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Gable Insurance AG in liquidation

Interim Report of the Trustee in Bankruptcy as at 31 December 2022

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1 Introduction

The present 7th interim report of the Trustee in Bankruptcy relates to the 2022 calendar year (reporting period). It builds on the previous six interim reports.

In the reporting period, the General Review Hearing was not continued. As of 31 December 2022, no claims have thus been added to the 12,527 claims in respect of which the Trustee in Bankruptcy has already made a declaration (*i.e.* admitted or - partially - contested them). Reference can be made to what was set out in this regard in the previous interim report.

Another 1,085 claims in the amount of approximately CHF 197.3 million have currently (as of 31 December 2022) been registered, and the Trustee in Bankruptcy has not yet made a declaration in respect of them. Approximately 800 of these claims have already been finally assessed, and will be presented to the Princely Court of Justice during the continuation of the General Review Hearing. These claims include claims relating to three-party scenarios. With regard to their assessment, the EFTA Court laid down binding guidelines in its judgement (case no. E-5/20) and the Trustee in Bankruptcy has in the meantime defined its strategy in this regard.

The Trustee in Bankruptcy has filed an application to schedule a new review hearing. The Princely Court of Justice has set 26 May 2023 as the date for the hearing.

In the reporting period, a new legal action against the estate (“Anordnungsklage”) was filed, and another one was filed in early 2023. In light of the fact that at the same time one of the pending actions was withdrawn, five review proceedings are currently (as of 15 March 2023) pending.

In the reporting period, approximately GBP 2.8 million in reinsurance benefits could be realised. Against the liabilities, there are currently assets which in their realised form (liquid assets and investments) amount to roughly CHF 78.0 million (as of 31 December 2022).

Investment class	31/12/2022	31/12/2021	Δ in currency	Δ in %
Liquidity	CHF 2,241,764.10	CHF 6,324,185.42	CHF -4,082,421.32	-64.6%
Investments	CHF 75,801,309.22	CHF 91,272,784.06	CHF -15,471,474.85	-17.0%
Total	CHF 78,043,073.32	CHF 97,596,969.48	CHF -19,553,896.16	-20.0%

The unusual reduction in assets by 20% primarily results from temporary book losses on investments and the change in foreign exchange rates, *i.e.* the strengthening of the franc in the reporting period.

The Trustee in Bankruptcy decided in the reporting period to take legal action against two (former) members of the Board of Directors in England (where they live) and to assert liability claims. The bankrupt company blames these (former) body members for the damage caused to it. In November 2022, an action to this effect was filed with the competent court in London (High Court of Justice).

In the reporting period, the Trustee in Bankruptcy, in close cooperation with the run-off manager Enstar, conducted an assessment of all former coverholders of the bankrupt company with regard to so called “trapped funds” (insurance premiums collected by the coverholders, but not yet passed on to the bankrupt company). In addition to the primary goal of collecting outstanding funds, all cases should be finalised in a well-founded manner. In light of the fact that the situation of the English coverholders, in particular, had not been conclusively dealt with, intense negotiations were started with them some of which are still ongoing.

2 Assets

The assets of the bankrupt company are composed of cash at bank and securities, of outstanding claims arising from the insurance business, in particular reinsurance benefits, and of responsibility claims (if any). They are described below.

2.1 Cash at banks and securities

The year 2022 was globally characterised by the fact that the central banks turned away from several years of loose monetary policy which, against the background of low inflation and consequently low interest, created an attractive investment environment for shares and meager returns on fixed-income investments or even negative interest on cash holdings over many years. The investment strategy which was adjusted in 2017 took account of these circumstances in the interest of the preservation of the bankrupt company's fixed assets.

Pandemic-related supply-chain issues and/or increased consumer demand as well as the war of Russia in Ukraine led to production losses in the industrial sector and to a lack of available goods and raw materials. As a result, the prices of consumer goods and the energy prices increased sharply and triggered a historically unprecedented increase in inflation rates in the developed industrial nations. As mentioned in the introduction, the central banks found themselves having to implement drastic interest rate increases to counteract the strong trend towards inflation.

