

**Commercial judgement No. 2019TALCH06/00721**

Public hearing of Tuesday July second one thousand nineteen [sic] at nine o'clock a.m.

**Docket number: TAL-2019-05136**

**Number L-11674/19**

Composition :

Nadine WALCH, vice-president;  
Laurent LUCAS, judge;  
Jackie MORES, judge;  
Elia DUARTE, registrar.

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**Between:**

The **Financial Sector Supervisory Commission**, a public institution, established in L-1150 Luxembourg, at 283, route d'Arlon, represented by its current management team and composed of the Managing Director Mr. Claude MARX, the Director Ms. Françoise KAUTHEN, the Director Mr. Jean-Pierre FABER, the Director Mr. Marco ZWICK and the Director Mr. Claude WAMPACH,

**applicant for the dissolution and liquidation** of the public limited company [*société anonyme*] **ABLV BANK LUXEMBOURG SA**, established and having its registered office in L-2449 Luxembourg, at 26A, boulevard Royal, under the terms of an application filed on 24 June 2019,

represented by Messrs. Frank BILDORFF, Marc LIMPACH, Jacques STREWELER and François GOERGEN, all residing professionally in L-1150 Luxembourg, at 283, route d'Arlon, following a power of attorney dated 25 June 2019,

**and:**

the public limited company **ABLV BANK LUXEMBOURG SA**, established and having its registered office in L-2449 Luxembourg, at 26A, boulevard Royal, registered in the Trade and Companies Register of Luxembourg under the number B 162048, represented by its current board of directors, currently declared eligible to benefit from a suspension of payment procedure,

**respondent** for the purposes of the aforementioned application dated 24 June 2019,

represented by the ordinary limited partnership [*société en commandite simple*] KLEYR GRASSO, established and having its registered office in L-2361 Strassen, at 7, rue des

Primeurs, registered in the Trade and Companies Register of Luxembourg under the number B 220509, represented by its current manager, represented for the purposes of these proceedings by Maître Marc KLEYR, attorney at law, residing in Luxembourg,

**In the presence**

**of the directors appointed under the suspension of payment procedure**

Maître Alain RUKAVINA, attorney at law, residing in Luxembourg, represented at the hearing by Maître Azadeh AZIZI, attorney at law, residing in Luxembourg,

the limited liability company [*société à responsabilité limitée*] Deloitte Tax & Consulting SARL, established and having its registered office in L-1821 Luxembourg, at 20, boulevard de Kockelscheuer, registered in the Trade and Companies Register of Luxembourg under the number B 165178, represented by Mr. Eric COLLARD, residing professionally in Luxembourg, represented at the hearing, following a power of attorney dated 25 June 2019, by Ms. Christine BERTON, residing in Luxembourg,

**of the State Prosecutor of the District Court [*tribunal d'arrondissement*] of Luxembourg**

represented by Mr. Felix WANTZ, Deputy State Prosecutor.

**THE FACTS:**

By an application filed on 24 June 2019 at the Registry of the District Court of and in Luxembourg, the Financial Sector Supervisory Commission (hereinafter referred to as the "CSSF") requested the dissolution and liquidation of the public limited company ABLV BANK LUXEMBOURG SA (hereinafter referred to as "ABLV").

The case was entered in the court register under the docket number TAL-2019-05136 and the application was served on the respondent by a court bailiff on 24 June 2019.

The CSSF and ABLV were summoned to appear in the Judge's Council Chamber on 26 June 2019, at 9:00 o'clock a.m., in the presence of the Public Prosecutor's Office and the directors appointed under the suspension of payment procedure, a hearing during which the proceedings took place as follows:

Mr. Marc LIMPACH, section chief of the CSSF, outlined the application and presented his arguments.

Maître Marc KLEYR replied and presented his arguments.

The representatives of the directors, Maître Azadeh AZIZI and Ms. Christine BERTON, left the matter to the discretion of the Court.

The findings of the Public Prosecutor's office, represented by the Deputy Prosecutor Mr. Felix WANTZ, were also heard.

