

Carrard Consulting SA

To the creditors of Banque Privée
Espírito Santo SA in liquidation

Lausanne, February 2021

Banque Privée Espírito Santo SA in liquidation (BPES): Circular no. 27 for the attention of BPES creditors – status of liquidation operations at the end of 2020

Dear Sir/ Madam,

The purpose of this circular is to provide BPES creditors with a summary on the progress of liquidation operations at the end of 2020. It informs the creditors of the major steps that have been undertaken by the liquidator and on the main ongoing and future liquidation operations. Its content is not exhaustive but, in the interests of transparency, it seeks to provide the creditors with comprehensive information on the situation to date. The liquidator makes no warranty as to the content of the information, since the liquidator is not solely responsible for the accuracy and truthfulness thereof.

This circular is accompanied by (i) the liquidator's Circular no. 28 concerning the assignment of certain claims and a plan to realise the assets and (ii) for the affected creditors, a statement relating to the second provisional distribution of the liquidation dividend (see point 6 below).

This circular is sent, together with the aforementioned documents, by registered mail only to creditors (i) who are third-ranked in the creditors' priority ranking filed in April 2017 or in the additional creditors' priority ranking of October 2020, or (ii) whose rejection of the third-class claim was the subject of an action disputing the creditors' priority ranking which has not been definitively settled against the creditor, or (iii) who have had the processing of their claim suspended in the creditors' priority ranking or (iv) whose claim was generated late and has not yet been processed by the liquidator. It is also published on the liquidator's website.

1. Progress of liquidation operations and staff situation

Liquidation activities are carried out at the premises of Carrard Consulting SA, Lausanne, Place St-François 7, case postale 5671, 1002 Lausanne, Switzerland. The bankruptcy estate has not remunerated any employee of the bank since 30 June 2016.

2. Ongoing banking activity and IT systems

A person employed by the liquidator continues to carry out securities transactions and verifications of the assets recorded in the books at BPES and with custodians, including the cash assets of former customers. This person also regularly verifies the cash assets available to the bankruptcy estate.

3. Key liquidation figures

The key liquidation figures can be summarised as follows (as at 31 December 2020):

| | | |
|--|---|--|
| - Cash available to the bankruptcy estate: | CHF 60.6 million | |
| - Segregated cash (customer assets): | CHF 18.7 million | |
| - Number of securities positions held by customers with BPES ¹ : | 133 | |
| - Distribution of liquidation dividend in favour of creditors: | <i>Paid as at 31/12/20 (in CHF)</i> | <i>Still due as at 31/12/20 (in CHF)</i> |
| • 1 st -class creditors ² : | 838,053 | 2,469 |
| • 2 nd -class creditors (excluding preferred deposits): | 512,994 | - |
| • 2 nd -class creditors (preferred deposits only): | 17,684,547 | 1,885,950 |
| • 3 rd -class creditors (first provisional distribution – before deduction of 30% retention on claims for damages): | 16,767,964 | 10,094,681 ³ |

Segregated cash of approximately CHF 18.7 million consists of customer assets still deposited with BPES due to uncertainty over their legal fate, civil or criminal sequestrations, because they are the subject of a dispute among several announced holders or because they have not been claimed to date.

¹ Excluding securities issued by Espírito Santo Group entities.

² This item does not include social security contributions owed to pension funds related to employee claims admitted to the creditors' priority ranking or benefits paid under the emergency social plan.

³ This amount does not take into account any claims of the estate arising after the bankruptcy, which could be opposed for set-off.

The first provisional distribution of BPES' liquidation dividend of 2.8% (less a 30% withholding on claims for damages in connection with investments in Espírito Santo Group products) paid more than CHF 16.7 million to third-class creditors. Many creditors have not yet come forward validly.

In addition, waiver by some creditors of any claims in the bankruptcy of Luxembourg companies that are debtors of debt securities and fiduciary investments that gave rise to claims for damages admitted to the bankruptcy of BPES has made it possible to release the 30% deduction in favour of these creditors, totalling CHF 1 million. This last amount is included in the above-mentioned amount of CHF 16.7 million.

4. Generation of claims in the companies of the Espírito Santo Group

No decision has been taken so far by the administrators of the Luxembourg companies Espírito Santo International SA ('ESI'), Rio Forte Investments SA ('Rio Forte'), ESFIL - Espírito Santo Financière SA ('ESFIL') and Espírito Santo Financial Group SA ('ESFG') on claims produced by the liquidator on behalf of BPES and on behalf of former BPES customers.

