

Insolvency & Restructuring - Switzerland

SAirGroup's debt restructuring liquidation leads to new decision

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The debt restructuring proceedings of former national carrier Swissair are still ongoing and keeping the courts busy.

In one of the latest decisions, concerning a Sfr2.4 billion claim of the insolvency estate of Sabena AG against SAirGroup AG (in liquidation), the Federal Supreme Court ruled that the Zurich High Court had asked for too high a deposit (Sfr800,000) in the appeal proceedings and sent the matter back to the Zurich High Court. Sabena requested the Federal Supreme Court lower the advance on costs (court deposit) for the appeal proceedings to Sfr300,000. A new Zurich High Court decision is expected.

The proceedings started in October 2006 with the submission of Sabena's contestation of the schedule of claims issued by SAirGroup's liquidator with the Zurich District Court. In April 2013 the Zurich District Court upheld a claim of only Sfr28,684,927 and rejected the rest of the claim. Sabena filed an appeal with the Zurich High Court, which led to the order regarding the advance on costs. Sabena appealed the order, resulting in the Federal Supreme Court's decision regarding the court deposit of the appeal proceedings.

The advance on costs was based on the expected dividend of the SAirGroup creditors, which had increased between submission of the claim and the appeal. The Federal Supreme Court ruled that the advance on costs for the appeal proceeding could not be affected by this increase.

Based on the duration of the first round and the difficulty of the case, a final and binding decision regarding the admission of Sabena's claim is not expected for some time.

In another dispute opposing SAirLines AG (in liquidation), SAirGroup (in liquidation) and the insolvency estate of Sabena, the Federal Supreme Court decided that a Belgian judgment which had ruled on a liability claim of Sabena against SAirLines/SAirGroup could not be recognised and enforced according to the Lugano Convention in Switzerland because Sabena had put forward the respective arguments in an amendment of claim after the debt restructuring moratorium of SAirLines and SAirGroup. In the court's view, Sabena's claim in Belgium was functionally (if not formally) related to the liquidation proceedings of SAirLines and SAirGroup because the purpose of the proceedings in Brussels was only to receive a judgment and to present it in Switzerland in order to be in a better position in the in the Swiss liquidation proceedings. Therefore, the Belgian judgment had to be considered as an insolvency matter which did not fall under the scope of the Lugano Convention. Whether this new ruling will be well received in Belgium is uncertain. In 2009 the Belgian State submitted an application instituting proceedings with the International Court of Justice in the Hague because of a ruling of the Swiss Federal Court in a matter involving, among others, the Belgian State against SAirLines in SAirLines's debt restructuring proceedings. However, it withdrew the application because of Switzerland's argumentation, putting the Federal Supreme Court's ruling into perspective.

Circular

In April 2014 SAirGroup's liquidator published a 23rd circular to creditors⁽¹⁾ in which it summed up the current state of the debt restructuring proceedings. Some proceedings are still pending (contestations of the schedule of claims) against SAirGroup for a total of more than Sfr3 billion. One of the biggest proceedings is Sabena's claim. SAirGroup had to pay court deposits for several claw-back and liability proceedings that it initiated. As of December 31 2013, the court deposits paid by SAirGroup amounted to Sfr8

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million.

The estimated maximum dividend that SAirGroup's creditors can expect has increased and now amounts to 18.7% (an increase of 0.7% compared to May 2013), and the minimum dividend has increased to 11.6% (up 0.2% compared to May 2013). The outcome of the various proceedings pending against SAirGroup (contestations of the schedule of claims) and suspended claims will influence the final dividend. Ten per cent of the minimum dividend of 11.6% has already been paid out to creditors by way of interim payments. The remaining dividend that may be paid to the creditors is therefore expected to be between 1.6% and 8.7%.

The next steps announced by the liquidator in SAirGroup's debt restructuring proceedings will involve the liquidation of the remaining assets, in particular the last remaining properties in Switzerland and abroad. The focus will also be on reaching an agreement with other former group companies on the settlement of reciprocal claims. A timetable could not be provided, as it is impossible to estimate how long it will take for these issues to be resolved.

The liquidators of SAirLines, Swissair Schweizerische Luftverkehr AG and Flightlease AG also published a circular to the creditors in April 2014, providing an update on the latest status and explaining the next steps in the proceedings (Circulars 19, 20 and 17).
(2) The estimated maximum dividend in the SAirLines proceedings amounts to 28.9%, the expected minimum dividend is 11.8%. A part of the expected dividend (7.4%) has already been paid out to the creditors by way of interim payments, so the remaining dividend that may be paid to the creditors is between 4.4% and 21.5%.

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Endnotes

(1) See www.liquidator-swissair.ch.

(2) *Ibid.*

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