On that, the Court adjourned to take the matter under advisement and at the public hearing of 2 July 2019 at 9:00 o'clock a.m. handed down the

**following judgement:**

Having regard once again to the judgement handed down on 9 March 2018 by the District Court of and in Luxembourg, sitting in commercial matters, having declared ABLV eligible to benefit from the suspension of payment procedure for a duration of six months and having appointed directors, with the mandate of supervising the asset management of ABLV, Maître Alain RUKAVINA and the limited liability company Deloitte Tax & Consulting SARL, represented by Mr. Eric COLLARD.

Having regard once again to the judgement delivered on 7 September 2018 by the District Court of and in Luxembourg, sitting in commercial matters, having extended the duration of the suspension of payment procedure until 10 October 2018 at midnight.

Having regard once again to the judgement delivered on 10 October 2018 by the District Court of and in Luxembourg, sitting in commercial matters, having extended the duration of the suspension of payment procedure until 7 February 2019 at midnight.

Having regard once again to the judgement delivered on 7 February 2019 by the District Court of and in Luxembourg, sitting in commercial matters, having extended the duration of the suspension of payment procedure until 4 July 2019 at midnight.

Having regard to the application submitted on 24 June 2019 by the CSSF seeking the dissolution and liquidation of ABLV on the basis of Article 129(1) point 1 of the amended law of 18 December 2015 relating to the winding-up, the reorganization and liquidation measures of credit institutions and certain investment firms as well as investor deposit and compensation safeguard schemes (hereinafter referred to as the "amended law of 2015").

Having regard to the service of process by the court bailiff Geoffrey GALLE of 24 June 2019 by which the application was served on ABLV.

The CSSF argues that the suspension of payment procedure does not rectify the situation of ABLV to the extent that the company under Hong Kong law DUET GROUP LIMITED (hereinafter the "DUET GROUP") allegedly informed it on 4 June 2019 of its decision to withdraw its offer to purchase all of the shares in ABLV held by the credit institution under Latvian law ABLV BANK, AS [*sic*].

ABLV confirms that the DUET GROUP withdrew its purchase offer and it recognizes the merits of the application for dissolution and court-ordered liquidation.

However, it disputes the allegations made by the CSSF to support its request contained "*in the 5<sup>th</sup> and 6<sup>th</sup> paragraphs of page 10, and then from the 3<sup>rd</sup> paragraph of page 11 up to and including the 3<sup>rd</sup> paragraph of page 13 of the application*".

It takes the position that the liquidator or liquidators to be appointed by the Court should be separate persons from the directors previously appointed under the suspension of payment procedure. With a view to limiting costs, it proposes to appoint a sole liquidator.

The representatives of the directors left the matter to the discretion of the Court.

The representative of the Public Prosecutors Office supported the CSSF's application.

Article 129(1) of the amended law of 2015 stipulates in its first point that "*Dissolution and liquidation can intervene when it appears that the suspension of payment procedure provided for under Title II, previously decided does not rectify the situation which justified the latter*".

By a judgement handed down on 7 February 2019, the court of this seat had extended the duration of the suspension of payment procedure until 4 July 2019 at midnight to allow for the completion of the DUET GROUP's approval process.

It is undisputed that the DUET GROUP withdrew its purchase offer on 4 June 2019.

Therefore, the suspension of payment granted to ABLV did not make it possible to rectify the situation which justified the latter, so that there are grounds to declare the dissolution and order the liquidation of ABLV.

#### Terms and conditions of liquidation

Article 129 (7) of the amended law of 2015 provides that "*when ordering liquidation, the court appoints an official receiver as well as one or more liquidators. It decides on the mode of liquidation. It may, to the extent that it determines, make the rules governing bankruptcy applicable. In this case, it may fix the time at which the cessation of payment took place to a date of up to six months prior to the filing of the application referred to in Article 122, paragraph 3. The mode of liquidation can be modified later, either ex officio or at the request of the liquidators or of the CSSF*".

It is therefore appropriate to appoint an official receiver who enjoys the broadest rights of scrutiny and disclosure.

Given that this concerns the liquidation of a credit institution, it is appropriate to appoint two liquidators who will execute their mandate according to the terms and conditions defined hereinafter.

ABLV's agent considers that the liquidator or liquidators to be appointed by the Court should be separate persons from the directors previously appointed under the suspension of payment procedure.

Article 129(7) of the amended law of 2015 supra does not prohibit naming the directors as court-ordered liquidators.