Information on the status of each of these entities is available on the Luxembourg administrators website: <http://www.espiritosantoinsovencies.lu/>.

The Office for Bankruptcies of the Eastern District of Vaud rejected the claims generated by the liquidator in the ancillary bankruptcies of ESI and Rio Forte initiated in Switzerland, following the recognition of the bankruptcy judgements pronounced in Luxembourg against these entities. The liquidator contested these decisions by filing an action to dispute the creditors' priority ranking before the competent judicial authorities. The proceedings are stayed and discussions are underway with the administrators of ESI and Rio Forte.

5. Inventory of assets and realisation

a) General

The inventory of assets is available to creditors. In summary, the following items may be disclosed to creditors in relation to 2020:

- The estate was able to collect a total amount of approximately CHF 3.8 million due to revocatory claims, notably by the signing of several settlement agreements;
- The estate was able to collect an amount of approximately CHF 630,000 following the signing of a settlement agreement with a former independent manager;
- Securities deposited in the nostro account of the estate were able to be sold for more than CHF 19,500;

- Loans, unsecured or secured with collateral consisting of group securities or non-group securities, amounted to CHF 122 million at the start of the bankruptcy. An amount in the order of CHF 24 million has been recovered or repaid to date. The contract entered into in 2017 with international collection company Intrum Justitia enabled the estate to recover amounts of CHF 141,700 as at 31 December 2020 (net amounts after deduction of fees due to Intrum Justitia for its work).

In general, the liquidator's activity enabled BPES to receive more than CHF 6 million in 2020.

The above figures do not include the realisations described in the asset realisation plan (circular no. 28) attached to this circular.

b) Assignment of claims

By circular no. 23 of the liquidator, the estate assigned the revocatory claims against two former directors of BPES. 4 creditors of BPES are assignees of the rights.

By circular no. 25 of the liquidator, the estate assigned specific claims against three former BPES customers. No BPES creditor requested the assignment of the rights of the estate.

c) Assignment of liability claims against corporate bodies

By circular no. 11, the liquidator offered to assign to creditors the liability claims against the corporate bodies of BPES and the corporate bodies of the other companies of the Espírito Santo Group, including the corporate bodies of ESI and Rio Forte, as well as contractual claims based on various insurance policies.

As at the date hereof, 58 BPES creditors still hold rights assigned to them and have acted within the time limit set by the liquidator by bringing action against certain corporate bodies. No legal action was initiated against the insurers concerned by Circular no. 11.

d) Custody fees

The invoicing of custody fees for 2020 for the Espírito Santo Group shares and the non-transferable securities enabled the estate to receive a total amount of around CHF 138,000.

Custody fees for the same amount will be deducted for 2021.

6. Additional creditors' priority ranking and distribution of liquidation dividend

The liquidator filed an additional creditors' priority ranking on 29 October 2020, in which claims were accepted for approximately CHF 30 million (late claims and claims until then suspended) in 3rd-class claims.

On the proposal of the liquidator, the Supervisory Committee (at its meeting of 11 November 2020 and by circulation) and FINMA (by correspondence of 1 February 2021) approved a second provisional distribution of 2.2% of the liquidation dividend, bringing the total estimated liquidation dividend to 5%. The 30% deduction in relation to claims for damages also applies to this second provisional distribution of liquidation dividend for the creditors affected.

As of the date of this circular, this second distribution relates only to creditors admitted to the creditors' priority ranking in April 2017; the liquidator will require a similar authorisation for claims admitted to the additional creditors' priority ranking of October 2020 in a second phase.

Creditors who have not yet sent the necessary information and documents for payment are invited to do so as soon as possible. All information is available on the liquidator's website (see figure 13 below).

7. Ongoing legal proceedings

As at 31 December 2020, some ten or so legal proceedings involving BPES were pending before the Swiss courts, with the exception of proceedings initiated in the United States and British Virgin Islands by the liquidators of the Madoff and Fairfield funds ('Madoff proceedings').

These are essentially proceedings disputing creditor's prioritisation decisions made by the liquidator in April 2017 and October 2020, as well as revocatory procedures.

With respect to the Madoff proceedings, the former customers concerned refused to fund the lawsuits against the estate, so that the liquidator terminated the mandate of US lawyers tasked with the defence of the estate in the proceedings, in order to limit costs. The assets of the customers affected are retained by the liquidator in order to cover the costs of the procedures. However, the blocked amounts do not fully cover the estate's expenditures and costs associated with potentially being unsuccessful in the proceedings.

