out (CHF)</b>
SAirGroup	60,052,268.00	4,590,440.45	64,642,708.45
SAirLines	1,964,281.00	150,151.10	2,114,432.10
Swissair (loans)	1,212,188.00	92,660.55	1,304,848.55
Swissair (know-how fee)	5,500,000.00	420,424.10	5,920,424.10
FinBV	2,241,263.00	171,323.80	2,412,586.80
<b>Total</b>	<b>70,970,000.00</b>	<b>5,425,000.00</b>	<b>76,395,000.00</b>

This apportionment was approved by the Creditors' Committees of SAirLines, Swissair, and SAirGroup, and by the Dutch bankruptcy judge. The payouts from the escrow account have now been made. The sale of the Swissport group has been completed.

## **II. PURSUIT OF CONTESTED CLAIMS**

### **1. Avoidance claims**

#### *1.1 Introduction*

Since the report on the progress of the avoidance claims in circular no. 19 dated 15 May 2012 (section V1.1), the last remaining avoidance claim has been settled. The assertion of avoidance claims has yielded around CHF 460 million net to date.

1.2 *Credit Suisse*

On 21 November 2005, SAirGroup filed an avoidance claim under Article 288 of the Swiss Federal Debt Enforcement and Bankruptcy Act with the Commercial Court of the Canton of Zurich ("Commercial Court") against Credit Suisse (formerly CSFB) for repayment of CHF 1,603,333 plus interest. In a judgment delivered on 3 November 2009, the Commercial Court upheld the claim and ordered that Credit Suisse repay the sum claimed plus interest. On 16 December 2009, Credit Suisse lodged a nullity appeal with the Court of Cassation of the Canton of Zurich against the ruling by the Commercial Court. In its judgment dated 25 April 2011, the Court of Cassation set aside the ruling and remitted the case to the lower court for reconsideration.

Settlement negotiations were subsequently conducted before the Commercial Court on 2 December 2011, but the parties could not reach agreement. The Commercial Court delivered its judgment on 22 August 2012 and once again ordered that Credit Suisse pay the sum claimed plus interest. During the period for appeal against the ruling, the parties entered into settlement negotiations. They reached a definitive settlement, the main points of which are:

- Credit Suisse undertakes to pay in full the avoidance claims lodged, totalling CHF 1,603,333.
- Credit Suisse pays half of the interest of 5% p.a. accrued since 11 August 2005 per the appointed date of settlement.
- Credit Suisse waives its third-class claim, which would be revived in accordance with Article 291, paragraph 2 of the Swiss Federal Debt Enforcement and Bankruptcy Act.
- SAirGroup and Credit Suisse each pay half of the CHF 40,000 in court costs incurred in respect of the proceedings before the Commercial Court.
- SAirGroup waives compensation of CHF 45,000 in respect of the proceedings before the Commercial Court.

The Creditors' Committee of SAirGroup has approved the settlement. Credit Suisse has since discharged its obligations.

## **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 Federal Supreme Court dismissed in its judgment of 11 July 2012 the appeal brought by SAirGroup against the ruling of the High Court of Zurich of 16 May 2011.

The Federal Supreme Court concluded that the High Court's findings, that neither SAirGroup nor SAirLines had an excess of debts over assets at the time the Roscor transaction was executed on 18 December 2000, stood up to scrutiny by the Federal Supreme Court. Following the High Court's assessment of the facts of the case, SAirGroup did not suffer any loss from the Roscor transaction, neither was the transaction contrary to duty.

### *2.2 Next steps in respect of the pursuit of responsibility claims*

In response to the judgment of the High Court of Zurich in the matter of the Roscor transaction dated 16 May 2011, the liquidator and Creditors' Committee considered the prospects and risks arising from the various responsibility issues last year and again in spring 2012. A working hypothesis was put forward that the appeal to the Federal Supreme Court against the ruling by the High Court of Zurich would be unsuccessful. The potential impact of the ruling by the High Court on the various responsibility issues was then assessed. After duly considering this element, it was decided to lodge two further claims relating to "payments in September 2001" and the "acquisition of foreign airline companies".

