

**Unofficial Translation
of German Original**

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Registered mail

To the bank customers and creditors of
Bank Hottinger & Cie AG in liquidation proceedings

Küsnacht, September 2023

Bank Hottinger & Cie AG in liquidation proceedings; Circular No. 14

Dear Sir or Madam,

We are pleased to provide you with information on the status of the insolvency proceedings of Bank Hottinger & Cie AG ("**Bank Hottinger**").

I. LIQUIDATION STATUS AS AT 30 JUNE 2023

We have updated the liquidation status effective 30 June 2023. Compared to the liquidation status as at 31 December 2022, which we reported to you in Circular No. 13, there have been only a few changes:

The credit balances with banks dropped from around CHF 70.7 million to around CHF 66.9 million. The reduction is mainly due to the payout of a larger customer position, changes in foreign currency exchange rates and the payment of costs incurred during the liquidation. With the payout of the aforementioned customer position, the position "Receivables bank customers (after opening of bankruptcy proceedings)" under the mass debts decreased accordingly.

The provisions for the O. Ltd. case were again adjusted to around CHF 50 million to allow for the changed exchange rate of the US dollar.

II. STATUS OF THE SCHEDULE OF CLAIMS

For the current status of the schedule of claims, please refer to the comments under section II of Circular no. 13.

III. CONCLUSION OF A SETTLEMENT REGARDING LIABILITY CLAIMS STEMMING FROM THE LUGANO CASES

1. INTRODUCTION

In circular no. 11 we informed you that in February 2022 we had filed an action for liability before the Commercial Court of Zurich against various bodies of Bank Hottinger in connection with claims for damages by the former customer E.R. concerning highly speculative investments.

The lawsuit is based on the following facts:

- E.R. filed a claim in the amount of CHF 15,043,786.10 in the bankruptcy proceedings of Bank Hottinger. This was rejected in full by the liquidators in the schedule of claims. E.R. then filed an action to contest the schedule of claims with the Zurich District Court for recognition of a claim amounting to CHF 7,309,687. After an initial provisional assessment by the Zurich District Court, the liquidators agreed with E.R. in April 2018 on the recognition by way of settlement of a claim in the amount of CHF 4,400,000. For details, please refer to Circular No. 7, section V.3.
- For the claim recognised against E.R., the liquidators filed a liability action against various bodies of Bank Hottinger in February 2022. They were essentially accused of having allowed, in disregard of various (internal) regulations, the external asset manager commissioned by E.R. and affiliated with Bank Hottinger to book highly speculative shares in the Quasar Universal Hedge Fund into the investment portfolio of the bank customer E.R. This was despite the fact that the relevant bodies of Bank Hottinger had concrete knowledge that the investments in the Quasar Fund were highly problematic. In addition to allegations of a lack of due diligence, the focus was also on the knowing creation of a cluster risk and violation of investment guidelines. The shares in the Quasar Universal Hedge Fund ultimately proved worthless.

The defendants requested that the action to be dismissed.

An instruction hearing was held on 30 August 2022. The delegation of the commercial court assessed the responsibility claims as follows:

- With regard to the damage, the delegation pointed out that in the settlement with the bank customer E.R., as was usual in such cases, the question of involuntariness arose with regard to the settlement amount. This posed a risk to the claimant.
- With regard to a possible breach of duty by the defendant bodies of Bank Hottinger, the following should be taken into account, among other things:
 - o On the one hand, E.R. had signed a risk disclaimer regarding the Quasar Universal Hedge Fund. In addition, he had approved the composition of his securities portfolio, including shares in the Quasar Universal Hedge Fund, on several occasions with a “déclarations de bien-trouvé” [reconciliation statement] and had granted the bank discharge for asset management. It was therefore questionable whether the defendant institutions could be proven to have acted wrongly. This posed a risk to the claimant.
 - o On the other hand, neither the risk disclaimer nor the “déclarations de bien-trouvé” [reconciliation statement] would have reflected Bank Hottinger's actual state of knowledge about the Quasar Fund. In addition, it was unclear whether these documents were capable of curing any breaches of due diligence on the part of the bank and its executive bodies. The delegation of the commercial court considered these circumstances to be a risk for the defendants.

Overall, the delegation of the commercial court concluded that, according to the current state of the files, the risks of the bankruptcy estate were significantly higher than those of the defendant bodies.

2. CONCLUSION OF A SETTLEMENT

Settlement negotiations took place in court following the remarks by the delegation of the commercial court. The defendants offered the claimant a settlement amount of CHF 300,000. However, neither the court nor the claimant considered this sum to be adequate. The parties agreed to continue the settlement negotiations out of court. The proceedings were therefore temporarily suspended on the occasion of the instruction hearing.

