

Carrard Consulting SA

To the creditors of Banque Privée
Espírito Santo SA in liquidation

Lausanne, March 2018

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Banque Privée Espírito Santo SA in liquidation (BPES): Circular no. 13 for the attention of the BPES creditors - status of liquidation operations at the end of 2017

Dear Sir, Madam,

This circular serves to present a summary, for the BPES creditors, of the status of the liquidation operations at the end of 2017. It informs the creditors on the important steps that have been undertaken by the liquidator and on the main ongoing and future liquidation operations. Its contents may not be exhaustive but, in the interest of transparency, seeks to provide comprehensive information to the creditors on the status to date. The liquidator makes no warranty as to the content of the information, the liquidator not being solely responsible for accuracy and truthfulness thereof.

This circular is accompanied by (i) the liquidator's Circular No. 14 concerning the provisional distribution of the liquidation dividends to third-class creditors; and (ii) an asset realization plan (Circular No. 15, Article 34 paragraph 1 of the FINMA Banking Insolvency Ordinance - OIB-FINMA).

It is sent with Circulars no. 14 and 15 indicated above, by registered letter only to the creditors (i) classified in third class in the claims register filed in April 2017, or (ii) for which the rejection of the claim in third class has been the subject of an action to challenge the claims register, or (iii) for which the processing of the claim has been suspended in the claims register filed in April 2017, or (iv) for which the claim has been lodged late and has not yet been processed by the liquidator. It is also published on the liquidator's website.

1. Conduct of the liquidation operations and staff situation

The liquidation activities take place in the premises of Carrard Consulting SA, in Lausanne. Since 30 June 2016 the estate in bankruptcy no longer pays any employees.

2. Continued banking activities and computer systems

As explained in the report for 2016, the liquidator decided to no longer maintain the existing BPES infrastructure at the time of the bankruptcy (in particular IT) and necessary to monitor and record the assets of the clients, especially the Avaloq banking software. This expensive infrastructure was replaced in the summer of 2016 by a simplified accounting formula (based on Excel), with reduced functionality to essentially meet the needs of liquidation. The implementation of this simplified solution saved hundreds of thousands of francs in bankruptcy.

After more than one year of operation, this solution has proven to work without significant harm for former clients whose assets are still deposited with BPES.

A person employed 80% by the liquidator carries out securities transactions and reconciliations of assets with BPES custodians, including cash assets of former clients. This person also reconciles on a regular basis the cash assets available to the bankrupt estate. The salary costs of this person are invoiced at cost price to the bankrupt estate.

3. Electronic data archiving

The process of electronic archiving of data ended in 2017. The electronic data archiving system is now operational, but its document and information retrieval capabilities are very limited compared to an operational banking system.

4. Payment of privileged deposits

The amount of privileged deposits due as of 19 September 2014 was approximately CHF 19.7 million.

At the end of 2017, CHF 17.4 million was transferred to the beneficiaries of privileged deposits, the outstanding balance being explained mainly by the lack of payment instructions of the beneficiaries or freezing orders imposed by criminal authorities.

5. Transfer of segregated assets

On the day of opening the bankruptcy, the total amount of segregated assets deposited with BPES (AuM) amounted to over CHF 5.5 billion. Segregated assets should be distinguished for entities of the Espírito Santo Group (especially fiduciary investments with these entities as well as bonds and notes that are issued by them) from financial instruments and securities of other issuers (called "non-GES" assets). At 19 September 2014, the latter accounted for a total of more than 13,000

positions¹, valued at CHF 2.2 billion and deposited with more than 60 custodians in Switzerland and abroad.

The law requires the liquidator to transfer segregated assets free of claims or third party rights and pursue their recognition. Recall, in order to reduce the significant costs associated with the pursuit of the banking activity, securities for which no transfer instruction had been received were sold (to the extent of their feasibility) in 2015 after a final notice from the liquidator was sent requesting the necessary information.

