

Carrard Consulting SA

To the creditors of Banque Privée
Espírito Santo SA in liquidation

Lausanne, April 2024

The English version of this circular is published on the liquidator's website. In case of discrepancy between the two versions, the French version shall prevail.

Banque Privée Espírito Santo SA in liquidation (BPES): Circular No 34 for the attention of BPES' creditors – status of liquidation operations at the end of 2023

Dear Sir/ Madam,

The purpose of this circular is to summarise for BPES' creditors the progress of the liquidation operations at the end of 2023. It provides information to creditors on the significant steps taken by the liquidator as well as on the main ongoing and future liquidation operations. Its contents are not exhaustive but aim to provide creditors with the best possible information on the situation to date, in the interests of transparency. The liquidator makes no warranty as to the content of the information, the accuracy and veracity of which does not depend exclusively on the liquidator.

This circular is sent by registered letter only to those creditors that are (i) classified in third class in the schedule of claims filed in April 2017 or in the additional schedule of claims of October 2020, or (ii) whose rejection of the third class claim has been the subject of an action challenging the schedule of claims which has not been definitively settled against the creditor, or (iii) the processing of whose claim has been suspended in the schedule of claims, or (iv) whose late claim has not yet been processed by the liquidator. It will also be published on the liquidator's website.

1. Conduct of liquidation operations and staff situation

The liquidation activities continue to take place at the premises of Carrard Consulting SA, in Lausanne, whose address is now: place St-François 7, P.O. box, 1001 Lausanne, Switzerland. The bankruptcy estate has not paid any employees of the bank since 30 June 2016.

2. Banking activity continued

Staff employed by the liquidator continue to carry out securities transactions and verification of assets recorded at BPES and with custodians, including the cash assets of former customers. They also verify on a regular basis the cash assets available to the bankruptcy estate.

3. Key figures of the liquidation

The key liquidation figures can be summarised as follows:

	At 31 December 2023		At 31 December 2022	
- Cash available to the bankruptcy estate ¹ :	CHF 39,041,398		CHF 40.1 million	
- Segregated liquidity (customer assets):	CHF 11.1 million		CHF 12.3 million	
- Number of securitisation positions held by customers with BPES ² :	91		92	
- Distribution of money to creditors:	Paid as at 31.12.23 (in CHF)	Still due as at 31.12.23 (in CHF)	Paid as at 31.12.22 (in CHF)	Still due as at 31.12.22 (in CHF)
• 1 st class creditors ³ :	840,522	-	838,053	2,469
• 2 nd class creditors (excluding preferential deposits):	512,994	-	512,994	-
• 2 nd class creditors (preferential deposits only):	17,805,295	1,776,095	17,751,844	1,829,546
• 3 rd class creditors (first interim distribution):	19,742,876	7,634,712 ⁴	19,294,072	8,083,516 ⁴

¹ Excluding segregated liquidity (customer assets).

² Excluding securities issued by entities of the Espírito Santo group.

³ This item does not include social security contributions due to pension funds related to wage claims admitted to the schedule of claims or benefits paid under the social emergency plan.

⁴ This amount is before deduction of the 30% withholding on claims for damages; it does not take into account any claims of the estate arising after the bankruptcy that could be opposed for set-off.

<ul style="list-style-type: none"> 3rd class creditors (second interim distribution): 	15,784,900	5,909,535 ⁴	15,429,048	6,265,387 ⁴
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Segregated liquidity amounting to approximately CHF 11.1 million consists of customer assets still deposited with BPES due to uncertainty as to their legal fate, criminal seizure, because they are the subject of a dispute between multiple announced holders or because they have not been claimed to date.

The first interim distribution of BPES' liquidation dividend of 2.8% meant it was possible to pay more than CHF 19.7 million to third-class creditors. The second interim distribution of 2.2% meant it was possible to pay approximately CHF 15.8 million to these same creditors. These amounts include payment of the 30% withholding for claims for damages in connection with investments in securities of the Espírito Santo group when the creditors concerned have waived their securities in the Espírito Santo group and/or assigned to the estate those of their claims arising from fiduciary investments with group companies (for more information on the 30% withholding in respect of claims for damages, creditors are invited to read liquidator's circular no 14).

