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To the creditors of SAirGroup in  
debt restructuring liquidation

Küsnacht, March 2006 WuK/fee

**SAirGroup in debt restructuring liquidation;  
Circular No. 8**

Ladies and Gentlemen

This Circular provides information on the status of the SAirGroup debt restructuring proceedings since mid-October 2005, as well as on the next steps planned in these proceedings over the coming months.

**I. REPORT ON ACTIVITIES AS OF 31 DECEMBER 2005**

Having been acknowledged and approved by the Creditors' Committee, the third of the Liquidators' reports on activities for 2005 has been submitted to the debt restructuring judge at the district court of Zurich on 28 February 2006. The report on activities will be available for inspection by creditors at the Liquidator's offices at Seestrasse 39, Goldbach-Center, 8700 Küsnacht until 30 March 2006. Appointments must be made in advance with Ch. Rysler, telephone +41 43 222 38 00.

The following is a summary of those points of the report on activities which have not already been covered by one of the Circulars published over the past year.

ALLE ANWÄLTE SIND AN IHREM JEWEILIGEN STANDORT  
IM ANWALTSREGISTER EINGETRAGEN

**II. OVERVIEW OF THE LIQUIDATION PROCESS**

**1. Activities of the Liquidator**

Creditors were informed about the most important aspects of the asset liquidation process in Circulars No. 4 to 7. The Liquidator's activities in 2005 focused on examining avoidance claims (see Circular No. 5, section I), on enquiries into the responsibility borne by SAirGroup's governing and executive bodies (see Circular No. 5 section IV and Circular No. 6 section IV), and on the assessment of liabilities (see section IV below). A number of assets were also realized (see section III below).

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

The Creditors' Committee held a total of six meetings in the course of 2005. At its meetings, the Committee discussed the various proposals submitted by the Liquidator and passed resolutions accordingly. Assessing and pursuing avoidance claims, in particular, occupied a great deal of the Committee's time and resources. In addition to making general assessments of these claims, the Creditors' Committee also had to review and decide upon 22 proposals from the Liquidator regarding the institution of the corresponding legal proceedings.

**III. REALIZATION OF ASSETS**

**1. General**

The Liquidator continued to collect accounts receivable in Switzerland and abroad during the period under review. An amount of around CHF 133 million could be collected.

**2. Settlement of reciprocal claims with Swiss International Air Lines AG ("Swiss")**

Swiss, then operating under the name Crossair AG, ordered three Embraer EMB145 aircraft for the autumn of 2001. The first aircraft was to have been paid for upon delivery on 27 September 2001. At that

time, Swiss held liquidity of just CHF 12 million, while the purchase price of the aircraft stood at CHF 22 million. The Chief Financial Officer of Swiss thus approached the Chief Financial Officer of SAirGroup in an e-mail dated 26 September 2001, asking that SAirGroup transfer at least CHF 10 million to Swiss as at 27 September 2001. In his request, he referred to the poor financial situation at Swiss and claimed that its present cashflow difficulties were due to the sums that were still outstanding from Swissair Swiss Air Transport Company Ltd. ("Swissair"). SAirGroup subsequently transferred the sum of CHF 10 million to Swiss with a value date of 27 September 2001. On 26 July 2002, SAirGroup submitted an invoice to Swiss for outstanding interest on a loan of CHF 10 million. Swiss refused to pay this interest on the grounds that the payment of CHF 10 million made by SAirGroup on 27 September 2001 was not a loan, but in settlement of the outstanding claims that Swiss held against Swissair. A review of the facts revealed that on one hand, the payment of CHF 10 million on 27 September 2001 could not necessarily be regarded as a loan. SAirGroup would have to prove that a loan agreement had been concluded between itself and Swiss. Despite a number of indications in its favour, it is unsure whether this approach would have succeeded. On the other hand, the chances of a successful challenge of the payment under an avoidance action according to the terms of Art. 288 of the Swiss Debt Enforcement and Bankruptcy Law (DEBL) were regarded as good. On 27 September 2001, the Swiss management was aware of the poor financial situation of SAirGroup and of Swissair. It could easily recognize that the payment of CHF 10 million would favour Swiss over the other SAirGroup creditors.

