

**Carrard Consulting SA**

To the creditors of Banque Privée  
Espirito Santo SA in liquidation

Lausanne, 6 February 2015

**Banque Privée Espirito Santo SA in liquidation (BPES): Circular for the attention of BPES creditors – status of liquidation operations at the end of the 2014 financial year**

Dear Sir or Madam,

The purpose of this circular is to present in a summary form to the creditors of BPES the status of liquidation operations at the end of the 2014 financial year.

Its aim is to inform creditors about the key steps that have been taken by the liquidator and about the main liquidation operations underway and to come. Its content cannot be exhaustive but is intended to inform creditors about the situation to date, in an effort to be transparent.

Note that this circular has been sent for the first time by post to creditors whose names and addresses are known by the liquidator. It has been preceded by four circulars that have been brought to the knowledge of creditors solely by their publication on the liquidator's website ([www.liquidator-bpes.ch](http://www.liquidator-bpes.ch)).

**1. General situation**

**a) Priority steps of the liquidator**

In general, the liquidator has given priority to the following tasks from the commencement of the bankruptcy on 19 September 2014:

- (i) The identification and inventory of bank assets intended to pay creditors;
- (ii) The payment of privileged deposits to BPES creditors;

- (iii) The transfer of segregated assets deposited with BPES;
- (iv) The management of personnel so as to ensure both the execution of liquidation operations and the decrease in the bank's workforce.

**(1) The identification and inventory of bank assets intended to pay creditors**

Swiss law requires the liquidator to draw up an inventory of the bankruptcy assets. These assets must be used to pay off the creditors of BPES.

The interim inventory of assets and an initial implementation plan are in the process of being drawn up and, in principle, can be provided to creditors at the end of the first quarter of 2015. This information will be accompanied by other documents that can already be transferred to the bankruptcy file (in particular the interim statement of the debt of the bankruptcy – see below – company documents as well as contractual documents).

To date, the liquidator has already sold the following assets (note that the assets must be sold immediately, particularly if they are exposed to a rapid depreciation, if they incur excessively high administrative costs or if they are traded on a representative market):

- works of art have been sold at auction for an amount exceeding €500,000 under execution of contracts signed before the bankruptcy; in general, income from the sale is situated in the initial estimation ranges of the auction houses, indeed above in certain cases; several works are still to be sold, particularly by Sotheby's.
- The four company vehicles, relatively old with high mileage, have been sold for an overall amount of CHF 25,300 (after having received three bids for each vehicle).
- The furniture situated at the head office in Pully, and in the Zurich branch has been bought by the respective new tenants of the offices for amounts exceeding CHF 500,000 (see below).

The liquidator is currently examining Pauliana claims, as well as liability lawsuits against the corporate bodies. Statute of limitations interruptive steps are underway with regard to these bodies. At this time, these assets will be stated for the record in the inventory and the liquidator will determine the follow-up to be given to these claims later on. Creditors will be notified by circular and official publication.

## **(2) The payment of privileged deposits to BPES creditors**

The liquidator has rapidly introduced a process intended to pay the amounts due to BPES creditors in relation to privileged deposits (i.e. up to CHF 100,000) according to applicable laws.

On 23 January 2015, payments made in relation to privileged deposits totalled more than CHF 12 million, representing over 1,200 accounts open with BPES (i.e. around 1,500 depositors) out of a total of some 1,760 accounts. The total amount due to creditors in relation to privileged deposits rises to around CHF 19.5 million, with it being understood, however, that a number of creditors have not yet come forward or have not sent suitable documentation with a view to their repayment. These people need to rapidly send the liquidator the form provided for this purpose, available on the liquidator's website (see below).

## **(3) The transfer of segregated assets deposited with BPES**

Note that shares and other securities pursuant to article 16 of the Swiss federal law on banks and savings banks (hereinafter: LB) registered in the deposit accounts of BPES customers on the day of the bankruptcy are automatically segregated from the bankruptcy assets, likewise cash assets that have resulted from them (e.g. redemption of bonds, dividends, etc.) since the bankruptcy. In other terms, as the shares and other securities are owned by the customer, they do not come under the bankruptcy assets, and therefore do not generate any bankruptcy dividend, but are returned to their owners, subject to the exercising by the insolvent estate of any rights, particularly a right of set-off or exception, enabling it to oppose the diversion of funds.

When the liquidator started its work, it had to deal with a delay of several months in processing the transfer of BPES customer shares and the departure of several employees assigned to these transfers. Therefore, the liquidator immediately took measures intended to deal with the challenge that the transfer of the segregated assets of the BPES creditors represented (and still represent). Among these, we should note:

- (i) Safeguarding, as far as possible, the personnel assigned to the transfer of the segregated assets (back office);
- (ii) Strengthening of the back office by hiring three additional people, under the form of a provision by an external company.