To date, the estate has been unable to distribute large amounts due to creditors admitted to a schedule of claims (approx. CHF 13.55 million), since it has not received valid payment instructions. Creditors who have not yet sent the information and documents required for the payment are asked to do so as soon as possible. All information is available on the liquidator's website (see figure 11 below).

4. Filing of claims in Espírito Santo group companies

To date, no decision has been made by the trustee of the Luxembourg companies ESFIL – Espírito Santo Financière SA ("ESFIL") and Espírito Santo Financial Group SA ("ESFG") on the claims filed by the liquidator on behalf of BPES' former customers.

The trustees of Espírito Santo International S.A. ("ESI") and Rio Forte Investments SA ("Rio Forte") challenged certain claims filed by individual creditors, which are based on the same debt securities as those invoked by the BPES bankruptcy estate in support of its claims filed on behalf of former customers. These disputes will be settled by the competent Luxembourg courts, and the estate will intervene in these proceedings to defend its position.

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

As indicated in the 2020 report, the Bankruptcy Office for the Vaud East District rejected the claims filed 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 challenged these decisions by filing actions which challenged the schedule of claims before the competent judicial authorities, the main argument being based on the existence of a

right of pledge. In 2021, the parties agreed to suspend the proceedings in order to hold settlement discussions given the reciprocal claims of the parties concerned.

5. Inventory of assets and disposal

a) General

The inventory of assets is available to creditors. In summary, the following information can be communicated to creditors in relation to 2023:

- The estate collected an amount of CHF 300,000 pursuant to a settlement agreement with a former service provider (revocatory claims);
- The estate collected an amount of close to CHF 200,000 following the execution of a settlement agreement with former customers of an entity of the Espírito Santo group (debt recovery against said entity), first part of an amount of approximately CHF 500,000 had been collected in 2022;
- As at 31 December 2023, an amount of approximately CHF 27 million had been recovered or repaid by the debtors of the estate as from the time the bankruptcy was instituted.

The estate also asserts a right of pledge over the assets at that time deposited by ESI, Rio Forte and Espírito Santo Control SA with BPES. The right of pledge must be used to guarantee the estate's nostro claims. The estate's right of pledge is disputed by the Luxembourg trustees of the aforementioned companies; moreover, the assets concerned are seized by the Swiss criminal authorities, respectively by the Luxembourg criminal authorities on delegation from the Swiss criminal authorities when assets are located in Luxembourg. The estate has initiated numerous steps intended to claim the assets concerned, but these steps are complex due to the international nature of the dispute and the claims made on the assets by a number of opponents. The value of these assets is difficult to assess; based on the information available to the liquidator, one of the companies concerned, Espírito Santo Health Care Investments SA, has paid a liquidation dividend, of which BPES claims the share allocated to Rio Forte, i.e. EUR 28.6 million.

b) Assignment of liability claims against the corporate bodies

By way of reminder, by means of circular No 11, the liquidator offered for assignment to creditors the liability claims against the corporate bodies of BPES and the corporate bodies of the other companies of the Espírito Santo group, in particular the bodies of ESI and Rio Forte, as well as the contractual claims based on multiple insurance policies.

Assignee creditors have taken action within the time limit set by the liquidator by initiating legal proceedings against certain corporate bodies and the proceedings are ongoing.

c) Custody fees

The invoicing of custody fees for 2023 for the securities of the Espírito Santo group and the non-transferable securities enabled the estate to collect a total amount of approximately CHF 107,000.

Custody fees of a similar amount are charged for 2024.

