

**SAirGroup in  
debt restructuring liquidation**

**Circular No. 24**

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

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in debt restructuring liquidation**

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To the creditors of SAirGroup AG  
in debt restructuring liquidation

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## **SAirGroup AG in debt restructuring liquidation; Circular no. 24**

Dear Sir or Madam

This circular provides information on the current status of the SAirGroup AG 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 2014**

Having been acknowledged and approved by the Creditors' Committee, the 12th Liquidator's report on activities for 2014 was submitted to the debt restructuring judge at the District Court of Zurich on 27 February 2015. The report on activities will be available for inspection by creditors at the Liquidator's offices at Seestrasse 39, Goldbach Center, 8700 Küsnacht until 8 April 2015. Appointments should be made in advance with Christian Rysler (phone +41 43 222 38 00).

The following pages summarise the report on activities and cover the issues the creditors have not already been informed about by way of previous circulars.

## II. OVERVIEW OF THE LIQUIDATION PROCESS

### 1. ACTIVITIES OF THE LIQUIDATOR

The activities of the Liquidator in 2014 concentrated on settling liabilities, including pursuing actions brought by creditors to contest the schedule of claims (see section VI.1 below), implementing the agreement to disband the former Swissair VAT group (see section IV.2 below), selling the stake in the Betriebsgesellschaft Kongresshaus Zürich AG (see Circular no. 23, section IV.6) and conducting legal proceedings relating to responsibility on the part of directors and officers (see section V.1 below).

### 2. ACTIVITIES OF THE CREDITORS' COMMITTEE

The Creditors' Committee held three meetings in 2014. 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 2014

### 1. INTRODUCTORY REMARKS

Enclosed is a report on the liquidation status of SAirGroup as of 31 December 2014 (Enclosure 1) containing a statement of assets of SAirGroup as of 31 December 2014 according to present information.

### 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 at 31 December 2014, these deposits amounted to CHF 6,992,000. The amount of the court deposits changed in 2014 due to the cessation of the legal proceedings against Homburger attorneys (see section V.2 below) and the exequatur proceedings (see section VI.3 below).

Assets as yet unrealised: 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), the last foreign property in India, insofar as it belongs to SAirGroup, and securities. Furthermore, any responsibility claims are listed in the liquidation status pro memoria.

### 3. DEBTS INCURRED IN THE COURSE OF THE LIQUIDATION PROCESS

Accounts payable: The accounts payable reported as of 31 December 2014 relate to costs incurred during the debt restructuring liquidation.

Provisions for interim payments: SAirGroup's liquidation status as of 31 December 2014 includes the following provisions for the first, second and third interim payments.

Nature of provision	1st interim payment in CHF	2nd interim payment in CHF	3rd interim payment in CHF
No payment instructions or payments not carried out for other reasons	7,012,441	3,107,179	5,615,742
Contingent claims where conditions not yet met	1,426,237	565,113	699,664
Claims in pending schedule of claims proceedings	166,112,325	65,818,091	81,489,065
Suspended claims	359,580,105	102,012,633	126,301,355
<b>Total provisions</b>	<b>534,131,109</b>	<b>171,503,015</b>	<b>214,105,825</b>

These provisions ensure that the maximum amounts for the three interim payments are guaranteed for all unsettled claims.

### 4. CREDITORS' CLAIMS

For the current status of the schedule of claims proceedings, please see 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, recognised, definitively rejected, in dispute under actions to contest the schedule of claims, or still suspended in the schedule of claims. 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 18.8%, provided that all of the pending actions to contest the schedule of claims are dismissed and no more than 40% of suspended claims

have to be recognised. However, if all of the actions are upheld and the suspended claims have to be recognised in full, the minimum dividend would be 11.8%. Of this, 10% has already been paid out by way of previous interim payments. The future dividend that may be expected, therefore, is between 1.8% and 8.8%.