### *2.3 Payments in September 2001*

On 27 June 2012, SAirGroup lodged the "payments in September 2001" responsibility claim against various defendants with the Commercial Court. It is alleged that they had arranged to make various payments on behalf of SAirGroup to creditors even though SAirGroup was no longer in

a position or entitled to make them given its dire financial situation. Other creditors of SAirGroup were damnified on account of these repayments. The claim amounts to around CHF 133 million. The defendants still have time to submit their defence within the specified deadline.

#### *2.4 Acquisition of Air Littoral*

On 6 July 2012, SAirGroup also lodged a further responsibility claim before the Commercial Court relating to the acquisition of Air Littoral. Under the "acquisition of Air Littoral" claim, the defendants are alleged to have breached their duty by agreeing to and implementing the acquisition of a shareholding in the French air carrier Air Littoral in September 1998 without therefore creating a corresponding equivalent value. As a result, SAirGroup incurred a loss of around CHF 124 million. The defendants still have time to submit their response within the specified deadline.

### **III. APPORTIONMENT OF INPUT TAX CREDITS OF THE FORMER SWISSAIR VAT GROUP**

From 1999 to 31 March 2002, the Swissair group was treated as a single group for the purpose of VAT. On 31 March 2002, this VAT group was dissolved. At the time the Swissair VAT group was due a VAT credit of around CHF 55 million from the Swiss Federal Tax Administration.

The VAT group was managed by SAirGroup. Settlement and payment transactions with the Swiss Federal Tax Administration were carried out exclusively through SAirGroup. SAirGroup on its part settled the tax credits and liabilities within the group.

After the VAT group was dissolved, SAirGroup claimed the payment of around CHF 55 million from the Swiss Federal Tax Administration. The latter declined to make the payment, claiming it had the right to set off this amount against the Swiss Confederation's claims arising from the government loan of CHF 1.45 billion to Swissair. In the ruling on 10 March 2010, the Swiss Federal Administrative Court and the Federal Supreme Court determined that the VAT tax claim was due to the



Swissair VAT group as a whole, not SAirGroup. The courts therefore dismissed the Swiss Federal Tax Administration's claim for set-off.

The ruling by the Federal Supreme Court means that the VAT tax credit due to the Swissair VAT group, consisting of over 40 former Swissair companies, could be claimed only collectively. An agreement therefore needs to be reached among these companies on how the VAT tax credit is to be apportioned.

SAirGroup drafted an agreement between the members of the Swissair VAT group regarding the group's dissolution and sent it to all these companies at the end of 2010. When drafting the agreement, SAirGroup considered all the agreements relating the VAT credits and liabilities reached in connection with the sale of the individual companies or the settlement of reciprocal claims.

Since then, all these companies, with the exception of the Gate Gourmet group, have reached an agreement. Before the agreement can be concluded, a solution needs to be found with the Gate Gourmet group to resolve the current differences.

In SAirGroup's view, when the Gate Gourmet group was sold, the outstanding VAT liabilities and credits were settled with it. Currently, however, the Gate Gourmet group contends that the ruling by the Federal Supreme Court created a new set of circumstances and that it is due around CHF 4.4 million from the dissolution of the VAT group. Negotiations are currently underway to reach a solution.

Based on the proposed agreement, SAirGroup would receive CHF 40-45 million.

#### **IV. THIRD INTERIM PAYMENT**

Based on the progress of the proceedings and the liquid funds available, at present it appears that a third interim payment could be made to the creditors with third-class claims in the amount of 2.3%. Currently several outstanding matters are at an advanced stage of completion. There is a good prospect of significant amounts of money being

transferred to the liquidation assets in the near future. This could increase the percentage share for the third interim payment.

Currently the third interim payment is being prepared on this basis. It is planned to publish the provisional distribution list for the third interim payment for inspection by the creditors in February 2013. Payment can then be made from the start of March 2013.

The next circular will be sent to the creditors along with the third interim payment and the publication of a supplement to the schedule of claims in February 2013.

Yours faithfully

SAirGroup in debt restructuring liquidation

The Liquidator

Karl Wüthrich

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