As of 20 December 2017, there are only (approximately) 380 positions on non-GES securities deposited with BPES, which can be divided into three broad categories:

- Positions held by former clients of BPES: these securities positions are still deposited with BPES because of legal constraints (mainly to cover the claims of the estate in bankruptcy or because of freezing orders given by the criminal authorities) or the difficulty of transferring them;
- The last positions held by ES Bankers (Dubai) Limited: their transfer, complicated and very slow going, is part of the Settlement Agreement dated 17 June 2015 (see Circular No. 5 sent by the liquidator to the BPES creditors);
- The positions held in BPES' *nostro* portfolio.

For the securities of Espírito Santo Group companies, the liquidator's activities were focused on the claims declarations from issuing companies undergoing bankruptcy proceedings (see figure 6 below).

6. Lodging of claims in the Espírito Santo Group companies

As announced in the Circular for 2016 and in Circular No. 8 of the liquidator for BPES creditors, the liquidator has filed as of 25 September 2017 claims declarations in the bankruptcy proceedings of Luxembourg companies Espírito Santo International S.A. ("ESI") and Rio Forte Investments SA ("Rio Forte"). These claim declarations took place within the deadline set for lodging claims of 30 September 2017 by the receivers of these companies.

BPES has directly asserted - either on its behalf and on behalf of former clients - in the bankruptcies of the Luxembourg companies ESI and Rio Forte the receivables arising from notes and bonds issued by these companies and placed in the portfolios of former clients with BPES.

However, the liquidator provided to former clients the necessary documents and information allowing them to directly and personally pursue in the bankruptcies of these companies, those receivables arising from fiduciary investments made by

¹ A "position" is namely a class of securities (e.g. securities bearing the ISIN [...]) for a client.

BPES with ESI and RFI, in their name, but on behalf of former clients of BPES. These claim declarations must also be made by 30 September 2017, it being understood that the liquidators of the companies concerned have indicated in their respective notices that the period for lodging claims were not deadlines in Luxembourg law and that claim declarations filed after the expiry of the deadline would be accepted. According to the information available to the liquidator, however, it is appropriate to reserve in Luxembourg law the loss of the right of the creditor concerned to participate in any distributions that have already been made prior to the filing of the claim declaration.

With regard to the bankruptcy of ES Bank (Panama) SA ("ESBP"), it is recalled that BPES had immediately produced after the bankruptcy the claims arising from the fiduciary investments made by BPES with ESBP on its behalf, but on behalf of former clients, this is a precautionary measure because of the extremely short time required for Panama. BPES's claims were accepted in the bankruptcy of ESBP. However, no distribution has occurred to date.

The claims produced by BPES in the Luxembourg bankruptcies of ESFIL - Espírito Santo Financial SA and Espírito Santo Financial Group SA have not yet been processed by the receiver in charge of the liquidation of these companies. These claims were also produced very quickly in early 2015 by BPES - on its behalf and on behalf of former clients - as a safeguard against creditors' rights.

The liquidator also produced claims in the ancillary bankruptcies of the ESI and Rio Forte companies opened in Switzerland and then the recognition in Switzerland of the bankruptcy judgements pronounced in Luxembourg against these entities. The claims were filed on 16 October 2017, within the time limit set by the Bankruptcy Office of the East Vaud District.

7. Asset inventory and realisation

a) General

The inventory of assets is now available to creditors. In summary, the following may be disclosed to creditors:

- At 31 December 2017, the cash available to the estate in bankruptcy amounted to CHF 73.8 million (against CHF 69 million at the end of 2016);
- A Pauliana claim by BPES was the subject of a settlement reached with the company ES Bankers (Dubai) Limited ("ESBD") for an amount of USD 13 million, of which USD 5 million had already been received by the BPES estate in bankruptcy in 2015. An amount of USD 7.4 million was received during 2016. An additional amount of USD 500,000 was received during 2017, payment of the balance (\$100,000) is guaranteed if the conditions stipulated in the settlement, related to the transfer of ESBD securities, are met;