#### **IV. REALISATION OF ASSETS**

##### **1. GENERAL**

The Liquidator continued to collect accounts receivable both in Switzerland and abroad during 2014. As a result, an amount of CHF 43,140,946 was collected.

##### **2. DISBANDMENT OF THE SWISSAIR VAT GROUP**

On the basis of the agreement relating to the allocation and payment of input tax owed to the former Swissair VAT group, the Swiss Federal Tax Administration (FTA) paid the input tax owing (CHF 50,881,253.05) plus credit interest (CHF 22,589,946.90) to the Liquidator on 18 March and 12 June 2014. The Liquidator then distributed the input tax amounts including credit interest to the members of the group in accordance with the agreement. Further, with the agreement of the Creditors' Committee, Atrib Management Services AG (AMS) and SAirGroup signed a separate agreement regarding the allocation of the input tax balances on 29/30 April 2014. AMS received a further share of CHF 120,000 from the amount of CHF 295,873.98 that had not yet been allocated in the overall agreement (in addition to the CHF 84,117.02 of input tax already paid out). SAirGroup received the remaining share of CHF 175,873.98. SAirGroup has so far received a total of CHF 59,684,286.13 (including credit interest) from the implementation of the agreement to disband the former Swissair VAT group.

The FTA paid the input tax balances of various Gate Gourmet companies of CHF 4,393,193.45 as well as credit interest of CHF 1,950,463.10 to a joint account in the name of Gate Gourmet Switzerland and SAirGroup. Gate Gourmet Switzerland and SAirGroup were unable to reach agreement on the breakdown of these balances by negotiation. Gate Gourmet Switzerland therefore lodged a lawsuit against SAirGroup before the Commercial Court of the Canton of Zurich on 25 July 2014. The Commercial Court has not yet handed down a ruling. On 27 February 2015 settlement negotiations between the two parties took place at the Commercial Court.

## V. PURSUIT OF CONTESTED CLAIMS

### 1. PURSUIT OF RESPONSIBILITY CLAIMS

#### 1.1 *Payments in September 2001*

In the “payments in September 2001” responsibility action filed by SAirGroup with the Commercial Court of the Canton of Zurich against various defendants on 27 June 2012, the exchange of written pleadings has been concluded. The Commercial Court will now determine the next steps in the proceedings.

#### 1.2 *Acquisition of Air Littoral*

In a ruling dated 26 January 2015, the Commercial Court of the Canton of Zurich dismissed the responsibility claim concerning the acquisition of Air Littoral filed by SAirGroup. The Commercial Court concluded that the management bodies against whom action was taken had not breached their duties of care when the stake in Air Littoral was acquired. The decision process may not have been entirely faultless. However, in the court's view, the acquisition of Air Littoral could be viewed as justifiable overall. The liquidation bodies of SAirGroup decided not to lodge an appeal against the decision with the Federal Supreme Court. This decision has therefore become legally binding.

#### 1.3 *Further areas of responsibility*

With regard to further responsibility issues (cf. Circular no. 18, section VI.2.3), SAirGroup reserves the right to submit further claims against the responsible parties.

### 2. CLAIM AGAINST HOMBURGER ATTORNEYS

The liquidation bodies decided not to file a civil appeal with the Federal Supreme Court against the judgement of the Commercial Court of the Canton of Zurich of 27 March 2014 (cf. the supplements to Circular no. 23). This judgement has therefore become legally binding.

## VI. SETTLEMENT OF LIABILITIES

### 1. SCHEDULE OF CLAIMS PROCEEDINGS

*First-class claims*: Currently, the decisions on CHF 101,895,080 in registered first-class claims remain suspended. These are essentially recourse claims brought by former management employees in connection with responsibility proceedings initiated by Flightlease AG.

