

**SAirGroup in  
debt restructuring liquidation**

**Circular No. 17**

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

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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, April 2010 WuK/fee

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**SAirGroup in debt restructuring liquidation;  
Circular no. 17**

Dear Sir or Madam,

This Circular provides information on the current status of the SAirGroup debt restructuring liquidation, as well as on the further course of proceedings over the coming months.

**I. REPORT ON ACTIVITIES AS OF 31 DECEMBER 2009**

Having been acknowledged and approved by the Creditors' Committee on 17 March 2010, the 7th Liquidator's report on activities for 2009 was submitted to the debt restructuring judge at the District Court of Zurich. The report on activities is available for inspection by creditors at the Liquidator's offices at Seestrasse 39, Goldbach Center, 8700 Küsnacht until 7 May 2010. Appointments should be made in advance with Christian Rysler (phone +41 43 222 38 00).

The following pages summarise those points of the report on activities which have not yet been covered by one of the Circulars published over the past year.

## **II. OVERVIEW OF THE LIQUIDATION PROCESS**

### **1. Activities of the Liquidator**

The Liquidator's main focus rested on the pursuit of actions brought by creditors to contest the schedule of claims (see section VI below), making the second interim payment to creditors, the pursuit of avoidance actions instigated (see section V.1 below) and the investigation and pursuit of pending legal proceedings relating to the responsibility of directors and officers (see section V.2 below). A number of assets were also realised (see section IV below).

### **2. Activities of the Creditors' Committee**

The Creditors' Committee held three meetings in 2009. At its meetings, the Committee discussed the proposals submitted by the Liquidator and passed resolutions accordingly. It also passed circular resolutions on various proposals submitted by the Liquidator.

## **III. ASSET STATUS OF SAIRGROUP AS OF 31 DECEMBER 2009**

### **1. Introductory remark**

Enclosed is a report on the liquidation status of SAirGroup as of 31 December 2009. The report contains a statement of assets and liabilities of SAirGroup in debt restructuring liquidation as of 31 December 2009 according to present information.

### **2. Assets**

Court deposits: In recent years, SAirGroup has had to make several court deposits in connection with the instigation of a number of avoidance and responsibility claims. As at 31 December 2009, the sum of these deposits amounted to CHF 38,848,047. The total fluctuated in 2009 as a result of the settlement of various avoidance actions and additional deposits paid in respect of appeals on responsibility claims (see section V.2 below) as well as the replacement of bank guarantees with cash deposits.

Pending apportionment of proceeds from the sale of Swissport, Gate Gourmet, SR Technics and Nuance: It was not possible in 2009 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 largely been resolved within SAirGroup. However, an assessment on the part of SAirLines has not yet been completed. Efforts will, however, be made to resolve these outstanding matters in the course of this year.

As-yet unrealised assets: This item still consists primarily of claims against former Swissair group companies, shareholdings held by SAirGroup, residual IT items, real estate in Switzerland and abroad (as far as it is owned by 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 2009 relate to costs incurred during the debt restructuring liquidation.

Provisions for interim payments: The liquidation status as of 31 December 2009 includes the sum of CHF 563,669,770 as provision for the first interim payment. Of this amount, CHF 12,187,793 is reserved for 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. An amount of CHF 16,814,755 is for interim payments for conditional claims for which the respective condition has not yet been met. Another CHF 192,953,234 concerns interim payments for claims for which an action to contest the schedule of claims is pending. The remainder of the provision – CHF 341,713,988 – is for claims that are still suspended at present.

With respect to the second interim payment, a provision of CHF 319,747,549 was included in the liquidation status of the SAirGroup as per 31 December 2009. Of this amount, CHF 155,122,103 is reserved for payments in respect of which creditors have not yet issued payment instructions to the Liquidator, and CHF 6,662,450 for interim payments for conditional claims for which the respective condition has not yet been met.

Another CHF 66,124,093 concerns interim payments for claims for which an action to contest the schedule of claims is pending. The remainder of the provision – CHF 91,838,903 – is for claims that are still suspended at present.

The provisions that have been made guarantee the maximum amounts for both interim payments for all claims that have not yet been settled.

**4. Creditors' claims**

For the current status of the schedule of claims proceedings, please see section VI below. The enclosed overview of the schedule of claims proceedings (Enclosure) states the current total of claims that have been registered in the respective classes, those claims which have been recognised, those which have been definitively rejected, those which are in dispute (actions to contest the schedule of claims) and those for which schedule of claims entries are 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 16.4%, providing all of the still pending actions to contest the schedule of claims are unsuccessful and no more than 40% of suspended claims have to be recognised. Should all of the actions be admitted and the suspended claims have to be recognised in full, however, the minimum dividend would be 10%. 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 2.6% and 9%.

