

Carrard Consulting SA

To the creditors of Banque Privée
Espírito Santo SA in liquidation

Lausanne, March 2023

Banque Privée Espírito Santo SA in liquidation (BPES): Circular no. 33 for the attention of BPES creditors – status of liquidation operations at the end of 2022

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 2022. It informs the creditors of the major steps that have been undertaken by the liquidator and concerning the main ongoing and future liquidation operations. Its contents are not exhaustive. Rather, 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 sent, by registered mail, only to creditors (i) who are third-ranked in the priority ranking of creditors filed in April 2017 or in the additional priority ranking creditors of October 2020, or (ii) whose rejection of the third-class claim was the subject of an action disputing the priority ranking of creditors which has not been definitively settled against the creditor, or (iii) who have had the processing of their claim suspended in the priority ranking of creditors 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 still being 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. Banking activity carried on

An individual 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:

	At 31 December 2022		At 31 December 2021	
- Cash available to the bankruptcy estate ¹ :	CHF 40.1 million		CHF 42.1 million	
- Segregated cash (customer assets):	CHF 12.3 million		CHF 17.8 million	
- Number of securities positions held by customers with BPES ² :	92		100	
- Distribution of liquidation dividend in favour of creditors:	Paid as at 31/12/2022 (in CHF)	Still due as at 31/12/2022 (in CHF)	Paid as at 31/12/2021 (in CHF)	Still due as at 31/12/2021 (in CHF)
• 1st-class creditors ³ :	838,053	2,469	838,053	2,469
• 2nd-class creditors (excluding preferred deposits):	512,994	-	512,994	-
• 2 nd -class creditors (preferred deposits only) ⁴ :	17,751,844	1,829,546	17,742,028	1,828,469

¹ Excluding segregated cash (customer assets).

² Excluding securities issued by Espírito Santo Group entities.

³ This item does not include social security contributions owed to pension funds related to employee claims admitted to the priority ranking of creditors or benefits paid under the emergency social plan.

⁴ Total amount due increased by CHF 10,893.02 after the liquidator identified an error in the accounting of a claim at the time of bankruptcy by the bank's services.

• 3 rd -class creditors (first provisional distribution):	19,294,072	8,083,516 ⁵	18,782,699	8,594,889 ⁵
• 3 rd -class creditors (second provisional distribution):	15,429,048	6,265,387 ⁵	14,963,103	6,731,332 ⁵

Segregated cash of approximately CHF 12.3 million consists of customer assets still deposited with BPES due to uncertainty over their legal fate, criminal sequestrators, because they are the subject of a dispute among several announced holders or because they have not been claimed to date.

The first provisional distribution of BPES' liquidation dividend in the amount of 2.8% made it possible to pay more than CHF 19.2 million to third-class creditors. The second provisional distribution of 2.2% made it possible to pay around CHF 15.5 million to these same creditors. These amounts include the release of the 30% deduction for claims for damages in connection with investments in Espírito Santo Group securities where the creditors concerned have waived their Espírito Santo Group securities and/or have transferred to the estate their claims arising from fiduciary investments with group companies (for more information on the 30% deduction in respect of claims for damages, creditors are invited to read circular no. 14 of the liquidator).

Almost one-third of the amounts that were eligible for distribution to third class creditors have not been distributed to date because they have not been claimed. Creditors who have not yet sent the necessary information and documents for payment are invited to do so as soon as possible. All information can be found on the liquidator's website (see figure 14 below).

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. Several individual creditors, however, challenged whether the BPES bankruptcy estate was right to file claims on behalf of former BPES customers. These disputes will be decided by the competent Luxembourg courts, and the bankruptcy estate will participate in these proceedings to defend its position.

Information on the status of each of these entities can be found on the Luxembourg administrators website: <http://www.espiritosantoinsovincies.lu/>.

⁵ This amount is before a 30% deduction on claims for damages; it does not take into account any claims of the estate arising after the bankruptcy, which could be opposed for set-off.

As indicated in the 2020 report, 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 against these entities in Luxembourg. The liquidator contested these decisions by filing an action to dispute the priority ranking of creditors before the competent judicial authorities. In 2021, the parties agreed to suspend the proceedings with a view to facilitating settlement talks in view of the mutual claims of the parties in question.

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 2022:

- The estate collected an amount of CHF 100,000 in performance of a settlement agreement with a former independent manager;
- The estate collected an amount close to CHF 700,000 following the signing of a settlement agreement with former clients of an entity of the Espírito Santo group (debt recovery against said entity);
- The estate was successful in legal proceedings (defence of a claim by asserting revocation claims) and was able to appropriate assets amounting to approximately CHF 460,000;
- Securities deposited in the nostro account of the estate were able to be sold for more than CHF 12,000;
- 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. A sum in the amount of CHF 26 million has been recovered or repaid to date.

