

**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, August 2023

## Bank Hottinger & Cie AG in liquidation proceedings Circular No. 13

Dear Sir or Madam,

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

### I. LIQUIDATION STATUS AS AT 31 DECEMBER 2022

We have updated the liquidation status effective 31 December 2022. Compared to the liquidation status as at 31 December 2021, which we reported to you in Circular No. 12, there have only been few changes:

The credit balances with banks dropped from around CHF 71.4 million to around CHF 70.8 million. This reduction was mainly caused by changes in foreign currency exchange rates and the payment of costs incurred during the liquidation.

Due to the discontinuation of negative interest, the provision of CHF 500,000 made for this purpose could be released. At present, bank balances have been earning interest again.

The provisions for the O. Ltd. case were adjusted to the changed exchange rate of the US dollar to approximately CHF 51 million. Unfortunately, no progress

could be achieved in these proceedings. The criminal proceedings in Geneva are still pending. The Geneva public prosecutor's office has brought charges against two former members of the executive board of Bank Hottinger. A court ruling is not yet available. We cannot give any estimate about when the dispute with O. Ltd. is going to be settled at the moment.

## **II. STATUS OF THE SCHEDULE OF CLAIMS**

In the only pending action to contest the schedule of claims for approximately CHF 2 million, the appeal proceedings are pending before the Zurich High Court. The applicant in the above proceedings had appealed against the judgment of the single judge at the District Court of Zurich, which had only approved her claim to the extent of CHF 391,600.52. In the appeal proceedings, the applicant requested free legal assistance. This application was rejected by the High Court. The appeal in civil matters filed by the applicant against this ruling was dismissed by the Federal Supreme Court. Bank Hottinger has not yet been given a deadline to respond to the appeal.

## **III. CONCLUSION OF A SETTLEMENT REGARDING THE INSURANCE CLAIMS STEMMING FROM THE LUGANO AND GENEVA CASES AGAINST CHUBB VERSICHERUNGEN (SCHWEIZ) AG**

### **1. INTRODUCTION**

In circular no. 12 dated June 2022, we informed you that we had filed a claim for CHF 10,000,000 against Chubb Versicherungen (Schweiz) AG ("Chubb") stemming from the Lugano and Geneva cases before the Commercial Court of the Canton of Zurich. An instruction hearing/preliminary hearing was held on 7 November 2022. The delegation of the Commercial Court presented its current view to the parties.

In its statement of defence, Chubb argued, among other things, that it was only liable for CHF 7,000,000. The remaining CHF 3,000,000 would have to be claimed against Liberty Mutual Insurance Europe Limited. The delegation of the Commercial Court shared this view in its interim assessment.

The delegation of the Commercial Court assessed each individual claim separately.

## 2. F.E. CLAIM

F.E. filed a claim in the bankruptcy proceedings of Bank Hottinger in the amount of EUR 9,525,400 plus interest until 26 October 2015. F.E. made claims arising from unauthorised money transfers and payments executed on the basis of forged payment orders. The managing director of the external asset manager RZ et Associés Lugano SA, Rocco Zulino, was involved in these transactions. Bank Hottinger could have recognised the forgeries. It had therefore breached the account/custody agreement of 28 April 2006. In addition, F.E. would be entitled to non-contractual claims against Bank Hottinger in connection with these payments. The total claim asserted in the amount of CHF 14,542,203.70 (including interest) was dismissed in its entirety in a schedule of claims decree dated 15 March 2017. On 18 April 2017, F.E. filed an action to contest the schedule of claims in the amount of CHF 13,852,016.85 against Bank Hottinger with the District Court of Zurich, single court for DEBA (*SchKG*) actions.

At the introductory hearing on 26 June 2018, the competent district judge informed the parties of her assessment of the dispute on the basis of the statement of claim and the statement of defence. She concluded that there was a considerable litigation risk for Bank Hottinger, among other things because it could have recognised the forgeries from the circumstances surrounding the payments if it had acted with due diligence. Following the introductory hearing, an agreement was reached with F.E. for a settlement of CHF 7,500,000 (incl. interest) (see circular no. 11, section II.1.).

