

**Unofficial Translation  
of German Original**

To the creditors of SAirLines in debt  
restructuring liquidation

Küsnacht, April 2009 WuK/fee

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**SAirLines in debt restructuring liquidation;  
Circular no. 12**

Dear Sir or Madam,

This Circular provides information on the progress of the SAirLines debt restructuring liquidation proceedings since April 2008, as well as on the next steps planned in these proceedings over the coming months.

**I. REPORT ON ACTIVITIES AS OF 31 DECEMBER 2008**

Having been acknowledged and approved by the Creditors' Committee on 17 March 2009, the sixth of the Liquidators' reports on activities for 2008 has been submitted to the debt restructuring judge at the District Court of Zurich. The report on activities is available for inspection by the creditors at the premises of the Co-Liquidator, Karl Wüthrich, at Wenger Plattner, Seestrasse 39, Goldbach Center, 8700 Küsnacht, up to 24 April 2009. Appointments should be made in advance with Christian Rysler (phone +41 43 222 38 00).

The following is a summary of the content of the report on activities.

**II. OVERVIEW OF THE LIQUIDATION PROCESS**

**1. Activities of the Liquidators**

During the year just ended, the Liquidators' activities focused on settling liabilities, including the pursuit of pending legal actions to contest the schedule of claims (section VI.2 below), defending the estate against guarantee claims in connection with the sales of the Nuance Group and Avireal AG, and the pursuit of one avoidance claim. Investigations into the responsibility borne by directors and officers were also continued.

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

The Creditors' Committee did not hold any meetings in 2008. It passed circular resolutions on three proposals submitted by the Liquidators.

**III. ASSET STATUS OF SAIRLINES AS OF 31 DECEMBER 2008**

**1. Introductory remark**

Enclosed is a report on the liquidation status of SAirLines as of 31 December 2008, containing a statement of the assets of SAirLines in debt restructuring liquidation as of that date, according to present information.

**2. Assets**

Pending apportionment of proceeds from the sale of Swissport, Restorama, RailGourmet, Gate Gourmet and Nuance: In 2008 it again was not possible to apportion the proceeds of the sales of the Swissport Group, the Gate Gourmet Group and the Nuance Group. Efforts will, however, be made to resolve these outstanding matters in the course of this year.

As-yet unrealised assets: As in the past, this category consists primarily of claims against former Swissair Group companies and shareholdings (particularly the holding in Cargolux, Luxembourg) and securities held by SAirLines. Furthermore, any responsibility and

avoidance claims are carried pro memoria. Valuations of as-yet unrealized assets can still be described as conservative, and it is, therefore, likely that the reported liquidation figures can be achieved.

### **3. Debts incurred in the course of the liquidation process**

Accounts payable: The accounts payable reported as of 31 December 2008 relate to costs incurred during the debt restructuring liquidation.

Provision for first interim payment: The liquidation status of SAirLines as of 31 December 2008 includes the sum of 378,457,859 Swiss francs as provision for the first interim payment. Of this amount, 4,256,789 Swiss francs are reserved for payments for which the creditors have not yet given the Liquidators payment instructions, or for payments that could not be effected for other reasons. Another 83,319,978 Swiss francs concern interim payments for claims for which an action to contest the schedule of claims is pending. The remainder of the provision – 290,881,092 Swiss francs – is for claims that are still suspended at present.

### **4. Creditors' claims**

The enclosed overview of the schedule of claims proceedings states the total of claims that have been registered in the respective classes, those claims which have been recognised, those which have ultimately been 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 with a priority entitlement to the estates of S Air Logistics AG, S Air Relations AG and S Air Services AG, as well as those of third-class claims, may change in the course of efforts to settle the schedule of claims. In 2008, changes only occurred for third-class claims for which a decision regarding the schedule of claims has been suspended. Dr. Mario Corti withdrew his recourse claim for 15,244,902 euros lodged with SAirLines from proceedings related to Air Littoral. He was able to resolve this matter. Furthermore, an error was corrected in the overview. These claims currently amount to 2,999,807,929.73 Swiss francs.

**5. Estimated dividend**

The disposable assets reported in the liquidation status result in a maximum dividend of 20.4%, providing all of the still pending actions to contest the schedule of claims are unsuccessful and no more than 50% 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 9.4%. Of this, 4.8% has already been paid out in an initial interim payment. The remaining dividend that may be expected, therefore, is between 4.6% and 15.6%.

**IV. REALISATION OF ASSETS**

**1. General comments**

The Liquidators continued to collect accounts receivable from Switzerland and from abroad in 2008. Payments totalling 1.7 million Swiss francs were added to the estate's assets.