The measures taken by the liquidator must enable it to follow-up as soon as possible the transfer requests issued by BPES creditors. However, the total delay from the start of the liquidator's work has not yet been caught up, despite the measures taken. In particular, certain counterparties often have to be reminded several times by the BPES back office, the status of a bankrupt bank raises questions and requirements

from counterparties that require additional steps and the transfer of certain securities (particularly units from investment funds) takes a considerable time. The large number of securities left to transfer is also due to the fact that a number of holders, in particular former banque restante (holdmail) customers, have not yet sent transfer orders.

As stated in the liquidator's Circular no. 2 of 7 October 2014, the holder's instructions to sell securities ensures a faster transfer of the resulting cash, without the risk of losing the segregation right.

The requests to transfer segregated assets are in general processed in the order of their arrival, subject to exceptions, in particular when mass transfers can be done to a single establishment, enabling faster processing.

On 23 January 2015, segregated assets exceeding CHF 900 million had already been transferred to BPES customers, with the balance remaining to be transferred totalling some CHF 4.7 billion. However, these figures have been drawn up by including all of the bonds and other debt securities issued by the Espirito Santo group, assessed at their nominal value. This value is only indicative since some bonds still have a market value at this time (which differs from the nominal value), whereas many other Espirito Santo group bonds and debt securities seemingly no longer have any real value. The debts and bonds of entities outside the Espirito Santo group, as well as other securities (equity), have been assessed at their market value.

Therefore, the balance of CHF 4.7 billion of securities still deposited at BPES, stated above, is divided up into securities from the Espirito Santo group, on the basis of CHF 3.4 billion, and into securities outside the group totalling CHF 1.3 billion, including around CHF 237 million deposited by customers not affiliated to the Espirito Santo group.

**(4) The management of personnel so as to ensure both the execution of liquidation operations and the decrease in the bank's workforce.**

During the first months of the liquidation, the bank kept some of the personnel as well as the premises and some of the computer services to ensure it could pay the privileged deposits and transfer the securities. These debts created after the commencement of the bankruptcy are called the debt of the bankruptcy. They also include the fees of the liquidator, external agents and all of the obligations required for the liquidation operations. They are deducted from the assets to be used to pay off the bank's creditors.

The interim statement of the debt of the bankruptcy, as well as the assets inventory, will be a part of the information provided to creditors in the bankruptcy file.

The liquidator pays particular attention to the situation of the personnel: each month it analyses whether or not the establishment has enough people with a view to successfully, effectively and economically carry out the liquidation operations.

Out of around 110 employees of BPES in Switzerland on the day of the bankruptcy, to date there are 40 employees remaining whose contracts have not been terminated, who are occupied with tasks that the liquidator must complete with a view to terminating the liquidation of BPES. These employees are mainly assigned to the back office (security transfer department), to payment traffic, computer service, accounting, entry of lodgements and maintaining a telephone hotline.

Regarding leases, the liquidator has found a new tenant for the premises and the furniture of the head office, and this from 1 March 2015 (this date can be postponed for a maximum of three months if required). The first option has already been exercised up to the end of March 2015. Only a very reduced part, independent from the premises will be kept until the end of the 2015 financial year in order to continue the liquidation operations. The furniture was bought for the price of CHF 500,000. This rapid transfer of the lease to a sole third party has enabled us to avoid inclusion in the liquidation assets of an obligation up to the expiry of the lease of over CHF 8 million.

In the Zurich offices, the lease, which expires in 2019, has also been able to be transferred early to a third party effective as of 1 December 2014; furthermore, the new tenant has agreed to buy the furniture for a total of CHF 20,000.

The Geneva lease has not been taken over by the bankruptcy estate. Therefore, the rent up to April 2015, next expiry date, will be lodged in the bankruptcy and entered in the list of creditors.

#### **b) Lodgement of claims**

The liquidator draws up the list of lodgements, which record all of the claims announced to the liquidator by creditors. The period given by the Swiss Financial Market Supervisory Authority (FINMA) to lodge the claims in the bankruptcy of BPES has been fixed at 7 November 2014. Note that in bankruptcy proceedings, late lodgements, which are made after this period, are permitted and will be processed pursuant to the principles of article 251 LP. They will not give rise to the levying of additional costs if they are received before the submission of the list of creditors, and this as long as the late lodgement does not result in a delay in this submission.

To date, around 2,000 lodgements of claims have been registered for an amount exceeding CHF 3 billion (interim figure). This figure does not include claims not announced but that feature on the books of BPES and to this end must automatically be registered pursuant to the legal provisions. The liquidator has not yet made a statement on the validity of these claims. Before stating its opinion, the liquidator will invite the corporate bodies of BPES to decide on all the lodgements. The liquidator

will then draw up the list of creditors, which will state in what measure the claims will have been admitted or set aside. Creditors will be notified by official publication in the Swiss Gazette of Commerce (FOSC) and on the FINMA website of the submission of the list of creditors and the related legal consequences. The submission of the list of creditors will be the subject of a circular.