Swiss was responsible for maintaining flight operations on behalf of Swissair from the date on which the provisional debt restructuring moratorium was granted for SAirGroup and Swissair, on 5 October 2001, up to the end of March 2002. According to SAirGroup accounting records, pending claims of CHF 5,218,889, EUR 461,830 and USD 2,473,672 against Swiss accrued in connection with the continuation of flight operations and with regard to the many years of operational cooperation between the Swissair group and Swiss.

Specifically, these claims comprise fees for the use of licences, as well as maintenance, value-added tax, insurance charges, costs relating to the Qualiflyer Group project and loan interest on the CHF 10 million.

In order to safeguard the rights in connection with the payment of CHF 10 million on 27 September 2001, SAirGroup filed in due time a conciliation petition ("Sühnbegehren") with the competent justice of the peace and lodged an avoidance claim with the Commercial Court of Canton Zurich on 17 November 2005, within the permissible period for legal action ("Weisungsfrist").

The parties had held settlement talks even before the action was filed. In November 2005, SAirGroup and Swiss had agreed to the following settlement, subject to the approval of the SAirGroup Creditors' Committee and the Swiss Board of Directors:

- Swiss undertook to make the following payments to SAirGroup:
  - CHF 10,880,000.00 in respect of the transfer of CHF 10 million on 27 September 2001 (incl. interest)
  - CHF 8,620,000.00 in settlement of the other claims (incl. interest).
- The total amount of CHF 19,500,000.00 had to be paid by 31 December 2005 at the latest.
- SAirGroup undertook to withdraw the action filed with the Commercial Court of Canton Zurich within five days of receipt of the CHF 19,500,000.00 and to assume the associated court costs.
- The parties' individual costs were declared settled.
- The parties declared all claims to have been settled in full once the aforementioned payments had been made. This clause did not include the claims registered by Swiss in the debt restructuring proceedings of SAirGroup, SAirGroup's claims in connection with the "Swissair" trade name and the pictorial mark consisting of the red rhomboid with the white cross, or any Swiss claims arising in connection with the "Swiss" pictorial mark.

This agreement enabled the reciprocal claims between SAirGroup and Swiss to be settled in due consideration of the risks associated with legal action. The settlement was approved by the SAirGroup Creditors' Committee and the Swiss Board of Directors. Swiss made the payment of CHF 19,500,000.00 promptly. SAirGroup then withdrew its pending action with the Commercial Court of Canton Zurich.

#### **IV. ASSESSMENT OF LIABILITIES**

##### **1. Proceedings concerning the schedule of claims**

Work on drawing up the schedule of claims had to be deferred owing to the very great time pressure arising in the investigation and pursuit of avoidance claims under Arts. 286 – 288 of the DEBL since, under the terms of Art. 292 DEBL, such claims would have been deemed to be forfeited after 26 June 2005. Despite this fact, the schedule of claims is now largely complete. It will be submitted to the Creditors' Committee for approval in the next four months and then presented for inspection by the creditors.

##### **2. Settlement of early retirees' claims in accordance with "Option 96/2000"**

The 1995/1996 social plan was drawn up amid the first restructuring of SAirGroup, then still Swissair Swiss Air Transport Company Ltd., in light of planned lay-offs in 1996. This social plan governed early retirement on special terms, as per "Option 96".

According to Option 96, women aged 55 and men aged 56 at the time of leaving would benefit from early retirement on special terms.

The benefits owing to early retirees under Option 96 comprised the following amounts:

- Basic benefit: 70% of final salary for a set period of time;
- Transitional benefit I: 50% of final salary once the entitlement to basic benefits had ceased; these benefits were to be paid for no more than six months;

- Transitional benefit II: The maximum single AHV pension from the point the entitlement to transitional benefit I ends, right up to statutory retirement age;
- Payment by SAirGroup of premiums (both employer and employee contributions) to the general pension fund of SAirGroup (*Allgemeine Pensionskasse der SAirGroup, APK*); and
- provision for early retirees to draw an early pension from the general pension fund, subject to a percentage reduction in pension payments.