Within a short period of time, this led to a drastically changed investment environment and caused the Trustee in Bankruptcy to review the existing investment strategy and to adjust the same with regard to the now comparatively very attractive returns for investments with an average rating of A. On the basis of an independent analysis, the Trustee in Bankruptcy also decided to invest in fixed-income investments exclusively and directly in the future and to dispense with the partial diversification in other investment classes such as shares.

At the same time, the Trustee in Bankruptcy decided to pool the fixed assets of the bankrupt company at Liechtensteinische Landesbank AG (LLB), thus reducing the administration costs. The investments at Neue Bank AG were transferred as early as at the end of 2022, and those at LGT Bank AG (LGT) followed in early 2023. As a result of the fact that no collective

investments (funds) will be made in the future, so called product costs for their management will no longer be incurred, thus reducing the total expense ratio (TER).

The Trustee in Bankruptcy believes that due to the adjustments mentioned above generate nominal net returns of around 3.0% p.a. will be generated in the coming years.

In the past, more than 85% of the bankrupt company's assets had already been invested in fixed-interest bonds. However, in 2022, this investment class was hit by the sharp increase in interest on an unprecedented scale, which led to book losses of 6% on the invested capital. The book loss on the other investment classes, in particular on the equity component, amounted to an additional 1.5% on the fixed assets.

Book losses for fixed-income investments as well as book gains reflect the difference of the coupon (interest rate) of the bond held with regard to the current coupon (interest rate) of newly issued bonds. Upon maturity of the bonds held, these are reimbursed at the nominal value (100%) and, as a result, any price losses / gains which may have occurred in the meantime are made up for. With regard to fixed-income investments, the Trustee in Bankruptcy is pursuing the so called "buy-to-hold" strategy, thus actually neutralising the daily price fluctuations of this investment class, as described above.

As part of the adjustment of the strategy and the pooling of the entire fixed assets at LLB, a number of meetings with representatives of the banks involved were held in the reporting period. As mentioned above, the Trustee in Bankruptcy caused a bank-independent portfolio analysis to be conducted, and such analysis formed the basis of the application to the Bankruptcy Court for consent to the strategy adjustment.

The bankrupt company's financial situation (cash at bank and securities) has developed in CHF as set out below since the previous report, it being understood that the percentage developments are the result of the pooling of all investments and liquid funds at LLB, as described above (as of 31 December 2022):

Liechtensteinische Landesbank AG (LLB)

Investment class	31/12/2022	31/12/2021	Δ in currency	Δ in %
Liquidity	CHF 2,241,764.10	CHF 6,324,185.42	CHF -4,082,421.32	-64.6%
Investments	CHF 74,223,560.82	CHF 56,453,843.49	CHF 17,769,717.33	31.5%
Total	CHF 76,465,324.92	CHF 62,778,028.91	CHF 13,687,296.01	21.8%

LGT Bank AG (LGT)

Investment class	31/12/2022	31/12/2021	Δ in currency	Δ in %
Investments	CHF 1,577,748.39	CHF 22,510,512.81	CHF -20,932,764.41	-93.0%
Total	CHF 1,577,748.39	CHF 22,510,512.81	CHF -20,932,764.41	-93.0%

2.2 Outstanding claims arising from the insurance business

The outstanding claims arising from the insurance business are composed, on the one hand, of the insurance premiums which have been collected by the coverholders, but have not yet been passed on to the bankrupt company, and, on the other hand, of the claims against reinsurance undertakings.

2.2.1 Claims against coverholders

The premiums not passed on by the coverholders to the bankrupt company are termed “trapped funds”. In the interim balance sheet as at 30 June 2016 on a going concern basis and at liquidation values, relevant claims of the bankrupt company against the coverholders in the amount of approximately CHF 85.0 million were stated. In the previous reports, the Trustee in Bankruptcy described the largely lacking value of this asset item. In the reporting period, two payments in the amount of approximately TCHF 766 could be caused to be made. As a result, a total of approximately CHF 5.4 million in trapped funds could be collected so far.