- A settlement was concluded with the CBH Compagnie Bancaire Helvétique SA bank, putting an end to any litigation concerning the fate of the client transfer contract concluded during the month of August 2014 as well as any possible Pauliana claims of bankrupt estate in connection with this contract. A final amount of CHF 7.8 million was collected by the bankrupt estate, of which 7.1 million in 2017, a sum of CHF 643,890 having already been received in September 2014;
- An amount of approximately CHF 1.6 million was recovered following the claim filed by the liquidator against compulsory taxation imposed by the canton of Vaud's tax authorities for 2014;
- Credits, unsecured or guaranteed consisting of securities of the group or otherwise amounted to CHF 122 million. An amount of approximately CHF 15 million has been recovered or reimbursed to date; in addition, a figure of the same amount could be offset by the bankrupt estate with the claims of certain debtors admitted to the claims register in April 2017. A contract was signed in 2017 with the international collection company Intrum Justitia, headquartered in Switzerland, which aims to recover the receivables of the bankrupt estate from uncooperative debtors. As stipulated in the Asset Realization Plan for the month of August 2017 (Liquidator's Circular No. 12), Intrum Justitia will be remunerated on the basis of a percentage of the receivables recovered, this percentage varying according to the domicile/head office of the debtor;
- Works of art and *nostro* securities were sold for an amount of around CHF 90,000 during 2017.

In addition, the liquidator was also able to collect liquidation proceeds from, among other things, transfer fees, custodial fees, emoluments relating to the issuing of certificates or declarations of assignments of rights and participation in costs for the establishment of settlement agreements of around CHF 285,000.

b) HSZH Verwaltungs AG (formerly Hyposwiss Privatbank AG)

As indicated in the report for 2016, the BPES liquidator was authorised by the BPES Creditors Committee and by FINMA to initiate legal action to pursue the Pauliana claims of the estate against HSZH Verwaltungs AG ("Hyposwiss"). These claims are following the payment of a settlement amount relating to an unmatured debt of Hyposwiss made some days before the BPES bankruptcy.

A request for conciliation has been filed as of 8 December 2016 before the competent authorities in Zurich for an amount of CHF 1.2 million. In the absence of conciliation, an application was filed by BPES on 5 May 2017, in which Hyposwiss is concerned by the filing of a response dated 28 August 2017. These proceedings are still open and have not been the subject of any judicial decision to date.

- c) Assignment of liability claims against the Swiss Financial Market Supervisory Authority FINMA

By Circular No. 9 to the creditors, the liquidator offered in assignment to the creditors any liability claims against FINMA for lack of supervision in connection with the bankruptcy of BPES. No creditor validly required the assignment of the rights against FINMA.

- d) Assignment of liability claims against governing bodies

By Circular No. 11 to the creditors, the liquidator offered in assignment to the creditors the claims for liability against the governing bodies of BPES and the governing bodies of the other companies of the Espírito Santo group, including the governing bodies of ESI and Rio Forte, as well as contractual claims based on various insurance policies.

As of the date hereof, the liquidator has granted the rights to 111 creditors of BPES. The assignment of the rights was denied to approximately 50 creditors who had not fulfilled the conditions for the assignment of the rights. These figures are not definitive, however.

8. Claims register

Pursuant to that which has been announced in the circular concerning 2016, the liquidator published a first version of the claims register in April 2017. A claims decision was sent to each creditor, with an indication of the amount lodged, the amount admitted (where applicable) and the class in which the claim had been admitted.

Around thirty actions to challenge the claims register have been filed to date, of which around ten have been settled with the agreement of the Supervisory Board. The other actions to challenge the claims register are still pending.

On the liquidator's proposal, the Supervisory Board and FINMA validated a provisional distribution of the liquidation dividend of 100% to the 1st and 2nd class creditors, notably former employees of BPES. The dividend paid to these creditors (around 60) totals approximately CHF 1.3 million.

The payment of the dividend to these creditors took place principally on 29 September and 2 and 4 October 2017. In 2018, the estate in bankruptcy will pay the social security charges (employee and employer shares) due to the collection agencies, which are not included in the aforementioned sum of CHF 1.3 million and which have been withheld on the dividend paid to former employees concerning the employees' share.

The creditors are referred to Circular No. 14 for the interim allocation of the liquidation dividends to third-class creditors.

9. Automatic International Exchange of Tax Information ("AEOI")

According to the competent authorities, BPES is a reporting Swiss institution subject to the provisions of the Federal Law on the Automatic International Exchange of Tax Information (AEOIL). The AEOI obliges Swiss financial institutions (including BPES) to identify accounts subject to declaration and to report them to the Federal Tax Administration (FTA). Both the accounts of natural persons and the accounts of entities but be reported.

