

To the creditors of  
Petroplus Marketing AG in debt restructuring liquidation

**Brigitte Umbach-Spahn**, lic. iur. LL.M.  
Rechtsanwältin / Attorney at Law.  
Registered in the attorney register

**Karl Wüthrich**, lic. iur.  
Rechtsanwalt / Attorney at Law  
Registered in the attorney register

info.petroplus@wenger-plattner.ch

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## **Petroplus Marketing AG in debt restructuring liquidation Circular no. 10**

Dear Sir or Madam

This circular provides information about the settlement of the avoidance action against the Swiss Confederation (Directorate General of Customs) and the settlement of possible responsibility claims of Petroplus Marketing AG in debt restructuring liquidation ("PMAG").

### **I. AVOIDANCE ACTION AGAINST THE SWISS CONFEDERATION (DIRECTORATE GENERAL OF CUSTOMS)**

#### **1.1 Starting Position**

In February 2015, PMAG instigated an avoidance action against the Swiss Confederation (Directorate General of Customs, hereinafter "Federal Government") and contested the payment of petroleum tax of just under CHF 80 million in January 2012 (see Circular no. 2, section I.8 and Circular no. 8, section III.4.2 for background information and the course of the proceedings to date). In the proceedings before the regional court of Berne-Mittelland, the President of the Court summoned the parties to an instructional hearing after the exchange of pleadings, which took place in September 2019. At this hearing, the parties agreed on a comparative settlement of the dispute.

#### **1.2 Settlement**

The main provisions of the settlement are as follows:

- a) The Federal Government shall pay PMAG CHF 25,000,000 within 30 days of the conclusion of the agreement.
- b) Payment shall be made on balance of all claims.
- c) The court costs of CHF 100,000 will be halved.
- d) Each party shall bear its own costs.
- e) The conclusion of the agreement is subject to approval by the Creditors' Committee of PMAG and by the head of the Federal Department of Finance (resolution to be passed by 12 November 2019).

In the opinion of the Liquidators and the Creditors' Committee, the settlement takes due account of PMAG's litigation risks. Both the Creditors' Committee of PMAG and the head of the Federal Department of Finance approved the settlement within the deadline. The settlement has thus been reached. The settlement payment has been received on time.

## II. RESPONSIBILITY CLAIMS

### 1.1 Starting Position

The members of the board of directors and all persons engaged in the business management of the company are liable both to the company and to the individual shareholders and creditors of the company for any damage arising from any intentional or negligent breach of their duties (Art. 754 para. 1 CO). In addition, the auditors are also liable for damage arising from any intentional or negligent breach of their duties (Art. 755 para. 1 CO). The successful assertion of responsibility claims requires that the following conditions are fulfilled and can be proven by the plaintiff: (i) damage, (ii) breach of duty, (iii) adequate causal link and (iv) fault. The in-depth examination of possible facts relevant to responsibility has shown that a judicial assertion of responsibility claims would be associated with considerable risks and low prospects of success for PMAG.

Against this background, the Liquidators, in consultation with the Creditors' Committee, began negotiations with the potentially responsible bodies in the summer of 2018 with a view to comparatively settling the issue of "responsibility under stock corporation law". The discussions were held with various members of the Boards of Directors of PMAG and of Petroplus Holding AG or their legal representatives. As a result of the discussions, the settlement agreement described below was concluded in November 2019.

## 1.2 Settlement

The main provisions of the overall settlement on PMAG's responsibility claims against all its governing or executive bodies are as follows:

- a) PMAG waives all responsibility claims against payment of a settlement amount of CHF 2 million.
- b) With the fulfillment of this settlement, PMAG on the one hand and the governing bodies on the other hand declare all claims against each other to have been settled on balance. This means that the governing or executive bodies who have filed claims of around CHF 2,750,000 for being included as first-class claims in PMAG's debt restructuring proceedings and whose inclusion has so far been suspended waive these claims.
- c) The settlement shall come into force if the Creditors' Committee approves it and no creditor lodges a complaint against it or if any complaints are settled without affecting the validity of the settlement.

With the settlement, the issue of "responsibility under stock corporation law" can be finally resolved with a result that is appropriate to the circumstances. From an economic point of view, PMAG's liquidation estate benefits not only from the settlement payment of CHF 2 million but also from the waiver of the suspended claims of the governing or executive bodies. Based on the latest dividend estimate and a presumed inclusion of these claims [in the schedule of claims] partly as first-class claims and partly as third-class claims, this waiver has a value of good CHF 800'000.

On the initiative of a large creditor in the debt restructuring proceedings of PMAG and in the insolvency proceedings of Petroplus International B.V. ("PPI", the parent company of PMAG) and its insolvency administrators, possibilities of a coordinated procedure for asserting responsibility claims of PMAG and PPI were also explored. However, this has shown that such cooperation would have been associated with considerable uncertainties for PMAG, in particular regarding the expected economic result, the practical feasibility and the time required. The Liquidators and the Creditors' Committee consider the settlement to be the best solution for PMAG's creditors as a whole. The Creditors' Committee approved the settlement in December 2019.

Kind regards

Petroplus Marketing AG in debt restructuring liquidation  
The Liquidators

Brigitte Umbach-Spahn

Karl Wüthrich

**[www.liquidator-petroplus.ch](http://www.liquidator-petroplus.ch)**  
**[info.petroplus@wenger-plattner.ch](mailto:info.petroplus@wenger-plattner.ch)**

**Hotline**

**German: +41 43 222 38 30**

**Français: +41 43 222 38 40**

**English: +41 43 222 38 50**