**IV. REALISATION OF ASSETS**

**1. Sale of industrial plot in Altenrhein**

On 7 March 1991, with duly notarised contract of sale dated 21 December 1990, SAirGroup (then still Swissair Swiss Air Transport Company Ltd.) acquired the undeveloped parcel of land no. 2182 with an area of 36,490

m<sup>2</sup> for a price of CHF 9,122,500 (an average price of CHF 250/m<sup>2</sup>) adjacent to the airport in the commune of Altenrhein (municipality of Thal). Vendor was the former FFA Flugzeugwerke Altenrhein AG. The plot is divided into a residential and commercial zone of 15,718 m<sup>2</sup> classified WG3 and an industrial zone of 20,772 m<sup>2</sup> classified Ia.

After the commencement of debt restructuring liquidation proceedings, SAirGroup attempted to sell the land as of June 2003. Although an appropriate estate agent was appointed, efforts to sell have been in vain. It was not until spring of 2009 that a potential buyer approached the Liquidator and expressed an interest in buying the land in the industrial zone. With a view to a sale, the plot was divided into two parcels of land along the zone boundary. A new official survey was also conducted. The measure resulted in the creation of the following two parcels of land:

- No. 592 with a surface area of 15,722 m<sup>2</sup>, classified as a WG3 residential and commercial zone.
- No. 2182 with surface area of 20,751 m<sup>2</sup>, classified as I A industrial zone.

After lengthy negotiations, a contract of sale for the parcel of land no. 2182 was concluded with the interested party at a price of CHF 3,527,670 (20,751 m<sup>2</sup> at CHF 170). In light of the various uncertainties existing with respect to planning at Altenrhein Airport, the price achieved was a good one.

The Creditors' Committee approved the sale. The transaction was completed in summer 2009.

So far, no buyer has been found for residential and commercial plot no. 592. Contact has been established with various potential buyers.

## **2. Apportionment of proceeds from the sale of furnishings, IT-hardware and in-flight material**

### *2.1 Background*

Upon grant of the debt restructuring moratorium to the various Swissair companies, offices situated at Balsberg, Kloten and Hirschengraben, Zurich

were fully equipped with office furniture and IT-hardware. Further, in-flight material and various other flight-specific effects were held both in Switzerland and at various other locations. Title to property in the majority of office furnishings, IT-hardware and in-flight material could no longer be definitively determined. It was unclear whether title to the respective objects was held by SAirGroup, Swissair or the insolvent estate of Swissair Sabena Airline Management Partnership, London, Kloten branch ("AMP"). The three parties agreed to sell the objects and pay the proceeds into joint bank accounts. Upon sale, the following proceeds were generated:

Proceeds from the sale of office furniture	CHF 927,359.05
Proceeds from the sale of IT-hardware	CHF 1,018,101.55
Proceeds from the sale of in-flight material	CHF 4,999,003.75
<b>Total</b>	<b>CHF 6,944,464.35</b>

In order to clarify the situation, SAirGroup, Swissair and AMP came to an agreement on the apportionment of proceeds from the sales. This agreement was approved by the Creditors' Committee and has meanwhile been implemented.

## 2.2 *Apportionment of proceeds from the sale of office furnishings*

With respect to the proceeds of the sale of office furnishings in the amount of CHF 927,359.05, Flightlease AG was first paid CHF 23,195.55 in respect of property which it demonstrably owned. The remaining sum of CHF 904,163.50 was shared between SAirGroup, Swissair and AMP on a 1:1:2 basis. The rationale behind the apportionment was based on the rental area used by the companies in accordance with the rental index compiled by Avireal AG from 28 February 2002 (SAirGroup: 8,267.27 m<sup>2</sup>; Swissair: 7,298.27 m<sup>2</sup>; AMP: 19,789.29 m<sup>2</sup>). SAirGroup's share from the proceeds from the sale of office furnishings therefore stood at CHF 226,040.85.



*2.3 Apportionment of proceeds from the sale of IT-hardware*

The proceeds from the sale of IT-hardware stood at CHF 1,018,101.55. Apportionment criteria were based on the location of the respective device in combination with property management plans compiled by Avireal AG and – where available – the marking of devices as the property of AMP. The apportionment resulted in a share of CHF 301,185.65 for SAirGroup.