8. Automatic Exchange of Information (AEOI)

As a reminder, the liquidator had discovered that BPES was no longer to be qualified as a reporting Swiss institution subject to the provisions of the Federal Act on the Automatic Exchange of Information (AEOI Act) as of 2018. No activity should therefore be taken up in 2020 on this subject.

9. QI and FATCA reporting

The 2019 QI (Qualified Intermediaries) report was produced by the liquidator within the time limit extended to 15 April 2020.

The liquidator noted that, following the transfer or sale of securities in 2020 on the part of creditors, no US securities triggering QI reporting were held in BPES' books as at 31 December 2020. As a result, BPES terminated the QI contract and was able to close the deposit accounts specific to US accounts with its bank counterparties. The liquidator will be required to carry out the last QI 2018–2020 certification in June 2021.

In addition, in the context of FATCA, following the amendment of the Double Taxation Agreement between Switzerland and the United States announced in the previous circular, in 2020, BPES continued preparation of the necessary measures to be able to respond to the Federal Tax Administration within the time limit that would be granted to it if a grouped request (according to article 5 of the FATCA agreement) were to be made. No request was received in 2020, but it could be received during 2021. BPES is assisted by an external consultant in order, in particular, to be able to transmit the data in the format required by the US tax authorities.

10. BPES Supervisory Committee

The BPES Supervisory Committee, established by a FINMA decision of 19 May 2016, met four times in 2020. In particular, the Supervisory Committee discussed the following topics:

- Transactions entered into by the estate with certain creditors and debtors of the estate, including certain transactions described in the asset realisation plan (circular no. 28);
- The approval of claims admitted to the additional creditors' priority ranking;
- The approval of an additional distribution of liquidation dividend in favour of creditors;
- The approval of certain budgets for external providers;
- The authorisations to plead required by the liquidator in order to enforce in court the claims of the estate against certain debtors;
- The provisional distributions of the liquidation dividend in favour of creditors resulting from settlement agreements;
- The transfer to creditors of certain claims of the estate;
- Certain intra-group claims;
- Validation of the liquidator's fees (see figure 11 below).

11. Costs of the bankruptcy estate

The detailed breakdown of costs of the estate is now provided quarterly to FINMA. In accordance with Article 36(2) AMLO-FINMA, the final account is subject to FINMA approval.

As at 31 December 2020, the costs of the bankruptcy estate as from the start of the bankruptcy amounted to approximately CHF 41.1 million.

The estate costs were incurred in order to carry out the liquidation operations themselves but also, to a very large extent (which the liquidator estimates at more than 50% of the total costs), for the purpose of maintaining the human, technical and IT resources necessary for deviating the segregated assets in favour of former BPES clients, whose amount on the date of the bankruptcy exceeded CHF 5.5 billion, as well as the activities related to ownership of these assets (including relations and reporting to Swiss and foreign criminal, civil and administrative authorities).

The estate costs for 2020 break down as follows:

| | |
|---|----------------------|
| - Information/ communications/ technology: | CHF 416,000 |
| - Carrard Consulting SA fees: | CHF 820,000 |
| - External agents: | CHF 380,000 |
| - Supervisory Committee fees: | CHF 40,000 |
| - General expenses: | CHF 90,000 |
| - Custody fees and negative interest ⁴ : | CHF 440,000 |
| Total (rounded): | CHF 2,186,000 |

Appendix 1 details the changes in estate costs as of 19 September 2014.

The Supervisory Committee has not objected to the fees of the liquidator submitted to it.

12. Next steps in the liquidation

The next steps in the liquidation are described below. However, it is important to reserve any difficulties that the liquidator may encounter in the performance of its duties.

⁴ This amount is net of custody fees and negative interest charged to the customers.

2021 will be devoted to the second provisional distribution of the liquidation dividend. The liquidator will continue negotiations with the administrators of the companies of the Espírito Santo group to process intra-group claims. A provisional final account is also being prepared. The fate of the non-transferable securities will also be analysed in detail in order to find a solution for their exit from BPES deposits.

Pending legal proceedings will continue during 2021, as will payment of the provisional dividend to creditors who have not yet received it. The liquidator will also likely be required to provide information and particulars to the transferee creditors as part of liability claims against the corporate bodies.

For the remainder, the liquidator will continue to carry out the usual liquidation operations of a banking institution through bankruptcy proceedings.

13. Invitation to visit the website

The liquidator publishes information on the BPES website, which may be accessed at: www.liquidator-bpes.ch. Please visit it regularly so that you are aware of this information.

The liquidator is at your disposal should you have any queries about this document.

Yours faithfully,

The liquidator, Carrard Consulting SA

Appendix 1 - Costs of the estate