The negotiations proved to be tough. The defendants made their own willingness to settle conditional on Chubb Versicherungen (Schweiz) AG and Liberty Mutual Insurance Europe Limited waiving any (recourse) claims that might arise from the outcome of the parallel lawsuit of Bank Hottinger against Chubb Versicherungen (Schweiz) AG (see circular no. 13).

In July 2023, the parties finally agreed on a settlement amount of CHF 750,000 as well as on the wording of mutual waivers of claims concluded in parallel between the defendants and Chubb Insurance (Switzerland) Ltd and Liberty Mutual Insurance Europe Limited.

The settlement agreement shall enter into force as soon as the following conditions are fulfilled:

- a) All defendants confirm that they have entered into separate, mutual waivers of claims with Chubb Insurance (Switzerland) Ltd and Liberty Mutual Insurance Europe Limited with respect to the subject matter of this action (now fulfilled);
- b) The claimant's creditors as a whole agree to the settlement;
- c) No creditor requires the assignment of the right to conduct proceedings under Article 260 SchKG (*Bundesgesetz über Schuldbetreibung und Konkurs*; Swiss Debt Enforcement and Bankruptcy Act).

3. INSPECTION OF DOCUMENTS

All interested creditors may inspect the documents pertaining to the above settlement at the offices of the Liquidators, Brigitte Umbach-Spahn and Karl Wüthrich, Wenger Plattner, Seestrasse 39, Goldbach-Center, 8700 Küsnacht (please call +41 43 222 38 50 to arrange an appointment).

Creditors who wish to do so must sign a statement that they will use the information consulted solely to protect their own direct financial interests (Article 5(4) of the FINMA Banking Insolvency Ordinance, BIO-FINMA).

4. REALISATION PLAN

We are of the opinion that the settlement reached with the responsible bodies adequately takes into account the opportunities and risks of Bank Hottinger pointed out by the delegation of the Commercial Court and that the settlement

can achieve a good result for the bankruptcy estate. Should the settlement be reached, the bankruptcy result would improve by up to 1.1.% in the worst case, if the claims of O. Ltd. are qualified as bankruptcy claims, and by up to 0.5.% in the better case, if the claims of O. Ltd. are treated as bankruptcy claims.

We therefore propose that you approve the settlement reached with the responsible bodies.

5. PROCEEDINGS

5.1 *Vote on the settlement*

The application pursuant to section 4 above shall be deemed to have been adopted unless a majority of the creditors submit a **written** objection to the application with us by **28 September 2023** (date of postmark). **Silence shall therefore be construed as agreement to the applications presented by us** (Article 14(4) BIO-FINMA).

5.2 *Request for assignment under Article 260 SchKG:*

Pursuant to Federal Supreme Court case law, a creditor who demands the assignment of the litigation right is obliged to secure the settlement interest and is then entitled to assert the rights at its own risk and expense. In the event that the litigation is successful, he/she may use the proceeds to cover the cost he has incurred and his claims with respect to bankruptcy estate. Any potential surplus would be issued to the bankruptcy estate. The creditor shall bear court and party costs should he lose the litigation.

Requests for assignment of the right to conduct proceedings within the meaning of Art. 260 SchKG can also be submitted with us in **writing** by **28 September 2023** at the latest (date of the postmark of a Swiss post office). Also by **28 September 2023** at the latest (receipt of payment), a creditor who demands assignment must transfer the settlement proceeds of CHF 750,000.00 to the following account of the bankruptcy estate:

Bank: Zurich Cantonal Bank

SWIFT-Code: ZKBKCHZZ80A

Account: 0700-1301.764

IBAN: CH92 0070 0070 0013 0176 4

Loud: Bankruptcy estate of Bank Hottinger & Cie AG
c/o Wenger Plattner
Seestrasse 39
8700 Küsnacht

The right to request assignment is deemed to have been **forfeited** if this deadline is not respected.

5.3 *Contestable ruling*

Creditors who do not agree with the settlement agreement we have concluded may also request a contestable ruling from FINMA (Swiss Financial Market Supervisory Authority FINMA, Laupenstrasse 27, 3003 Bern) by **28 September 2023** (date of the postmark of a Swiss post office) (Art. 34 para. 4 BIO-FINMA). The contestation of the ruling is subject to a fee. Creditors domiciled abroad must provide a postal address in Switzerland to which official notices can be sent, otherwise notices will be published in the Swiss Official Gazette of Commerce (SOGC).

IV. FURTHER STEPS IN THE PROCEEDINGS

Concerning the bankruptcy dividend and the further course of the proceedings, we refer to the explanations on section V. of circular no. 13.

We will inform you about the next steps in the proceedings in a Circular in due course.