*2.4 Apportionment of proceeds from the sale of in-flight material*

In-flight material as well as flight-specific effects were the property of either Swissair or AMP. Accordingly, SAirGroup received none of the proceeds from the sale of these objects.

**V. PURSUIT OF DISPUTED CLAIMS**

**1. Avoidance claims**

*1.1 Credit Suisse Securities (Europe) Limited*

In April 2001, SAirGroup appointed Credit Suisse First Boston (Europe) Limited ("CSFB Europe") to find financing solutions and disinvestment opportunities (consultancy services) by signing a letter of engagement. On 18 July 2001, CSFB Europe invoiced for two interim payments each to a value of USD 250,000 as well as for out-of-pocket expenses in the amount of USD 148,288.89. On 3 September 2001, SAirGroup transferred the respective sums, that is, a total of USD 648,288.89.

On 21 November 2005, SAirGroup lodged an avoidance action before the Commercial Court against Credit Suisse Securities (Europe) Limited ("CSSE") (formerly CSFB Europe) and Credit Suisse ("CS") demanding repayment of these sums. Once it was established that the recipient of the payment challenged was CSSE alone, the claim against CS was withdrawn.

After exchange of the written party submissions, the Commercial Court invited the parties to an open discussion and settlement negotiations on 28 May 2009. On the basis of these discussions and based on the Court's opinion, the parties concluded the following settlement agreement:

- SAirGroup is to reduce its claim from USD 648,288.89 to 80% of this amount, that is to USD 518,631.10, and CSSE is to pay this amount.
- CSSE is to waive its claim which would be revived in accordance with Art 291 (2) of the Swiss Federal Debt Enforcement and Bankruptcy Law (DEBL) and SAirGroup waives interest.
- SAirGroup and CSSE bear court costs in equal measure and waive any right to compensation for legal fees.

The Creditors' Committee approved the settlement. The agreement has meanwhile been executed.

### 1.2 Citibank N.A.

On 11 July 2001, SAirGroup, Citibank N.A. ("Citibank"), CSFB and Deutsche Bank AG signed the CHF 1,000,000,000 Multicurrency Revolving Bridge Loan Facility Agreement, known as the CHF 1 billion loan. Under this loan agreement, SAirGroup made a payment to CSFB in its capacity as facility agent on 29 May 2001 in the amount of CHF 1 million as 1<sup>st</sup> tranche of the upfront fee (0.1% of the loan sum) and a further payment on 3 August 2001 in the amount of CHF 3.77 million comprised of an agency fee in the amount of CHF 20,000 and the 2<sup>nd</sup> tranche of the upfront fee (0.375% of the loan sum), in total then CHF 4.77 million. From the total received, CSFB deducted CHF 20,000 due to it in respect of its agency activities (agency fee); the remainder was divided one third each among the consortium banks CSFB, Citibank and Deutsche Bank AG. Accordingly, Citibank received a total of CHF 1,583,333.

On 21 November 2005, SAirGroup lodged an action before the Commercial Court for avoidance of this payment based on Art 288 SchKG demanding repayment of CHF 1,583,333 plus interest. In a judgment delivered on 3 November 2009, the Commercial Court upheld the claim and instructed Citibank to repay the sum claimed plus interest.

During the appeal period for an appeal against the decision of the Commercial Court, the parties entered into negotiations and concluded the following settlement agreement:

- SAirGroup is to reduce its claim from CHF 1,583,333 to 80% of this amount, that is to CHF 1,266,666, and Citibank is to pay this amount.

- Citibank is to waive its claim which would be revived in accordance with Art 291 (2) Swiss Federal Debt Enforcement and Bankruptcy Law (DEBL) and SAirGroup waives interest.
- SAirGroup and Citibank bear court costs incurred through the course of proceedings before the Commercial Court in equal parts.
- SAirGroup waives compensation for legal fees in respect of proceedings before the Commercial Court and the Federal Supreme Court.
- SAirGroup and Citibank bear all court costs of proceedings before the Cantonal Appeal Court in equal parts and each waive compensation for legal fees for these proceedings.

In spite of the judgment from the Commercial Court affirming the avoidance claim, SAirGroup still faced certain risks at appeal. By reaching the settlement agreement, these risks were avoided and creditors received a good result.

The Creditors' Committee approved the settlement. The agreement has now been executed.