In the case at hand, Maître Alain RUKAVINA and the limited liability company Deloitte Tax & Consulting SARL, represented by Mr. Eric COLLARD, have, for a period of more

than one year, exercised the mandate of directors of ABLV. An appointment of persons separate from those of the directors would entail the liquidators familiarizing themselves with the dossier, which would generate additional costs, a fact that ABLV seems to want to avoid, and which would result in a loss of time in terms of conducting the liquidation operations. Added to that is the fact that ABLV has not made the slightest criticism concerning the way in which the directors have executed their mandate during the suspension of payment procedure.

In the interest of conducting the liquidation operations properly and speedily, the Court shall appoint as liquidators Maître Alain RUKAVINA and the limited liability company Deloitte Tax & Consulting SARL, represented by Mr. Eric COLLARD.

ABLV's creditors must, under penalty of preclusion, file their claims with the registry of the District Court of and in Luxembourg, sixth bench, by 10 January 2020, at 5:00 o'clock p.m., at the latest.

The verification, the admission and the challenging of claims will be conducted according to the rules defined in the operative part of this judgement.

#### Conversion of debts labelled in a currency other than the euro

Debts labelled in a currency other than the euro will be converted to this currency at the exchange rate on the day of this liquidation judgement as it is published by the European Central Bank and the payment of all allowed claims will be in euros.

#### Provisional execution

In application of Article 129(9) of the amended law of 2015, this judgement is immediately enforceable and without surety.

#### Publication

Article 129(12) paragraph 1 of the amended law of 2015 stipulates that *"Within eight days of its delivery, an abstraction of the judgement declaring the dissolution and ordering the liquidation of an establishment and appointing an official receiver and one or more liquidators, as well as the amending judgements, shall be published at the expense of the institution and under the diligence of the liquidators in the Electronic register of companies and associations, in accordance with the provisions of Chapter Vbis of Title I of the amended law of 19 December 2002 concerning the Trade and Companies Register as well as accounting and annual accounts of the companies and in at least two Luxembourg newspapers or a foreign newspaper with adequate distribution, named by the Court"*.

It is appropriate to order the publication of an abstract of this judgement, within eight days of its delivery, and under the diligence of the liquidators, in the newspapers "Luxemburger Wort", "Tageblatt" and "Financial Times".

**On these grounds:**

The District Court of and in Luxembourg, sixth bench, sitting in commercial matters, ruling in a public hearing, after having heard in the Judge's Council Chamber, the findings of the representatives of the Financial Sector Supervisory Commission, the agent of the public limited company ABLV BANK LUXEMBOURG SA, the representatives of the directors and the representative of the Public Prosecutors Office,

**finds** the petition admissible and well founded,

**declares** the dissolution and orders the liquidation of the public limited company ABLV BANK LUXEMBOURG SA, established and having its registered office in L-2449 Luxembourg, at 26A, Boulevard Royal,

**appoints** as official receiver Ms. Nadine WALCH, vice-president of the District Court of and in Luxembourg

**appoints** as liquidators:

- Maître Alain RUKAVINA, attorney at law, residing professionally in L-1142 Luxembourg, at 9 Rue Pierre d'Aspelt, and
- the limited liability company Deloitte Tax & Consulting SARL, established and having its registered office in L-1821 Luxembourg, at 20, boulevard de Kockelscheuer, registered in the Trade and Companies Register of Luxembourg under the number B 165,178, represented by Mr. Eric COLLARD, residing professionally in L-1821 Luxembourg, at 20, boulevard de Kockelscheuer,

**says** that the liquidators shall represent both the company and its creditors and that they shall be endowed with the broadest powers with a view to achieving their objective which they will perform both in the Grand Duchy of Luxembourg and abroad;

**says** that the liquidation of the public limited company ABLV BANK LUXEMBOURG SA will be conducted in compliance with article 129 of the amended law of 18 December 2015 relating to the winding-up, the reorganization and liquidation measures of credit institutions and certain investment firms, as well as investor deposit and compensation safeguard schemes and articles 1100-1(1), 1100-4, 1100-6, 1100-8 and 1100-13 of the amended law of 10 August 1915 relating to commercial companies, as well as articles 448, 450, 451, 452, 453, 454, 462, 463, 464, 465.1°, 3° and 5°, 487, 492, 528, 542, 543, 544, 548, 549, 550, 551, 552, 567-1 and 3572 of the Luxembourg Commercial Code;

subject to the following derogating terms and conditions:

*Known creditors residing abroad shall be informed by the liquidators of the judgement declaring the dissolution and liquidation of the public limited company ABLV BANK LUXEMBOURG SA, in accordance with the provisions of Article 133 of the amended law of 18 December 2015 ;*

*The filing of claims will be conducted in compliance with article 134 of the same law;*

*The deadline by which claims must be filed is set for 10 January 2020, at 5:00 o'clock p.m., under penalty of preclusion;*

*The verification of claims shall be carried out by the liquidators as and when the claims are filed; they shall constitute lists of the claims that they consider eligible; each eligible claim is designated by the identity of its holder, its amount and its cause, as well as its privileged or subordinated character; the liquidators shall establish lists on which the contested claims are inscribed;*

*The Liquidators shall report to the official receiver on their verification operations, and shall submit draft lists of eligible claims and contested claims;*

*Throughout the month of March 2020, the lists with the claims declared as eligible shall be on file at the registry of the district court of Luxembourg, sixth bench, where the declared creditors and those inscribed in the balance sheet can inspect them;*

*During this same month, these same people can make objections to the claims appearing on the aforementioned lists; the objection is made by filing a statement at the registry; the registrar shall make a note of it on the list in question, in the margin of the contested claim; the note shall include the date of the objection and the identity of its author as well as, where appropriate, that of the agent making the statement of objection; the objection must be reiterated, under penalty of inadmissibility, within three days, by registered letter addressed to the liquidators; it must contain, under penalty of inadmissibility, the exact qualifications of the author of the objection, election of domicile in the municipality of Luxembourg, the supporting documents for his/her qualifications, as well as the arguments and documents invoked to substantiate the objection;*

*The admissibility and merits of the objection are summarily verified by the liquidators;*

*After expiry of the deadline for making objections on 31 March 2020, the uncontested claims which are declared eligible shall be permanently entered in the minutes signed by the liquidators and the official receiver;*

*The liquidators will validly inform the creditors whose claims have been contested or are the subject of an admissible objection and completely without merit, of the contested nature of their claim or of the existence of an objection, by registered letter at the address of the domiciliation agent, or else at the address of the foreign representative, or else at the address indicated in the claim, or else at their last known address ;*

*If these creditors fail to proceed by way of a summons within a period of 40 (forty) days from the mailing date of this registered letter, the claim in question is considered as definitively rejected;*

*The liquidators will likewise inform objectors whose objection seems inadmissible or completely without merit, of the contested nature of their objection by registered letter at the elected address for service ;*

*If these creditors fail to proceed by way of a summons within a period of 40 (forty) days from the mailing date of this registered letter, their objection shall be deemed to be inexistent and the claim declared admitted;*

*A creditor who proceeds by way of a summons against the liquidators and, in case of objection, also against the objector, likewise for an objector who proceeds by way of a summons against the creditor and the liquidators, must obligatorily elect their address for service in the municipality of Luxembourg in the summons; if they fail to maintain the said election of address for service for the duration of the proceedings or to notify the liquidator of a change in the elected address for service, all subsequent notifications and all summonses may be validly given to the registrar of the district court of Luxembourg, sitting in commercial matters, sixth bench, pursuant to Article 499, paragraph 2, of the Luxembourg Commercial Code.*

*Objections that cannot be decided on immediately will be handled separately;*

*Those that do not fall within the jurisdiction of the district court of Luxembourg, sitting in commercial matters, shall be referred to the court having jurisdiction;*

*Rulings on these challenges and objections shall not be subject to any application to set aside;*

*Creditors whose claims were allowed shall be individually informed of the fact by a simple letter from the liquidators;*

**declares** that debts labelled in a currency other than the euro will be converted to this currency at the exchange rate on the day of this liquidation judgement as it is published by the European Central Bank and the payment of all allowed claims will be in euros.

**orders** the publication of an abstract of this judgement in the Electronic register of companies and associations and in the newspapers "Luxemburger Wort", "Tageblatt" and "Financial Times";

**declares** that this judgement is provisionally enforceable, notwithstanding any appeal, immediately, before its registration and without surety;

**makes** the cost chargeable to the public limited company ABLV BANK LUXEMBOURG SA.

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