The delegation of the Commercial Court assessed this claim as follows:

- Rocco Zullino had not been an employee or organ of Bank Hottinger. Bank Hottinger had so far not substantiated or proven that a bank employee had acted erroneously. Accordingly, the conditions for insurance coverage under the Bankers Professional Liability Insurance Policy (hereinafter “Bankers Liability Policy”) were not met according to the preliminary assessment.
- The conditions for coverage of the loss under the Financial Institution Bond - Electronical Computer Crime Protection Policy (hereinafter “Bond Policy”) were met if it could be proven for each individual payment that it was based on a forged payment order. Bank Hottinger would have to substantiate these facts further and prove them in detail.
- With regard to the insurance claims becoming time-barred, the delegation of the Commercial Court is currently of the opinion that the Federal Court

decisions cited by Bank Hottinger cannot generally be applied to the Bond Policy. In each individual case of damage, it had to be examined at what point in time Bank Hottinger had sufficient concrete knowledge of the damage and the unlawful conduct. At this point, the 2-year limitation period begins to run. It would be for Chubb to assert and prove that the limitation period in the F.E. claim had already occurred at the time the waiver of limitation was issued on 27 January 2017.

- In the case of the Bond Policy, the deductible of CHF 500,000 was to be taken into account once for the Geneva case group and once for the Lugano case group, according to a preliminary assessment.

In summary, the delegation of the Commercial Court, as regards F.E. claim, rules out a liability of Chubb under the Bankers Liability Policy according to the preliminary assessment, while it judges such a liability under the Bond Policy as possible.

### **3. E.R. AND A.C. CLAIMS**

The creditors E.R. and A.C. filed claims for damages of approximately CHF 20 million in connection with the incidents in Lugano as pledged claims in the bankruptcy proceedings of Bank Hottinger. They claimed that the investment strategies applied by the external asset manager RZ et Associés Lugano SA, in particular the investments in the Quasar Universal Fund, had breached the investment advisory agreement. Bank Hottinger had been aware of the poor investment advice given by RZ et Associés Lugano SA and had nevertheless failed to warn the bank's clients.

The claims for damages filed by the creditors E.R. and A.C. were dismissed as part of the publication of the schedule of claims.

E.R. filed an action with District Court of Zurich to contest the schedule of claims for recognition of a claim amounting to CHF 7,309,687 as a claim secured by lien. A.C. filed an action to contest the schedule of claims for recognition of a claim amounting to CHF 1,775,041.47.

The single judge at the District Court of Zurich held an instruction hearing in each of the two proceedings after receipt of the statement of defence. It took the position in these hearings that the risks of Bank Hottinger should not be underestimated. The court deems the investment strategy employed by external asset managers RZ et Associés Lugano SA a breach of the investment advisory

agreement between the clients and RZ et Associés Lugano SA. Depending on what knowledge Bank Hottinger can be proven to have had and at what date, the court is considering ruling that the deposit agreement between the claimants and Bank Hottinger was also breached because Bank Hottinger failed to provide the claimants with information on the poor investment strategy. This means that claims for damages may be upheld.

After these instruction hearings, a settlement agreement was concluded with E.R. and A.C. respectively. In the case of E.R., Bank Hottinger recognised a claim of CHF 4,400,000. In the case of A.C. it was CHF 470,000 (see circular no. 7, sections V.3.2. and 3.3.).

The delegations of the Commercial Court assessed the two damage cases as follows:

- In both cases, no criminal acts (falsification of transfer orders) were involved. Accordingly, they do not fall under the Bond Policy.
- The claims could be covered by the Bankers Liability Policy if a wrongful act by a bank employee could be proven. Bank Hottinger would have to substantiate and prove which bank employees took which erroneous actions or omitted necessary actions and when - e.g. breach of duty of disclosure in relation to the Quasar Universal Fund despite the existence of compliance reports. The delegation of the Commercial Court pointed out that any consent of the clients to the transactions would have to be taken into account.
- The insurance companies had not been consulted when the settlement was reached. Therefore, forfeiture could have occurred.
- According to a preliminary assessment, the deductible of CHF 500,000 would have to be applied to each claim under the Bankers Liability Policy. Accordingly, there was no insurance cover for the E.R. claim in the amount of CHF 500,000. As regards A.C., the deductible exceeds the damage of CHF 470,000.

In the E.R. and A.C. claims, the Commercial Court delegation, in summary, assessed Chubb's risk of liability under the Bankers Liability Policy as small because, on the one hand, Bank Hottinger might have difficulty proving a wrongful act by a bank employee and, on the other hand, the claims against the insurers might be forfeited.