An individual early retirement agreement was concluded with every employee taking early retirement. The relationship of employment between the employee and the employer in question within the Swissair Group ended as the employee concerned took early retirement. From this point onwards, early retirees had the same status as employees who had retired on standard terms.

There were further restructuring-related lay-offs within the Swissair Group from 1997 up to and including 1999. The staff of the various Swissair Group companies were offered the possibility of retiring under the Option 96 scheme. In 2000, this was superseded by early retirement in accordance with "Option 2000", which was identical in content to Option 96.

There were some 300 early retirees under Option 96/2000 when the provisional debt restructuring moratorium was granted. Debt restructuring proceedings meant that SAirGroup was no longer able to meet its obligations under Option 96/2000. Those early retirees who were affected registered privileged claims totalling around CHF 60 million as part of the SAirGroup debt restructuring proceedings. In addition to the claims from Option 96/2000, the early retirees also registered claims resulting from pension shortfalls, reduced-fare flight tickets and receivables from SAirGroup shares and bonds.

The amounts of the early retirees' claims under Option 96/2000 are recognized by SAirGroup in as far as they comply with the contractual provisions of the early retirement agreements. The remainder of the

claims registered by early retirees are disputed. Furthermore, there is the legal issue of whether claims associated with Option 96/2000 should be included in the schedule of claims as privileged first-class claims or as unprivileged third-class claims. In proceedings relating to the composition of the schedule of claims brought by a retired member of staff of Swisscargo AG, the District Court of Bülach ruled that claims under Option 96/2000 should be included in the schedule of claims as third-class rather than first-class claims. An appeal against this ruling was lodged with the High Court of Canton Zurich, the ruling of which is still pending. It therefore remains to be seen how the courts will treat these legal issues, since they are not covered by legal literature, neither does any legal ruling exist at the highest court level.

In the light of this uncertainty the Liquidator, with the approval of the Creditors' Committee, submitted an offer to the early retirees concerned for the settlement of their registered privileged claims under Option 96/2000.

- SAirGroup would pay the early retirees 60% of the recognized claims made under Option 96/2000.
- The early retirees would waive any and all further claims, specifically those relating to pension shortfalls and reduced-fare flight tickets.
- A decision on the claims registered in connection with SAirGroup bonds and shares would be made in the context of work to draw up the schedule of claims.
- The offer would become effective if accepted by 85% of the early retirees concerned.

Of the 276 early retirees who received an offer, 272 accepted. The offer sum, totalling around CHF 18.2 million, could thus be paid out to the early retirees in December 2005. Decisions on the claims registered by the four early retirees who did not accept the offer will be made in the context of work to draw up the schedule of claims.

**V. ASSET STATUS OF SAIRGROUP AS AT 31 DECEMBER 2005**

**1. Introductory remark**

In the Appendix, you will find a report on the liquidation status of SAirGroup as at 31 December 2005, containing a statement of the assets of SAirGroup in debt restructuring liquidation as of that date, according to present knowledge.

**2. Assets**

Court deposits: SAirGroup had to pay court deposits totalling CHF 6,698,903 in connection with the introduction of a number of avoidance claims in the course of 2005.

Open apportionment of proceeds from the sale of Swissport, Restorama, RailGourmet, Gate Gourmet and Nuance: It was not possible in 2005 to apportion the proceeds of the sales of the Swissport Group, Restorama AG, RailGourmet, the Gate Gourmet Group, SR Technics Switzerland and the Nuance Group. The attendant complexities on the part of SAirGroup have largely been resolved, although an assessment on the part of SAirLines has not yet been completed. Efforts will nonetheless be made to resolve these outstanding matters in the course of this year.

Open apportionment of costs incurred during the debt restructuring moratorium and the debt restructuring liquidation vis-à-vis Swissair, SAirLines, T Group and SAir Services Invest AG: Compared with the previous year, there was another shift in this item – of CHF 0.6 million – in favour of SAirGroup. As in the past, 2005 again saw SAirGroup bear costs from which other Swissair companies also benefited. These costs have not yet been apportioned, although the principles of apportionment have been drawn up. It can thus be expected that this outstanding matter will be resolved in the course of the current year.