A general correspondence has been sent to all former BPES clients as of 30 October 2017. This correspondence (and its appendices) is also available on the liquidation website (see figure 13 below).

10. BPES Supervisory Board

The BPES Supervisory Board, established by a FINMA decision on 19 May 2016, has met eight times in 2017. The Supervisory Board deliberated on the following topics:

- The settlement with CBH Compagnie Bancaire Helvétique SA;
- Handling of liability claims against the Swiss Financial Market Supervisory Authority FINMA;
- Handling of liability claims against the governing bodies of BPES and other companies of the Espírito Santo group;
- Recovery of debts and the conclusion of the contract with Intrum Justitia;
- Handling of the Pauliana claims of the bankrupt estate;
- Handling of claims admitted to the claims register filed in April 2017;
- Provisional distributions of the dividend in favour of the creditors;
- Position of the estate in bankruptcy in the context of friendly settlements in connection with third party claims or claims of the estate in bankruptcy against third parties;
- Position of the estate in bankruptcy in the context of requests from the *US Department of Justice* (US program);
- Approval of liquidator fees (see point 11 below).

11. Estate in bankruptcy expenses

A detailed statement of expenses of the estate is submitted to FINMA on a monthly basis. Pursuant to Article 36 (2) of the OIB-FINMA, the final account is subject to the approval of FINMA at the end of the liquidation.

As of 31 December 2017, the expenses of the estate in bankruptcy after the opening of bankruptcy amounted to approximately CHF 33 million (without consideration of the liquidation proceeds received as of 19 September 2014).

The expenses of the estate were incurred in order to carry out the operations of the liquidation itself but also, to a very large extent (the liquidator estimated that over 50% of total costs), in order to preserve the human, technical and computer resources required to proceed with the payment of segregated assets in favour of former BPES clients, whose amount on the day of the bankruptcy exceeded CHF 5.5 billion, as well as activities related to the detention of these assets (including relationships with and reporting to the criminal, civil and administrative authorities in Switzerland and abroad).

The estate expenses for 2017 are as follows:

- Salaries and personnel costs:	<i>pm</i>
- Information/communication/technology:	CHF 600,000
- Costs of premises and facilities/general:	CHF 100,000
- Indemnities paid following the conclusion of settlement agreements:	CHF 400,000
- Fees of Carrard Consulting SA:	CHF 2,200,000
- External agents:	CHF 470,000
- Supervisory Board Fees:	CHF 230,000
Total (rounded):	CHF 4,000,000

Appendix 1 provides a breakdown of the expenses of the estate in bankruptcy as of 19 September 2014.

The liquidator's fees were analysed by the Supervisory Board for the period from 19 September 2014 to 31 December 2017; the Supervisory Board did not object to the liquidator's fees for this period.

12. Next steps in the liquidation

The next steps of the liquidation are described below. It is nevertheless appropriate to exclude any difficulties that the liquidator may encounter in accomplishing its tasks. Among the latter are part of requirements that may result for the estate under the regulations or ad hoc requests from US authorities (FATCA, qualified intermediaries, providing information to the US Department of Justice) as well as new standards with regard to automatic exchange of information.

The first months of 2018 will be devoted to the provisional distribution of the dividends in favour of third class creditors (see Circular no. 14), as well as the preparation of an action plan for securities still deposited with BPES (including GES securities) and an action plan for intra-group debt. The liquidator may also be required to carry out certain operations in connection with the assignment of claims for liability against governing bodies and certain insurers (access management for the bankruptcy file, interruption of the limitation, coordination in the event of request by the assignee creditors).

The legal proceedings will be continued during 2018, in particular following the filing of certain actions against the claims register.

For the rest, the liquidator will continue to carry out the usual operations of liquidation of a bank through bankruptcy.

13. Invitation to consult the website

The liquidator shall publish information on the BPES website, whose web address is: We invite you to visit the site regularly in order to be aware of this information.

The liquidator will be at your disposal for any questions arising from this document.

Yours faithfully,

The Liquidator, Carrard Consulting SA

Appendix 1 - Estate expenses