### *1.3 Compagnie Benjamin de Rothschild SA*

On 20 June 2005, SAirGroup lodged an avoidance action before the Cantonal Court in Geneva with respect to a total payment of CHF 18,750,000 plus interest at 5% calculated from 20 June 2005 made to Compagnie Benjamin de Rothschild SA ("CBR"). The claim refers to three payments made in the period between 23 August 2001 and 17 September 2001 by SAirGroup to CBR under an equity swap agreement. In a judgment dated 26 November 2009, the Cantonal Court in Geneva dismissed the claim citing a decision of the Federal Supreme Court in the case of Citigroup Global Markets Ltd issued on 28 May 2009 (see Circular No. 16 of 1 December 2009, section II.1.3). The facts of the CBR case are very similar to those of the Citigroup Global Markets Ltd. case. The Liquidator and the Creditors' Committee have therefore decided not to appeal against the judgment of the Cantonal Court in Geneva. This judgment has therefore become final. As a result of these proceedings, SAirGroup incurred total costs of CHF 170,000 (court costs and legal fees awarded to the other party).

*1.4 Additional comments*

On 21 November 2005, SAirGroup lodged an avoidance action before the Commercial Court in connection with fee payments made to Credit Suisse in connection with the CHF 1 billion loan. The claim is based on Art 288 SchKG and is for repayment of CHF 1,603,333 plus interest. In a judgment delivered on 3 November 2009, the Commercial Court upheld the claim and instructed Credit Suisse to repay the sum claimed plus interest. Credit Suisse lodged a nullity appeal against the decision.

With respect to avoidance claims against Roland Berger AG and PricewaterhouseCoopers AG, nullity appeals are still pending before the Court of Appeal.

With respect to avoidance proceedings against Nordea Bank Danmark A/S with regard to USD 61,191,000.98, the Court of Appeal upheld the nullity appeal in part in a judgment dated 5 June 2009 and amended the Commercial Court's decision in one point. The appeal by SAirGroup against the Commercial Court's decision to dismiss its claim has still not been decided by the Federal Supreme Court.

With respect to the avoidance actions against Deutsche Bank AG and Credit Suisse Securities (Europe) Ltd. with regard to equity swaps, the Commercial Court has still to pass judgement.

At present, six avoidance claims are still pending at various stages of proceedings. To date, avoidance claims have yielded approximately CHF 315 million (net, after deduction of costs).

**2. Assertion of responsibility claims**

*2.1 Roscor transaction*

The defendants submitted their defence briefs at the end of March 2010. SAirGroup now has time to submit its reply within the specified deadline.

*2.2 Recapitalization of Sabena in 2001*

SAirGroup has issued an appeal against the decision of the District Court of Zurich of 23 June 2009 before the High Court of the Canton of Zurich. At

the end of March 2010, it submitted its statement on the grounds for appeal. The High Court will now set defendants a date before which their defence briefs must be submitted.

### 2.3 *Other investigations*

In the meantime, further progress has been made with the investigations into the acquisition of holdings in LTU, Air Littoral, AOM and Air Liberté, the restructuring carried out in March 2001, the annual financial statements as at 31 December 2000, payments to foreign airline holdings and third parties from spring 2001, and responsibility on the part of the auditors and the group auditor. Work should be concluded shortly. The Creditors' Committee plans to decide on proposals put forward by the Liquidator concerning the next steps in these complex matters in the second half of 2010.

## **VI. SETTLEMENT OF LIABILITIES (SCHEDULE OF CLAIMS PROCEEDINGS)**

*First-class claims:* The sole pending claim is still that of SAirGroup pension fund (hereinafter the "Fund") in the amount of CHF 26,086,618.05 which concerns the prioritisation of this claim as a first-class claim. The High Court of the Canton of Zurich rejected the claim by the Fund in a decision dated 21 January 2010. It affirmed the decision of the single judge at Zurich District Court and held that the Fund was not a pension fund within the meaning of Art 219 (4)(b) DEBL. The fund has issued an appeal against the decision of the High Court before the Federal Supreme Court.

*Third-class claims:* In respect of third-class claims, at the beginning of 2009 there were still six actions pending involving a total of CHF 3,157,383,431.54. In the meantime, the action to contest the schedule of claims with respect to the bankruptcy estate of Atrib Management Services AG was settled by agreement. The claimant agreed to reduce its claim from CHF 6,875,819.84 to CHF 1 million. To this extent, the claims were recognised by SAirGroup and included in the schedule of claims as third-class claims. At present, there are thus five claims still pending before the District Court of Zurich involving a total of CHF 3,148,766,346.85.