6. Additional schedule of claims and distribution of dividend

By way of reminder, the Supervisory Commission (in its meeting on 11 November 2020 and by way of circulation) and FINMA (by correspondence of 1 February 2021) approved a second interim dividend distribution of 2.2%, bringing the total estimated dividend to 5%, for creditors admitted to the schedule of claims for April 2017. The liquidator required and obtained a similar authorisation for the claims admitted to the additional schedule of claims for October 2020. The 30% withholding in relation to claims for damages also applies to this second interim dividend distribution for the creditors concerned (see, however, figure 3 above).

At this stage, the amounts the liquidator would be able to distribute (taking into account the uncertainties related to the admission of certain claims and the recovery of certain assets) are too low to justify a third interim distribution of dividend.

7. Legal proceedings in progress

As of 31 December 2023, less than ten legal proceedings involving BPES were still pending before the Swiss courts.

These are essentially proceedings challenging the schedule of claims decisions handed down in April 2017 and October 2020 by the liquidator, as well as revocatory proceedings.

During 2023, two legal proceedings ended: one was settled with a former entity of the Espírito Santo group, which had acted to challenge the schedule of claims; the second procedure was definitively settled by the Federal Court and ruled in favour of the bankrupt estate regarding calculation of the preferential deposit in the particular case of an insurance company.

With regard to the Madoff proceedings, the liquidator is maintaining its practice, approved by the Supervisory Commission, of retaining in the estate, as far as possible, 10% of the amount of the recourse claims against each customer concerned, the balance of the assets having been remitted to the customer.

8. BPES Supervisory Commission

The BPES Supervisory Commission, established by a FINMA decision of 19 May 2016, met four times in 2023. In particular, the Supervisory Commission deliberated on the following subjects:

- Authorisation to institute legal proceedings against certain debtors of the estate;
- The status of post-bankruptcy cash, the holder of which is unknown;
- Use of the criminally seized assets over which the estate asserts rights of pledge;
- Approval of certain budgets for external service providers and third-party agents;
- The assignment to creditors of certain claims of the estate;
- Approval of the liquidator's fees (see figure 9 below).

9. Expenses of the bankruptcy estate

A detailed breakdown of the estate's expenses is submitted to FINMA on a quarterly basis. In accordance with Article 36 paragraph 2 OIB-FINMA, the final account is subject to FINMA approval.

The estate's expenses for 2023 break down as follows:

- Information/ communication/ technology:	CHF 288,000
- Carrard Consulting SA fees:	CHF 684,000
- External agents:	CHF 368,000
- Supervisory Commission fees:	CHF 80,000
- General expenses:	CHF 24,000
- Custody fees paid by the estate:	CHF 199,000
- Custody fees charged to customers:	(CHF 152,000)
- Creditors' interests in favour of the estate:	(CHF 438,000)
- Management fees:	CHF 4,000
Total (rounded):	CHF 1,057,000

The estate's income (excluding custody fees) for 2023 amount to approximately CHF 44,000.

Appendix 1 details the changes in the estate's costs and income from 19 September 2014.

The Supervisory Commission did not object to the liquidator's fees submitted to it.

10. Next stages of the liquidation

The next stages of the liquidation are described below. However, any difficulties the liquidator may encounter in the performance of its tasks should be reserved.

2024 will be devoted to defending the interests of the estate and customers/ former customers of BPES in the proceedings in Luxembourg and negotiating with the trustees of the companies of the Espírito Santo group in order to process intra-group claims.

The pending legal proceedings will be continued throughout 2024, as will payment of the interim dividend to those creditors that have not yet received it. The liquidator will also likely be required to provide information and knowledge to the assignee creditors in the context of liability claims against the corporate bodies.

As for the rest, the liquidator will continue to carry out the usual operations of winding up a banking institution via bankruptcy.

11. Invitation to consult the website

The liquidator publishes information on the BPES website, whose address is www.liquidator-bpes.ch. We invite you to visit it regularly to read this information.

The liquidator is at your disposal should you have any queries regarding this letter.

Yours faithfully,

The liquidator, Carrard Consulting SA

Appendix 1 – Estate expenses