The estate also asserted a lien on the assets then deposited by ESI, Rio Forte and Espírito Santo Control SA with BPES. The right of lien must serve to secure the nostro claims of the estate. The right of lien of the estate is being contested by the Luxembourg receivers of the aforementioned companies; the assets concerned are also sequestered by the Swiss criminal authorities, or by the Luxembourg criminal authorities on delegation from the Swiss criminal authorities when the assets are located in Luxembourg. The estate has taken numerous steps to claim the assets in question, but these steps are complex due to the international nature of the dispute and the claims made by numerous counterparties to the assets. The value of these assets is difficult to estimate; according to information available to the liquidator, one of the companies involved, Espírito Santo Health Care Investments SA, paid a liquidation dividend, of which BPES claims the share allocated to Rio Forte, i.e. €28.6 million.

b) Transfer of claims

During the year 2022, the liquidator offered for assignment:

- Numerous claims against some former BPES clients (Circulars nos. 31 and 32);
- Claims against a group company, ES Bank (Panamá) S.A., in liquidation (Circular no. 31).

No creditor has validly requested the assignment of the rights of the estate.

Two plans for the realisation of the assets were also published in the same circulars, which did not give rise to any dispute.

c) Transfer of liability claims against bodies

By way of reminder, 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 Espíritu Santo Group, including the corporate bodies of ESI and Rio Forte, as well as contractual claims based on various insurance policies.

Assignee creditors acted within the deadline set by the liquidator by taking action against certain bodies and the proceedings are ongoing.

d) Custody fees

The invoicing of custody fees for the Espíritu Santo Group securities for 2022 and the non-transferable securities enabled the estate to receive a total amount of around CHF 120,000.

Custody fees in the same amount have been invoiced for 2023.

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

By way of reminder, the Supervisory Committee (at its meeting of 11 November 2020 and by way of 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%, for creditors admitted to the priority ranking of creditors of April 2017. The liquidator requested and obtained a similar authorisation for claims admitted to the supplementary priority ranking of creditors of October 2020. The 30% deduction in relation to claims for damages also applies to this second provisional distribution of liquidation dividend for the affected creditors (see, however, figure 3 above).

At this stage, the liquidator has not taken any decision on a possible third provisional dividend distribution.

7. Ongoing legal proceedings

As of 31 December 2022, fewer than ten legal proceedings involving BPES were still pending before the Swiss courts.

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 regard to the Madoff proceedings, the liquidator is maintaining its practice, approved by the Supervisory Committee, of endeavouring to retain 10% of the amount of the recourse claims against each client concerned, with the balance of the assets having been released.

8. QI and FATCA reporting

By way of reminder, BPES has terminated the QI Agreement and creditors are referred to the 2021 circular if they wish to obtain further details.

In addition, the liquidator did not produce any FATCA reports in January 2023 for the 2022 tax year as no accounts have triggered reporting obligations since 1 January 2022.

9. Negative interest

The collection of negative interest was discontinued in 2022, as the bank with which the assets of the fund are deposited waived the levying of such negative interest.

10. Final account

In view of the length of the bankruptcy proceedings and the large number of accounting transactions, the liquidator and FINMA sought to agree on the form and contents of the final account. The liquidator submitted to FINMA for approval a draft final account covering an initial period from the bankruptcy (19 September 2014) to 30 June 2016, when the Avaloq operating system was shut down and the accounting was migrated to the Cresus software.

11. BPES Supervisory Committee

The BPES Supervisory Committee, established by a FINMA decision of 19 May 2016, met four times in 2022. In particular, the Supervisory Committee discussed the following topics:

- The settlements entered into by the estate with certain creditors and debtors of the estate, including entities of the Espírito Santo group;
- Authorisation to take legal action against certain debtors of the estate;
- The fate of criminally sequestered assets over which the estate asserts pledge rights;

- The approval of certain budgets for external providers and third-party agents;
- The transfer to creditors of certain claims of the estate;
- Validation of the liquidator's fees (see figure 12 below).

12. Costs of the bankruptcy estate

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

As at 31 December 2022, the costs of the bankruptcy estate as from the start of the bankruptcy amounted to approximately CHF 46.6 million (including the fees invoiced by third-party sub-depositories such as Euroclear/ Fundsettle).

The estate costs were incurred in order to carry out the liquidation operations themselves but also, to a very large extent, for the purpose of maintaining the human, technical and IT resources necessary for deviating the segregated assets in favour of former BPES clients, the amount of which 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 2022 break down as follows:

- Information/ communications/ technology:	CHF 204,000
- Carrard Consulting SA fees:	CHF 730,000
- External agents:	CHF 360,000
- Supervisory Committee fees:	CHF 33,000
- General expenses:	CHF 25,000
- Custodial fees paid by the estate:	CHF 207,000
- Custodial fees charged to clients:	(CHF 124,000)
- Negative interest paid by the estate:	CHF 170,000
- Other proceeds billed to clients ⁶ :	(CHF 155,000)
Total (rounded):	CHF 1,450,000

Estate proceeds for 2022 amounted to approximately CHF 25,000.

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

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

13. Next steps in the liquidation

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

2023 will be devoted to defending the interests of the estate and the clients/former clients of BPES in the proceedings in Luxembourg and to negotiating with the receivers of the Espírito Santo Group companies in order to deal with intra-group claims.

Pending legal proceedings will continue during 2023, 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 assignee creditors as part of liability claims against the corporate bodies.

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

⁶ Including: re-invoicing of negative interest, income on sale and transfer of securities (net).

14. 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