#### **4. OTHER CLAIMS**

With regard to the other claims, the delegation of the Commercial Court again pointed out that the deductible of CHF 500,000 was applicable to each individual case according to their assessment. Accordingly, it does not see any insurance coverage for all claims of less than CHF 500,000 that would only be covered by the Bankers Liability Policy. In the case of claims with damages exceeding CHF 500,000, the first CHF 500,000 would not be covered by the insurance.

The delegation of the Commercial Court estimates Bank Hottinger's chances in the remaining claims to be low. It is of the opinion that either there is no basis for insurance liability, that the damages are smaller than the deductible or that any insurance claims may be time-barred.

#### **5. POSSIBLE LIENS OF CREDITORS F.E., E.R. AND A.C. ON INSURANCE BENEFITS**

The creditors F.E., E.R. and A.C. have asserted liens on potential insurance benefits within the meaning of Article 60 of the Federal Insurance Contract Act. Such a lien exists only for benefits from an insurance against the consequences of legal liability. In the present case, only insurance benefits under the Bankers Liability Policy would fall under this provision of law. The Bond Policy does not meet these requirements.

#### **6. CONCLUSION OF A SETTLEMENT**

Settlement negotiations took place following the presentation by the delegation of the Commercial Court. The Commercial Court proposed a settlement in the order of CHF 3,000,000 to the parties. The parties finally agreed on an amount of CHF 3,300,000. This agreement shall enter into force as soon as the following conditions are fulfilled:

- a) All claimant's creditors;
  - b) creditors E.R., F.E. and A.C.; and
  - c) Liberty Mutual Insurance Europe Limited (for its 30% share)
- have approved the agreement.

In the meantime, the three creditors and Liberty Mutual Insurance Europe Limited have declared their approvals of the settlement. The creditor A. C. has furthermore expressly waived his lien on an insurance benefit. The other two creditors are holding on to their lien. Should the settlement come into effect, negotiations would have to be held with these creditors regarding their possible participation in the settlement result. If no agreement is reached, the court would have to decide on the existence and scope of the liens in any collocation proceedings.

## **7. 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).

## **8. REALISATION PLAN**

We are of the opinion that the settlement reached with the insurance companies adequately takes into account the opportunities and risks of Bank Hottinger as pointed out by the delegation of the Commercial Court. Should the settlement be reached, the bankruptcy result - depending on the outcome of the negotiations with the creditors E.F. and E.R. regarding the lien - would improve by up to 2 % in the worst case, if the claims of O. Ltd. are qualified as claims of the estate, and by up to 4 % 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 insurance companies.

## **9. PROCEEDINGS**

### **9.1 *Vote on the settlement***

The application according to section 8 shall be deemed to have been adopted unless a majority of the creditors shall have filed a written objection to the

application with us by **5 September 2023**. **Silence shall therefore be construed as agreement to the applications presented by us** (Article 14(4) of the FINMA Banking Insolvency Ordinance, BIO-FINMA).

## 9.2 *Contestable ruling*

Creditors who do not agree with the settlement agreement described shall request until **5 September 2023** (date of postmark of a Swiss post office) a contestable ruling from FINMA (Federal Financial Supervisory Authority FINMA, Laupenstrasse 27, 3003 Berne) (Article 34(4) BIO-FINMA). A fee is payable for a contestable ruling. Creditors resident or incorporated outside Switzerland must provide a postal address within Switzerland where official communications may be served, otherwise communications will be announced by publication in the Swiss Official Gazette of Commerce.

## IV. **LIABILITY CLAIMS STEMMING FROM THE LUGANO CASE**

In the liability proceedings (*Verantwortlichkeitsprozess*) pending before the Commercial Court of the Canton of Zurich (see circular no. 11, section V.1.), a preliminary hearing with settlement negotiations took place in August 2022. No agreement could be found at this negotiation. However, the parties continued the settlement negotiations. In mid-July 2023, an agreement could be signed, the entry into force of which - in addition to the approval by the creditors as a whole - is, however, subject to a condition that is currently not yet fulfilled. We will inform you again and, if necessary, submit a settlement for your approval as soon as it is clear whether or not an agreement has been reached between the parties.