**2. Apportionment of proceeds from the sale of Polygon Group, Guernsey**

In Circular 11 (section III.3) dated April 2008 we reported on the sale of shares of Polygon Group. The apportionment of the proceeds from this deal still had to be agreed at that time between SAirGroup, SAirLines and Swissair. In June 2008, the Co-Liquidator of SAirLines (Professor Dr. Roger Giroud), the Deputy Liquidator of Swissair (Dr. Niklaus Müller) and the Liquidator of SAirGroup (Karl Wüthrich) agreed on the apportionment of the proceeds from the liquidation of the stake in Polygon Group, and concluded a corresponding agreement. The proceeds are to be apportioned as follows:

- SAirGroup is to receive 950,000.00 US dollars from the sale, and 1,032,463.77 Swiss francs from the proceeds of the liquidation of SAirGroup Trust;

- SAirLines is to receive 1,240,000.00 US dollars from the sale, and 1,032,463.77 Swiss francs from the proceeds of the liquidation of SAirGroup Trust;
- Swissair is to receive 240,000.00 US dollars from the sale, and 1,032,463.77 Swiss francs from the proceeds of the liquidation of SAirGroup Trust.

The agreement was approved by the Creditors' Committees of SAirGroup, SAirLines and Swissair, and the apportionment has meanwhile been executed.

### **3. Handling of the Nuance Group sale**

The Nuance Group was sold in spring 2002 during the debt restructuring moratorium. The sale was concluded in July 2002. In 2003, conflicts arose between SAirLines and the buyer of the Nuance Group, Noel International S.A. ("Noel"), with regard to two items. On the one hand, Noel asserted that SAirLines should have disclosed to Noel that proceedings against SAirLines, SAirGroup and other Swissair companies had been initiated in France in November 2001 in connection with the former AOM. Following execution of the sale in September 2002, the Nuance Group was involved in these proceedings in France through a form of third-party notice. On the other hand, SAirLines requested compensation from Noel for approximately 2.7 million euros plus 5% interest from the end of February 2003, as Noel had not released SAirLines from a guarantee in connection with the Turkey business.

The parties could not reach an out-of-court settlement. At the end of July 2003, Noel initiated ICC arbitration proceedings in Paris to protect its interests. This resulted in an amount of 50 million Swiss francs being blocked in an escrow account for any potential guarantee claims. In its counterclaim, SAirLines requested payment from Noel of approximately 2.7 million euros with regard to the Turkey guarantee by Noel.

In a partial ruling on 23 August 2007, the arbitration court established, on the one hand, that SAirLines was obligated to inform Noel about the

pending AOM proceedings in Paris, and that it had violated this obligation. Accordingly, SAirLines was liable to pay compensation for any damages incurred by Noel from these AOM proceedings. At the same time, the arbitration court approved the SAirLines counterclaim against Noel in the amount of approximately 2.7 million euros.

In 2008, Noel paid SAirLines the amount of approximately 2.7 million euros plus interest. The equivalent of 4,339,129 Swiss francs has been received by SAirLines.

In the meantime, a legally binding ruling was made in the AOM proceedings to the effect that only SAirLines and SAirGroup were liable for any claims from the French claimants. The risk is therefore slight that Noel will incur damages from these AOM proceedings, with the exception of court costs and legal fees. The situation concerning the AOM legal proceedings has not yet been completely resolved. For this reason, the escrow account containing 50 million Swiss francs remains blocked. It is currently not possible to estimate how long it will be until the matter is definitively resolved.

#### **4. Handling of the Avireal sale**

The sale of Avireal was concluded in spring 2005 (see third report on activities dated 28 February 2006, section III.2). Conflicts subsequently arose between the parties to the sale agreement regarding the application of a price adjustment clause and also with relation to guarantee claims. The buyer has consequently submitted three claims against SAirLines to the Commercial Court of the Canton of Zurich.

In its rulings of 22 October 2008, the Commercial Court rejected two claims. These rulings have meanwhile become legally binding. This resulted in an amount of 7 million Swiss francs, which had been deposited in an escrow account to cover the buyer's guarantee claims, being released in favour of SAirLines. Of this amount, approximately 1.7 million Swiss francs had been paid to SAirLines by 31 December 2008. In the meantime, SAirLines has also received the remaining 5.3 million Swiss francs.

One of the buyer's claims in the amount of 11,668,400 Swiss francs is still pending before the Commercial Court. The ruling by the Commercial Court is anticipated in the course of 2009.

Furthermore, there are still conflicting views on two items worth a total of approximately 2.9 million Swiss francs regarding the application of the price adjustment clause. For this reason, 5 million Swiss francs remain blocked in an escrow account. Negotiations are currently in progress to resolve this matter. If no agreement can be reached, the case is to be decided by an arbitrator.