As-yet unrealized assets: This item still consists primarily of claims against former Swissair group companies, participations held by SAirGroup, residual IT items, real estate in Switzerland and abroad (in



as far as the latter properties are owned by SAirGroup), and securities. Intangible assets such as the "Swissair" brand and 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 2005 relate to costs incurred during the debt restructuring liquidation.

**4. Creditors' claims**

The Liquidator has largely finished assessing the registered claims with regard to drawing up the schedule of claims (see section IV above). The liquidation status report as at 31 December 2005 therefore reflects the current status of work in this regard. However, the amounts of the claims recognized in the individual classes may still change before the schedule of claims is presented to creditors.

First-class claims: 176 former Swissair employees registered claims totalling CHF 91,708,477. These claims are rejected by the Liquidator on the grounds that SAirGroup was not the actual employer. Other claims totalling CHF 163,956,184 had been registered by 1,033 creditors up to the end of December 2005. Of these, CHF 56,866,228 is recognized by SAirGroup and the Liquidator, respectively. The amount of claims was reduced thanks to the settlement of claims registered by early retirees under Option 96/2000 (see section IV.2 above) However, a former member of the executive board has filed recourse claims of around CHF 40 million, because a creditor is threatening him with a direct claim for damages.

Second-class claims: Of the CHF 1,151,772 claims registered by 12 creditors, SAirGroup and the Liquidator, respectively recognize claims amounting to CHF 559,343.

Third-class claims: Up to the end of December 2005, 13,613 creditors had registered claims totalling CHF 50,717,938,951, or claims had arisen from the SAirGroup accounting records. Of these claims, the

Liquidator and the company, respectively have so far recognized CHF 9,499,514,905.

**5. Estimated dividend**

No reliable estimate of the probable dividend for holders of third-class claims can be made until the registered claims have been assessed as part of the process of drawing up the schedule of claims. The range lies between 2.6 % and 16.1 %.

**VI. PURSUIT OF DISPUTED CLAIMS**

**1 Responsibility claims**

*1.1 Roscor transaction*

Information on the pursuit of responsibility claims in connection with the Roscor transaction was given in Circulars No. 5 and 6. With the approval of the Creditors' Committee, SAirGroup subsequently filed suit with the District Court of Zurich in September 2005. In December 2005, the same court required SAirGroup to pay a court deposit of around CHF 12 million. SAirGroup met this obligation by submitting a bank guarantee for the corresponding amount. Proceedings are currently awaiting the submission of the respondent parties' defence.

*1.2 Recapitalization of Sabena in 2001*

SAirGroup took a 49.5% stake in the Belgian airline Sabena in 1995. As part of the SAirGroup restructuring in 1997, the Sabena holding was transferred to SAirGroup's wholly-owned subsidiary SAirLines by means of a contribution in kind. The remaining shares in Sabena were held by the Belgian government and by other affiliated companies owned by the Belgian state.

In December 2000, the SAirGroup Board of Directors recognized that the Swissair group did not have the financial means necessary to build up a fourth operational base within the European aviation industry, and the previous expansion strategy was therefore abandoned. The Board

nonetheless decided to contribute EUR 150 million to Sabena's recapitalization. It did so even though it was aware of the desperate financial situation of SAirGroup and it knew that Sabena was overindebted – as well as that the planned financial injection would still not be enough to meet short-term funding needs.

At the end of January 2001, SAirGroup and SAirLines signed a series of related contracts in which SAirGroup undertook to pay Sabena a sum of EUR 150 million. At the end of February 2001, SAirGroup transferred EUR 150 million to Sabena, while SAirLines subscribed for non-voting participation certificates that had been created in connection with a resolution to increase Sabena's capital. Given Sabena's poor financial situation, these participation certificates were worthless. SAirGroup therefore sustained a loss of EUR 150 million from the transaction. In the view of the Liquidator and the Creditors' Committee, in adopting and executing the Sabena recapitalization in February 2001 the Board of Directors was in breach of its obligations and is thus responsible for the loss that was incurred.

At the beginning of November 2005, the members of the SAirGroup Board of Directors who were in office in late January/February 2001 were sent a draft responsibility writ concerning the Sabena recapitalization. A conciliation petition ("Sühnbegehren") was submitted to the competent justice of the peace ("*Friedensrichteramt*") at the same time. Conciliation proceedings failed. With the approval of the Creditors' Committee, SAirGroup therefore filed suit with the District Court of Zurich in February 2006.