In the reporting period and in close cooperation with the run-off manager Enstar, the Trustee in Bankruptcy conducted an assessment of all former coverholders of the bankrupt company with regard to trapped funds. In addition to the primary goal of collecting outstanding funds, the Trustee in Bankruptcy in any event wants all cases to be finalised in a well-founded manner.

For this purpose, on the one hand, the data available to the Trustee in Bankruptcy for each coverholder on the (allegedly) outstanding premiums were re-analysed on the basis of the knowledge gained in the meantime. On the other hand, an overview of the information on the

economic situation as well as on the position on the subject of trapped funds resulting from the previous exchange was established. On the basis of Enstar's report summarising the results, the Trustee in Bankruptcy decided the cases in which negotiations should be started and the cases which should be regarded as finalised.

First of all, the latter cases naturally constitute cases in which the Trustee in Bankruptcy came to the conclusion that the sum transferred by the coverholder since the beginning of the bankruptcy proceedings equals the amount of the premiums still outstanding at the moment of bankruptcy. In addition, several coverholders had to file for bankruptcy in the meantime and/or have already been dissolved so that, apart from the fact that in some cases claims were lodged in the bankruptcy proceedings, no further steps are indicated. In some instances, cases were finalised due to a combination of unreliable data material and the inefficiency of additional efforts given the low amount of trapped funds.

It became evident that the situation of the English coverholders, in particular, had not yet been finally dealt with. Intense negotiations some of which are still ongoing have been started with all coverholders in respect of whom the decision was made to take further steps. In 2023, the Trustee in Bankruptcy will continue the efforts to finalise the cases which are still in the process of being handled.

2.2.2 Claims against reinsurance undertakings

As of 31 December 2022, the bankrupt company received a total of approximately GBP 31.4 million in reinsurance benefits. During the reporting period, reinsurance benefits in the amount of approximately GBP 2.8 million were collected.

In addition, after lengthy negotiations with Barbican Specialty Reinsurance (BSR), the QS reinsurer of the Danish construction damage liability insurance business ("latent defects"/"change of ownership"), a definite agreement on the amount of the insurance sum to be paid could be reached.

In terms of their amount, the claims of the bankrupt company against its reinsurers by far represent the largest asset which has not yet been realised. At the moment, reinsurance claims in the total amount of approximately GBP 33.3 million have been reserved.

2.3 Liability claims

In the reporting period, the Liechtenstein Public Prosecutor's Office indicted the former President of the Board of Directors and the former director and manager of the bankrupt company. They were charged with various crimes and misdemeanours. The indictment has become final.

In 2022, the Trustee in Bankruptcy decided to take legal action against the above-mentioned former directors of the bankrupt company in England (where they live) and to assert liability claims. The bankrupt company holds them liable for the damage caused to it. In November 2022, a claim to this effect was filed with the competent court in London (High Court of Justice).

3 Liabilities

In the bankruptcy proceedings, currently (as of 31 December 2022), 13,612 claims amounting to CHF 355.1 million¹ have now been lodged, it being understood that these comprise individual claims from guarantee funds which, in turn, consolidate hundreds or (ten) thousands of individual claims. The Trustee in Bankruptcy already made a declaration in respect of 12,527 claims amounting to CHF 157.7 million² at the three previous hearings as part of the General Review Hearing, *i.e.* the Trustee in Bankruptcy admitted or - partially - contested them. The admitted claim sum is CHF 51.6 million, whereas the contested claim sum is CHF 106.1 million.

1,085 claims in the amount of approximately CHF 197.3 million have currently (as of 31 December 2022) been registered, and the Trustee in Bankruptcy has not yet made a declaration in respect of them. Approximately 800 of these claims have already been finally assessed, and will be presented to the Court of Justice during the next/continued General Review Hearing. The other claims have not (yet) been finally assessed. The Trustee in Bankruptcy will continue the assessment process for these claims.