**V. PURSUIT OF AVOIDANCE CLAIMS AGAINST PROP LEASING AND TRADING COMPANY LIMITED**

On 18 November 2005, SAirLines submitted an avoidance action against Prop Leasing and Trading Company Limited ("PLTC") to the Commercial Court of the Canton of Zurich for payment of 1,324,601.50 euros and 3,174,282.85 US dollars, plus 5% interest in each case from 20 June 2005. This avoidance action contested payments by SAirLines in the amount of 1,324,601.50 euros on 13 September 2001, and in the amount of 3,174,282.85 US dollars on 17 September 2001.

The Commercial Court rejected the claim in its ruling dated 13 December 2007. It denied that any intent by SAirLines to cause damage could be recognised on the part of PLTC. To safeguard its claims, SAirLines appealed against the Commercial Court ruling to the Appeals Court of the Canton of Zurich, and also submitted an appeal in civil matters to the Swiss Federal Supreme Court. In its ruling dated 22 December 2008, the Appeals Court rejected the appeal. The ruling by the Swiss Federal Supreme Court is anticipated in the course of 2009.

**VI. SETTLEMENT OF LIABILITIES**

**1. Capital tax claims for the debt restructuring moratorium period**

To safeguard its interests regarding the Zurich cantonal and municipal tax assessment for the 2001 tax year, SAirLines filed a precautionary

appeal with the Tax Office of the Canton of Zurich. In a proposed assessment dated 15 November 2006, the Tax Office of the Canton of Zurich assessed the capital tax for the period from 5 October 2001 to 31 December 2001 based on the nominal SAirLines share capital of 400 million Swiss francs, and declared this as a claim against the estate of SAirLines. Based on this proposal, SAirLines maintained its appeal and requested either that no more capital tax be collected following the debt structuring moratorium, or that this tax be qualified as a creditor's claim at most. In an appeal ruling on 31 August 2007, the Tax Office of the Canton of Zurich rejected the SAirLines appeal and maintained that the capital tax during the debt restructuring moratorium was to be considered a claim against the estate. SAirLines lodged an appeal against this decision with the Tax Appeals Commission of the Canton of Zurich. In its ruling dated 31 January 2008, the Tax Appeals Commission 1 of the Canton of Zurich upheld the SAirLines appeal to the extent that it established that the capital tax during the debt restructuring moratorium was to be qualified as a creditor's claim, and not as a claim against the estate. The ruling by the Tax Appeals Commission 1 was then contested by the Tax Office of the Canton of Zurich via an appeal submitted to the Administrative Court of the Canton of Zurich. In its ruling dated 3 September 2008, the Administrative Court rejected the appeal and upheld the ruling by the Tax Appeals Commission 1. The Tax Office of the Canton of Zurich then lodged an appeal under public law with the Swiss Federal Supreme Court against the ruling by the Administrative Court. The Swiss Federal Supreme Court rejected the appeal in its ruling dated 19 February 2009. It is thus established that the capital taxes for the period of the debt restructuring moratorium represent normal third-class creditors' claims, and not claims against the estate. The liquidation assets of SAirLines are thereby released from claims against the estate in the amount of over 1 million Swiss francs.

**2. Actions to contest the schedule of claims by the Belgian government and further Belgian companies**

In the context of the schedule of claims publication in July 2006, the Liquidators fully rejected the claims submitted by the Belgian



government, and by three companies controlled by the Belgian government, in connection with the Sabena situation. The Belgian government and the three companies appealed these decisions, and also jointly submitted an action to contest the schedule of claims to the District Court of Zurich. In their appeal, they argued that the Liquidators would have to suspend the decision on the asserted claims until a legally binding ruling was made in the legal proceedings pending in Belgium regarding these same claims. The appeal was rejected by both the lower and higher supervisory authorities in debt enforcement and bankruptcy matters for the Canton of Zurich, as well as by the Swiss Federal Supreme Court. With regard to the action to contest the schedule of claims, the claimants filed a petition calling for the suspension of the schedule of claims proceedings until a legally binding ruling was made in the Belgian proceedings. In accelerated proceedings before the District Court of Zurich, the sole judge approved this petition and suspended the proceedings. The Liquidators appealed against this suspension ruling to the High Court of the Canton of Zurich, which rejected the appeal in its ruling dated 2 March 2007. The Liquidators consequently filed a nullity appeal with the Appeals Court of the Canton of Zurich. In its ruling dated 15 November 2007, the Appeals Court rejected this appeal. The Liquidators finally submitted an appeal in civil matters to the Swiss Federal Supreme Court against the rulings by the High Court and the Appeals Court. In its ruling dated 30 September 2008, the Swiss Federal Supreme Court upheld the appeal and overturned the suspension of the legal proceedings related to the schedule of claims. Following the ruling by the Swiss Federal Supreme Court, the action to contest the schedule of claims of the Belgian government and the three companies were resumed, as was the action of the bankruptcy estate of Sabena. The claimants currently have until the end of March 2009 to substantiate their claims. At the present stage of the process, it is impossible to estimate how long it will be until the proceedings can be concluded.