Second-class claims: A settlement relating to the claims for employer contributions to incentive payments by the Swiss federal government was reached with the Compensation Office of Zurich Employers (AZA) in June 2014. Under the settlement the AZA reduced its claim for employer contributions to incentive payments from CHF 224,335.57 to CHF 201,902.00. The Creditors' Committee has approved this settlement. The reduced claim of AZA has been recognised in the SAirGroup's debt restructuring liquidation as a privileged second-class claim.

Third-class claims: Two actions regarding third-class claims totalling CHF 3,134,194,808.04 were still pending at the end of 2014.

In the action contesting the schedule of claims filed by the Belgian government and companies it controls, the civil appeal against the ruling of the High Court of the Canton of Zurich lodged by the creditors on 1 July 2013 is still pending at the Federal Supreme Court. To date, no deadline has been set for SAirGroup to respond to the appeal.

On 23 October 2014, in the action contesting the schedule of claims filed by Sabena SA in liquidation (hereafter Sabena; see Circular no. 22, section VII.1 and Circular no. 23, section VI.1), the High Court of the Canton of Zurich quashed the decision of the single judge at the District Court of Zurich of 30 April 2013 on the grounds that Sabena had not been given the right to respond to the new elements in the rejoinder and referred the matter back to the lower court for reconsideration. The High Court did not comment on the merits of the case. In consultation with the Creditors' Committee the Liquidator decided not to appeal this ruling to the Federal Supreme Court. Sabena has been given a new deadline to respond to the new elements in the rejoinder.

On 1 December 2014 the FTA registered a new third-class claim of CHF 6,891,729.97 for value-added tax owed before 1 January 1999. This claim is currently being evaluated.

## **2. CIVIL ACTIONS IN BELGIUM**

In a judgement of 4 December 2014, the Belgian Court of Cassation dismissed the appeal filed by SAirGroup and SAirLines against the ruling of the Brussels Appeal Court of 27 January 2011.

Sabena's liquidator will now have to further substantiate and prove the claimed damages in the proceedings before the Court of Appeal in Brussels. Whether the outcome of the Belgian case has an impact on the schedule of claims of SAirGroup depends on whether the Swiss courts recognise the effect of a Belgian ruling in the pending actions contesting the schedule of claims. This has not been the case previously (cf. section VI.3. below).



### **3. EXEQUATUR PROCEEDINGS IN SWITZERLAND**

In a ruling of 8 May 2014 the Swiss Federal Supreme Court approved the civil appeal lodged by SAirGroup and SAirLines on 12 December 2012 against the exequatur ruling of the High Court of the Canton of Zurich. The Supreme Court quashed the judgement of the High Court of the Canton of Zurich and dismissed Sabena's petition for recognition and declaration of enforceability of the judgement of the Brussels Appeal Court of 27 January 2011.

On 23 June 2014, Sabena lodged an application for revision with the Federal Supreme Court against this ruling, requesting that the Supreme Court's ruling be set aside and the ruling of the High Court of the Canton of Zurich of 7 November 2012 reinstated. The Federal Supreme Court rejected the application for revision by its decision of 27 February 2015. As a result the question of the recognition and enforceability of the Brussels Appeal Court's ruling of 27 January 2011, which attained legal force in the meantime, has finally been settled. This ruling can be neither recognised nor enforced in Switzerland.

## **VII. PLANNED NEXT STEPS IN THE PROCESS**

In the coming months the first priority is to assess and settle the complex mutual claims on and due to other former Swissair companies. We will be striving to reach mutually agreed solutions. This will also enable the main claims that were previously suspended in the schedule of claims to be settled.

The process of selling the last remaining property in India is already well advanced. The plan is to complete it by mid-2015.

The liquidation bodies will continue their investigations into responsibility claims. It is not possible at present to estimate how long it will take for these issues to be resolved.

Depending on 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 this year will be issued by spring 2016 at the latest.