## V. **FURTHER STEPS IN THE PROCEEDINGS**

We estimate the liquidation dividends at between 53% and 78%. The creditors with third-class claims can still expect to receive a dividend in the amount of between 15% and 40%. Should the settlement with the insurance companies (see section III. above) come into effect and an appropriate agreement be reached with the creditors E.F. and E.R. regarding their possible share of the settlement sum, the bankruptcy dividend will increase somewhat.

The pending dispute with O. Ltd. is still blocking a large part of the available liquid assets. Furthermore, there are uncertainties in that regard in connection



with the development of the exchange rate for US dollars. We also have to keep enough liquid assets for the further proper administration of the proceedings. For this reason, we are currently unable to execute a third interim payment. We will continue to evaluate this possibility.

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

Yours sincerely,

Bank Hottinger & Cie AG in bankruptcy liquidation  
The Liquidators:

Brigitte Umbach-Spahn

Karl Wüthrich

- Annexes:
- Liquidation status of Bank Hottinger as at 31 December 2022 (in German)
  - Overview of the status of the schedule of claims (in German)

Status per 31. Dezember 2022

	31. Dezember 2022		Bemerkungen
	CHF		
AKTIVEN			
Barschaft		-	
Kasse Zürich	-		Kasse aufgelöst
Guthaben gegenüber Banken		70'766'766	
Postfinance	-		
UBS AG	-126		
Zürcher Kantonalbank (Konkursmasse)	13'487'485		
Lombard Odier	57'279'407		
Euroclear	-		
Wertschriften und Beteiligungen		-	
Forderungen gegenüber Bankkunden		3'408'930	
Übrige Forderungen		255'674	
Rückerstattung Mehrwertsteuern	65'674		
Gerichtskaution	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		74'431'370	
PASSIVEN			
Massenschulden			
Massekreditoren (Steuerrückbehalte und Passive Abgrenzungen)		7'462	
Forderungen Bankkunden (nach Konkurseröffnung)		7'095'247	
Rückstellung für Forderungen gegenüber Bankkunden (Kreditrisiken)		2'560'000	
Rückstellung Forderung O. Ltd. (USD 55'160'396)		51'034'399	
Rückstellung für 1. Abschlagszahlung		1'596'982	
Rückstellung für 2. Abschlagszahlung		476'129	
Rückstellung Negativzinsen		-	
Rückstellung Honorar Liquidatoren		1'500'000	
Rückstellung übrige Liquidationskosten		600'000	
Total Massenschulden		64'870'219	
TOTAL AKTIVEN VERFÜGBAR		9'561'151	

Übersicht über den Stand des Kollokationsverfahrens per 31. Dezember 2022

Kategorie	angemeldet	Im Kollokationsverfahren					Konkursdividende in %			
		zugelassen	als bedingte Forderungen zugelassen	Kollokationsklage hängig	ausgesetzt resp. p.m. oder neu angemeldet	abgewiesen	Abschlagszahlungen	zukünftige Dividende		Total
		CHF	CHF	CHF	CHF	CHF		minimal <sup>1)</sup>	maximal <sup>2)</sup>	
Pfandgesicherte (Outsourcing Lombard Odier)	8'455'446	3'558'229				4897'217	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%
2. Klasse	373'049	145'207				227'842	100%	-	-	100%
2. Klasse (Bankkunden aus den Büchern)	37'879'500	37'979'500	100'000			-200'000	100%	-	-	100%
3. Klasse	156'751'782	46'72'022	200'000		241'711	151'638'049	38%	15.19%	39.82%	77.82%
3. Klasse (Bankkunden aus den Büchern)	49'692'269	49'544'562				147'707	38%	15.19%	39.82%	77.82%
3. Klasse (O. Ltd.)	87'655'978		87'655'978			-	38%	62.00%	39.82%	77.82%
<b>Total Nachlassforderungen</b>	<b>379'757'586</b>	<b>109'318'080</b>	<b>87'955'978</b>	<b>2'151'414</b>	<b>241'711</b>	<b>180'090'403</b>				

Bemerkungen

<sup>1)</sup> 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.

<sup>2)</sup> 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.

**[www.liquidation-bankhottinger.ch](http://www.liquidation-bankhottinger.ch)**

**Hotline Bank Hottinger & Cie AG in liquidation proceedings**

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