Yours sincerely,

Bank Hottinger & Cie AG in liquidation proceedings
The Liquidators:

Brigitte Umbach-Spahn

Karl Wüthrich

- Annexes: – Liquidation status of Bank Hottinger as at 30 June 2023
(in German)
– Overview of the status of the schedule of claims (in German)

Bank Hottinger & Cie AG in Konkursliquidation

Status per 30. Juni 2023

	30. Juni 2023		Bemerkungen
	CHF		
AKTIVEN			
Barschaft		-	
Kasse Zürich	-		Kasse aufgelöst
Guthaben gegenüber Banken		66'812'216	
Postfinance	-		
UBS AG	-126		
Zürcher Kantonalbank (Konkursmasse)	9'131'943		
Lombard Odier	57'680'399		
Euroclear	-		
Wertschriften und Beteiligungen		-	
Forderungen gegenüber Bankkunden		3'375'473	
Übrige Forderungen		253'237	
Rückerstattung Mehrwertsteuern	63'237		
Gerichtskauti on	190'000		
Verrechnungsteuer	-		
Diverse Forderungen	-		
Anfechtungsansprüche	-		Verzicht
Verantwortlichkeitsansprüche	p.m.		
Grundstücke		-	
Bewegliche Sachen		-	
Mobiliar Genf	-		Verkauft
Mobiliar Zürich	-		Verkauft
Mobiliar Archiv Zürich	-		Verkauft
Fahrzeug Mercedes	-		Verkauft
TOTAL AKTIVEN		70'440'926	
PASSIVEN			
Massenschulden			
Massekreditoren (Steuerrückbehalte und Passive Abgrenzungen)		7'462	
Forderungen Bankkunden (nach Konkurseröffnung)		3'300'480	
Rückstellung für Forderungen gegenüber Bankkunden (Kreditrisiken)		2'550'000	
Rückstellung Forderung O. Ltd. (USD 55'160'396)		50'096'672	
Rückstellung für 1. Abschlagszahlung		1'593'310	
Rückstellung für 2. Abschlagszahlung		476'129	
Rückstellung Negativzinsen		-	
Rückstellung Honorar Liquidatoren		1'500'000	
Rückstellung übrige Liquidationskosten		450'000	
Total Massenschulden		59'974'053	
TOTAL AKTIVEN VERFÜGBAR		10'466'873	

Bank Hottinger & Cie AG in Konkursliquidation

Übersicht über den Stand des Kollokationsverfahrens per 30. Juni 2023

Kategorie	angemeldet	Im Kollokationsverfahren					Konkursdividende in %					
		zugelassen	als bedingte Forderungen zugelassen	Kollokations- klage hängig	ausgesetzt resp. p.m. oder neu angemeldet	abgewiesen	Abschlags zahlungen	zukünftige Dividende		Total		
								CHF	CHF			CHF
Pfandgesicherte (Outsourcing Lombard Odier)	CHF											
	8'455'446	3'558'229			CHF	4'897'217	100%	-	-	100%	100%	
Pfandgesicherte (Schadenersatzforderungen)	36'464'785	12'370'000		2'151'414		21'943'371	38%					
1. Klasse	2'484'777	1'048'560				1'436'217	100%	-	-	100%	100%	
2. Klasse	373'049	145'207				227'842	100%	-	-	100%	100%	
2. Klasse (Bankkunden aus den Büchern)	37'879'500	37'979'500	100'000			-200'000	100%	-	-	100%	100%	
3. Klasse	156'751'782	4'672'022	200'000		241'711	151'638'049	38%	16.54%	39.80%	54.54%	77.80%	
3. Klasse (Bankkunden aus den Büchern)	49'692'269	49'544'562				147'707	38%	16.54%	39.80%	54.54%	77.80%	
3. Klasse (O. Ltd.)	87'655'978		87'655'978			-	38%	62.00%	39.80%	100.00%	77.80%	
Total Nachlassforderungen	379'757'586	109'318'080	87'955'978	2'151'414	241'711	180'090'403						

Bemerkungen

1) Minimaldividende: Die noch hängige Kollokationsklage für Schadensersatzforderungen aus dem Lugano-Fall muss zu 20 % anerkannt werden und sie wird nur zu 15 % durch Versicherungsleistungen gedeckt; im Übrigen werden keine Versicherungsleistungen bezahlt; die Forderung der O. Ltd. wird als Masseforderung qualifiziert; die übrigen in der 3. Klasse ausgesetzten oder pro memoria kollozierten Forderungen müssen anerkannt werden.

2) Maximaldividende: Die noch hängige Kollokationsklage wird abgewiesen; die Forderung der O. Ltd. wird nicht als Masseforderung qualifiziert; die ausgesetzten oder pro memoria kollozierten Forderungen werden nicht anerkannt; auf den anerkannten pfandgesicherten Schadensersatzforderungen werden keine Versicherungsbeträge geleistet.