Yours sincerely,

SAirGroup AG in debt restructuring liquidation  
The Liquidator

Karl Wüthrich

- Enclosed:
1. Liquidation status of SAirGroup as at 31 December 2014
  2. Overview of the schedule of claims proceedings of SAirGroup

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**LIQUIDATION STATUS as at 31 December 2014**

	<b>31.12.2014</b>	<b>31.12.2013</b>	<b>Change</b>
	<b>CHF</b>	<b>CHF</b>	<b>CHF</b>
<b>ASSETS</b>			
<b>Liquid funds</b>			
UBS AG CHF	801'399	647'541	153'858
ZKB CHF	1'074'281'805	1'020'304'748	53'977'057
ZKB USD	7'074	7'074	0
ZKB EUR	2'357	4'484	-2'127
<b>Total liquid funds</b>	<b>1'075'092'635</b>	<b>1'020'963'847</b>	<b>54'128'788</b>
<b>Liquidation positions:</b>			
Accounts receivable	416'115	383'802	32'313
Prepaid court expenses	6'992'000	8'000'900	-1'008'900
Open apportionment of proceeds on sale of Restorama/RailGourmet	5'000'000	5'000'000	0
Receivables from third parties	78'457'430	119'250'338	-40'792'908
Real estate	73'100'001	73'100'001	0
IT-Equipment	2	2	0
Shareholdings, securities	1	476'001	-476'000
Responsibility claims	p.m.	p.m.	
<b>Total liquidation positions</b>	<b>163'965'549</b>	<b>206'211'044</b>	<b>-42'245'495</b>
<b>TOTAL ASSETS</b>	<b>1'239'058'184</b>	<b>1'227'174'891</b>	<b>11'883'293</b>
<b>LIABILITIES</b>			
<b>Debts of the estate</b>			
Accounts payable	498'018	490'776	7'242
Provision, 1st interim payment	534'131'109	535'040'150	-909'041
Provision, 2nd interim payment	171'503'015	171'930'380	-427'365
Provision, 3rd interim payment	214'105'825	219'850'603	-5'744'778
Provisions for liquidation costs	10'000'000	10'000'000	0
<b>Total debts of the estate</b>	<b>930'237'967</b>	<b>937'311'910</b>	<b>-7'073'942</b>
<b>TOTAL DISPOSABLE ASSETS</b>	<b>308'820'217</b>	<b>289'862'981</b>	<b>18'957'235</b>

## Overview of the schedule of claims proceedings of SAirGroup

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	Amount in CHF	Amount in CHF	Amount in CHF	Amount in CHF	Amount in CHF	minimal	maximal	minimal	maximal	minimal	maximal
Secured by right of lien	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
First class	467'115'199.72	77'488'777.14	-	-	101'895'080.48	287'731'342.10	100%	-	-	-	-	100%	-	-	-	-	-	-	100%	100%
Second class	828'861.67	503'976.35	-	-	224'571.12	100'314.20	100%	-	-	-	-	100%	-	-	-	-	-	-	100%	100%
Third class <sup>1) 2) 3)</sup>	48'429'248'706.69	9'555'925'050.04	26'910'136.89	3'134'194'808.04	4'857'744'411.11	30'854'474'300.61	10.0%	-	-	-	-	10.0%	1.8%	8.8%	11.8%	1.8%	8.8%	11.8%	18.8%	
<b>Total creditors' claims</b>	<b>48'897'192'768.08</b>	<b>9'633'917'803.53</b>	<b>26'910'136.89</b>	<b>3'134'194'808.04</b>	<b>4'959'864'062.71</b>	<b>31'142'305'956.91</b>														

<sup>1)</sup> The minimal dividend calculation factors in 100% of conditional claims.

<sup>2)</sup> The maximum dividend calculation factors in 40% of suspended third-class claims and 0% of conditional claims.

<sup>3)</sup> From the total of the recognized claims the following registered claims which have in the meantime received full payment through dividend and third party payments have been deducted:

- Bank of America 81'064'375.50  
 - USD-Bond 539'953'750.00