## **2. Special subjects**

### **a) Situation of the other companies of the Espirito Santo Group**

The Espirito Santo Financière SA (ESFIL), Espirito Santo Financial Group SA (ESFG), Espirito Santo International S.A. (ESI), Espirito Santo Control SA, Rio Forte Investments SA (Rio Forte), ES Bankers (Dubai) and ES Bank (Panama) companies have been declared bankrupt or are in the process of liquidation.

The liquidator has been able to meet the persons in charge of the liquidation of the ESFIL, ESFG, ESI and Rio Forte entities in order to obtain more information on the proceedings underway. Coordination with these people is planned insofar as it would serve the interests of BPES creditors.

Pursuant to the liquidator's Circular no. 3, of 28 October 2014, the liquidator has lodged, on a temporary basis, the claims that BPES holds on behalf of its creditors in the bankruptcies of the ESFIL (for an amount to date exceeding EUR 81 million) and ESFG companies (for an amount to date exceeding EUR 93 million); these claims against ESI and Rio Forte will also be lodged on a temporary basis. A lodgement has already taken place in the bankruptcy of ES Bank (Panama). Later, the liquidator will examine the methods by which the transfer of claims can be formalised to enable holders to individually assert their claims.

### **b) The branch in Portugal**

The branch in Portugal has two offices, one in Lisbon, the other in Porto. The Porto office is now closed.

The liquidation of the BPES branch in Portugal is governed by Portuguese mandatory law.

Under Portuguese law, when BPES has its head office in a non-member State of the European Union, the situation can be summed up as follows:

- The bankruptcy of BPES in Switzerland does not have the immediate effect of causing the liquidation of the branch. In principle, this only takes place by a decision or with the consent of the Bank of Portugal, and under its supervision. The liquidation decision takes place, either due to the withdrawal of the bank licence in Portugal resulting in compulsory liquidation, or following a voluntary liquidation request outside of bankruptcy.

- The Bank of Portugal ordered protective measures for the branch, prohibiting it from granting further credit and purchasing assets; it also appointed the former managers of the branch as interim managers.
- The branch's assets must be allocated as a priority to cover the debts and obligations of the branch in Portugal; they can only be used to honour obligations abroad if the creditors of the branch in Portugal are fully covered.
- The Portuguese branch was obligated to retain liquidities with the Bank of Portugal. From the bankruptcy in Switzerland, the liquidator has taken the computer arrangements to ensure the branch in Portugal cannot use the bank system to make payments to Portugal that would dip into the substance of the branch's assets to the detriment of all of the BPES creditors. However, the branch managers appointed for this purpose by the Bank of Portugal, have used the liquidities deposited with the latter to fully repay the branch's depositors, pursuant to their obligations under Portuguese law (see above).
- The liquidator examines the opportunity to call for the recognition of the bankruptcy in Portugal, as well as the methods for this purpose.

**c) Tax statements**

A number of BPES customers have received tax statements during previous financial years, prepared by the bank. The liquidation proceedings and the personnel available are no longer able to produce such statements, which will no longer be sent to BPES customers.

However, in order to ensure customers can comply with their tax obligations, the information required to compile these tax statements will be provided to the customers concerned, on their request and at their expense.

**d) *ExS Fund (SPC) Limited fund***

By correspondence on 4 November 2014 sent by Rawlinson & Hunter, shareholders were informed that the ExS Fund (SPC) Limited company had been placed into voluntary liquidation from 21 October 2014. The persons in charge of the liquidation of this fund are Matthew Wright and Christopher Kennedy (Rawlinson & Hunter). During this voluntary liquidation period, there will be no assessment of the Net Asset Value (NAV), or monthly or quarterly reports. However, the liquidators of ExS Fund (SPC) will provide shareholders with an annual report on the progress of the liquidation pursuant to their legal obligations. This report will be provided at the start of November 2015 and will cover the period from October 2014 to October 2015. Contact Omar Grant ([OGrant@RHSWCibbean.com](mailto:OGrant@RHSWCibbean.com)) if you have any questions.

**e) Banque restante (holdmail) customers**

Some banque restante (holdmail) customers have still not come forward to the liquidator. In order that the latter is able to send communications, transfer assets or execute customer instructions, the liquidator asks all creditors who have not already done so, **including banque restante customers**, to send as soon as possible a valid communication address by email to [questions@liquidator-bpes.ch](mailto:questions@liquidator-bpes.ch) or by letter to Banque Privée Espirito Santo SA en liquidation, avenue du Général-Guisan 70A, case postale 107, 1009 Pully, Switzerland.

**f) Invitation to view the website**

The liquidator publishes information on the BPES website, the address of which is as follows: [www.liquidator-bpes.ch](http://www.liquidator-bpes.ch). We invite you to visit it regularly in order to find out about this information.

Yours faithfully,

The Liquidator, Carrard Consulting SA