## **2. Avoidance claims**

Where the pursuit of avoidance claims was not waived by the Liquidator and the Creditors' Committee (see Circular No. 5, section I and Circular No. 7, section I), these claims were pursued by SAirGroup itself. Following a thorough review of the facts, 22 claims worth a total of CHF 1.3 billion were filed. In consultation with the Creditors' Committee, in the majority of cases external lawyers were engaged to

produce a legal assessment of the individual circumstances of each case and to institute the appropriate legal action.

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

The schedule of claims should be drawn up by May 2006 and then presented to the Creditors' Committee for approval. It is then planned to publish the schedule of claims for inspection by the creditors in July 2006. Further information to creditors will be provided in the Circulars that are planned for July (publication of the schedule of claims) and autumn 2006.

Yours sincerely

SAirGroup in debt restructuring liquidation

The Liquidator

Karl Wüthrich

Encl.: Liquidation status of SAirGroup in debt restructuring liquidation,  
as of 31 December 2005

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## LIQUIDATION STATUS as of 31 December 2005

	31.12.2005 CHF	31.12.2004 CHF	Change CHF
<b>ASSETS</b>			
<b>Liquid funds</b>			
UBS AG CHF	166'542'897	161'656'059	4'886'838
UBS AG USD	1'345'491	18'153'298	-16'807'807
UBS AG EUR	53'630	823'252	-769'622
CREDIT SUISSE CHF	15'076	3'118	11'958
ZKB CHF	2'937	685'190	-682'253
Cash deposits, UBS Ltd, CS, ZKB <sup>1)</sup>	1'165'000'000	990'000'000	175'000'000
<b>Total liquid funds</b>	<b>1'332'960'031</b>	<b>1'171'320'917</b>	<b>161'639'114</b>
<b>Liquidation positions:</b>			
Accounts receivable	920'640	1'132'661	-212'021
Prepaid court expenses	6'698'903	884'600	5'814'303
Open apportionment of proceeds on sale of Swissport, Restorama, RailGourmet, and Nuance	70'000'000	70'000'000	0
Open apportionment of costs relating to Swissair, SAirLines, T Group and SAir Services Invest AG accrued during debt restructuring moratorium	10'370'519	9'600'000	770'519
Receivables from third parties	94'812'093	209'413'462	-114'601'369
Real estate	86'025'625	102'478'924	-16'453'299
Furniture, fittings	3	3	0
Shareholdings, securities	348'512	292'513	55'999
Responsibility claims	p.m.	p.m.	
Pauliana claims	p.m.	p.m.	
<b>Total liquidation positions</b>	<b>269'176'295</b>	<b>393'802'163</b>	<b>-124'625'868</b>
<b>TOTAL ASSETS</b>	<b>1'602'136'326</b>	<b>1'565'123'080</b>	<b>37'013'246</b>
<b>LIABILITIES</b>			
<b>Debts of the estate</b>			
Accounts payable	1'638'055	927'036	711'019
Provisions for liquidation costs	10'000'000	10'000'000	0
<b>Total debts of the estate</b>	<b>11'638'055</b>	<b>10'927'036</b>	<b>711'019</b>
<b>TOTAL DISPOSABLE ASSETS</b>	<b>1'590'498'271</b>	<b>1'554'196'044</b>	<b>36'302'227</b>

## CREDITORS' CLAIMS

Category	Registered	by SAirGroup		Dividend	
		contested	recognised	min.	max.
Secured by right of lien	0	0	0		
First class	163'956'184	107'089'956	56'866'228	100.0%	100.0%
First class, Swissair emp.	91'708'477	91'708'477	0		
Second class	1'151'772	592'429	559'343	100.0%	100.0%
Third class	50'717'938'951	41'218'424'046	9'499'514'905	2.6%	16.1%
<b>Total creditors' claims</b>	<b>50'974'755'384</b>	<b>41'417'814'908</b>	<b>9'556'940'476</b>		

<sup>1)</sup> CHF 25'000'000 is assigned as collateral for litigation deposits totalling CHF 21'711'000