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

The Liquidators' activities this year will concentrate on ongoing efforts to settle liabilities, as well as the sale of the last shareholding,

Cargolux. It is not possible to predict how much time is still needed for the liquidation process.

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 will be distributed by not later than spring 2010.

Yours Faithfully,

SAirLines in debt restructuring liquidation

The Liquidators

Karl Wüthrich

Roger Giroud

Enclosures:

- Liquidation status of SAirLines in debt restructuring liquidation, as of 31 December 2008
- Overview of proceedings to draw up the schedule of claims for SAirLines

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

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**LIQUIDATION STATUS AS OF 31 December 2008**

	Total	S Air Logistics AG	SAirLines (incl S Air Services and S Air Relations)
	CHF	CHF	CHF
<b>ASSETS</b>			
<b>Liquid funds</b>			
UBS AG CHF	340'538	311'478	29'060
UBS AG USD	20'384	16'592	3'792
Credit Suisse	143'289		143'289
ZKB CHF	9'904'265	5'600'000	4'304'265
ZKB USD	6'823		6'823
Fixed-term deposits	443'077'000		443'077'000
<b>Total liquid funds</b>	<b>453'492'299</b>	<b>5'928'070</b>	<b>447'564'229</b>
<b>Liquidation positions</b>			
Accounts receivable	2'992'228		2'992'228
Advance on legal costs	790'153		790'153
Open apportionment of proceeds and escrow accounts from the sale of Swissport, Restorama, RailGourmet, Gate Gourmet and Nuance	57'505'184		57'505'184
Receivables from third parties	8'260'845	54'195	8'206'650
Shareholdings, securities	190'902'356	135'942'349	54'960'007
Responsibility claims	p.m.	p.m.	p.m.
Avoidance claims	p.m.	-	p.m.
<b>Total liquidation positions</b>	<b>260'450'766</b>	<b>135'996'544</b>	<b>124'454'222</b>
<b>TOTAL ASSETS</b>	<b>713'943'065</b>	<b>141'924'614</b>	<b>572'018'451</b>
<b>LIABILITIES</b>			
<b>Debts of the estate</b>			
Accounts payable	487'303	150'000	337'303
Provision for liquidation costs	6'232'500	1'870'000	4'362'500
Provision, 1st interim payment	378'457'859	4'057'738	374'400'121
<b>Total debts of the estate</b>	<b>385'177'662</b>	<b>6'077'738</b>	<b>379'099'924</b>
<b>TOTAL DISPOSABLE ASSETS</b>	<b>328'765'403</b>	<b>135'846'876</b>	<b>192'918'527</b>

## Overview of proceedings to draw up the schedule of claims for SAirLines

Category	Registered			Schedule of claims				Dividend				
	Amount in CHF	Recognized Amount in CHF	Appeal lodged Amount in CHF	Decision suspended Amount in CHF	Rejected Amount in CHF	Future Dividend		Total				
						min.	max.	min.	max.			
Secured by right of lien	-	-	-	-	-	-	-	-	-	-	-	-
Preferential rights to the corporate assets of S Air Logistics AG	83'883'644.64	170'217.80	-	73'578'416.39	10'135'010.45	94.5%	94.5%	100%	94.5%	100%	100%	100%
Preferential rights to the corporate assets of S Air Relations AG	242'285'270.88	4'292'146.45	-	102'637'015.06	135'356'109.37	100%	-	100%	-	100%	100%	100%
Preferential rights to the corporate assets of S Air Services AG	44'747'368.51	4'429'846.30	-	40'184'286.86	133'235.35	100%	-	100%	-	100%	100%	100%
First class	91'709'000.29	-	-	-	91'709'000.29	100%	-	100%	-	100%	100%	100%
Second Class	3'082.40	3'082.40	-	-	-	100%	-	100%	-	100%	100%	100%
Third Class <sup>1)</sup>	65'470'710'388.82	858'303'793.28	1'735'832'868.32	2'999'807'929.73	59'876'765'797.49	4.8%	4.6%	9.4%	15.6%	9.4%	20.4%	20.4%
<b>Total</b>	<b>65'933'338'755.54</b>	<b>867'199'086.23</b>	<b>1'735'832'868.32</b>	<b>3'216'207'648.04</b>	<b>60'114'099'152.95</b>							

<sup>1)</sup> The third-class claims for which decisions have been suspended are factored into this calculation at 50%.