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

The next phase of proceedings will involve finalising the schedule of claims and liquidating the remaining assets, particularly real estate in Switzerland and abroad.

The liquidation bodies will also conclude their investigations into responsibility claims and possibly instigate further legal action. Avoidance claims that are still pending will continue to be pursued. It is not possible at present to estimate how long it will take before these two issues are settled.

Creditors will continue to receive information about important developments in the form of circulars, depending on how things proceed. A report on the progress of the liquidation process in the current year will be issued by no later than spring 2011.

Yours faithfully

SAirGroup in debt restructuring liquidation

The Liquidator

Karl Wüthrich

- Enclosures:
1. Liquidation status of SAirGroup as at 31 December 2009
  2. Overview of proceedings to draw up the schedule of claims for SAirGroup

**LIQUIDATION STATUS as of 31 December 2009**

	<b>31.12.2009</b>	<b>31.12.2008</b>	<b>Change</b>
	<b>CHF</b>	<b>CHF</b>	<b>CHF</b>
<b>ASSETS</b>			
<b>Liquid funds</b>			
UBS AG CHF	601'182	529'812	71'370
UBS AG USD	0	2'019	-2'019
UBS AG EUR	0	19'663	-19'663
CREDIT SUISSE CHF	26'045	2'746'030	-2'719'985
ZKB CHF	1'068'655'814	243'622'610	825'033'204
ZKB USD	88'522	1'930	86'592
ZKB EUR	14'202	0	14'202
Cash deposits ZKB	0	785'088'000	-785'088'000
<b>Total liquid funds</b>	<b>1'069'385'765</b>	<b>1'032'010'064</b>	<b>37'375'701</b>
<b>Liquidation positions:</b>			
Accounts receivable	5'069'507	3'056'747	2'012'760
Prepaid court expenses	38'848'047	10'127'185	28'720'862
Open apportionment of proceeds on sale of Swissport, Restorama, RailGourmet, and Nuance	37'184'700	39'613'558	-2'428'858
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	86'505'581	86'551'480	-45'899
Real estate	80'331'655	83'859'325	-3'527'670
Furniture, fittings	2	3	-1
Shareholdings, securities	376'509	376'509	0
Responsibility claims	p.m.	p.m.	
Pauliana claims	3'616'283	0	3'616'283
<b>Total liquidation positions</b>	<b>258'802'807</b>	<b>230'455'330</b>	<b>28'347'477</b>
<b>TOTAL ASSETS</b>	<b>1'328'188'572</b>	<b>1'262'465'394</b>	<b>65'723'178</b>
<b>LIABILITIES</b>			
<b>Debts of the estate</b>			
Accounts payable	826'165	947'695	-121'530
Provision, 1st interim payment	563'669'771	723'882'410	-160'212'639
Provision, 2nd interim payment	319'747'549	0	319'747'549
Provisions for liquidation costs	10'000'000	10'000'000	0
<b>Total debts of the estate</b>	<b>894'243'485</b>	<b>734'830'105</b>	<b>159'413'380</b>
<b>TOTAL DISPOSABLE ASSETS</b>	<b>433'945'087</b>	<b>527'635'289</b>	<b>-93'690'202</b>

## Summary of schedule of claims status

Category	Registered Amount in CHF	Schedule of claims						Dividend					
		Recognized Amount in CHF	Admitted subject to conditions Amount in CHF	Schedule of claims appeal pending Amount in CHF	Suspended / New registration Amount in CHF	Rejected Amount in CHF	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	66'818'522.44	-	26'068'618.05	109'705'517.65	264'522'541.58	100%	-	-	100%	-	100%	100%
Second class	828'070.62	501'929.90	-	-	224'571.12	101'569.60	100%	-	-	100%	-	100%	100%
Third class <sup>1) 2)</sup>	48'432'959'819.94	10'044'927'272.93	317'259'530.74	3'148'766'346.85	4'373'281'117.52	30'865'985'082.64	7.4%	2.6%	9.0%	10.0%	2.6%	10.0%	16.4%
<b>Total creditors' claims</b>	<b>48'900'903'090.28</b>	<b>10'112'247'725.27</b>	<b>317'259'530.74</b>	<b>3'174'834'964.90</b>	<b>4'483'211'206.29</b>	<b>31'130'609'193.82</b>							

<sup>1)</sup> The minimal dividend calculation factors in 3% of conditional claims.

<sup>2)</sup> The maximum dividend calculation factors in 40% of suspended third-class claims and 3% of conditional claims.