On top of this, another several thousand lodged damage claims are in the process of being handled. Therefore, it is to be expected that a larger number of additional claims will be lodged. It is therefore not yet certain when the General Review Hearing can be completed.

The amount of the dividend (percentage in the bankruptcy) cannot be estimated today either. The decision on whether to admit or contest the claims in respect of which the Trustee in Bankruptcy has not yet made a declaration, naturally has a significant impact on the ratio between existing assets and admitted liabilities. This is in particular the case because these claims include the most important creditors' insurance claims the values of which are high. The same applies to the damage claims which are currently still in the process of being handled

¹ Compared to the previous report from the Trustee in Bankruptcy, the total sum of the lodged claims which was then CHF 376.7 million has decreased, even though the number of lodged claims has increased. On the one hand, the reason for this is that there are claims which were subsequently withdrawn or whose amount was corrected downwards. On the other hand, and this is decisive at the moment, the change in the exchange rates, *i.e.* the strengthening of the franc, is responsible for this. In the entire report, the exchange rates as of 31 December 2022 were used.

² This amount too is lower due to the change in exchange rates than the one stated in the previous report of the Trustee in Bankruptcy. This also applies to the claims from insurance benefits and bankruptcy claims set out below.

and the classification of the claims either as (privileged) insurance claims or (non-privileged) bankruptcy claims.

3.1 Privileged insurance claims

3.1.1 Filings of claims from an insurance benefit

Of the claims in the amount of CHF 157.7 million which have now been finally assessed, approximately CHF 102.2 million are (privileged) insurance claims. The Trustee in Bankruptcy has hitherto admitted CHF 24.9 million as (privileged) insurance claims.

Apart from that, a great number of unsettled damage claims are still in the process of being handled, in France in particular.

3.1.2 Filings of claims by national guarantee schemes

To date (as of 31 December 2022), the national guarantee scheme in England (FSCS) has made payments for damage claims in the approximate amount of GBP 68.4 million and refunded premiums in the approximate amount of GBP 12.6 million. The FSCS did not update its list of claims in the reporting period. However, an update should be made prior to the next/continued General Review Hearing. The run-off manager Enstar is in close contact with the FSCS. It assessed and approved damage claim payments in the amount of GBP 67.6 million.

The consequences of the second judgement rendered by the EFTA Court on the correct classification of these FSCS claims could now be clarified (see item 4.7.4). These are privileged insurance claims. Consequently, the amount assessed by Enstar can be admitted at the next/continued General Review Hearing. An amount of GBP 31.1 million has currently been reserved for the unsettled damage claims.

With regard to the claims of the national guarantee scheme in Denmark (DGF), the Trustee in Bankruptcy admitted a total amount of approximately DKK 136.7 million (which amounts to approximately CHF 18.1 million) as early as at the General Review Hearing of 30 September 2020. With the updated list of claims dated 03 March 2022 (stating the situation as of 31 December 2021), claims for another approximate amount of DKK 3.4 million (which amounts to approximately TCHF 458) have been lodged. These are paid damage claims of Danish policyholders (the DGF does not make any premium refunds). This update was reviewed as

part of an audit by Enstar in mid 2022. On the basis of the positive audit outcome, the Trustee in Bankruptcy will be able to admit this additional amount at the next/continued General Review Hearing. Given that the DGF updates its claims every six months, claims for another approximate amount of DKK 5.5 million have been lodged in the meantime, which reflects the situation as at 31 December 2022. In collaboration with Enstar, the Trustee in Bankruptcy will make a decision on the conduct of another audit. The damage claim reserve for the hitherto about 100 unsettled damage claims amounts to approximately DKK 18.8 million (this amounts to approximately CHF 2.5 million).

The national guarantee scheme in Italy (CONSAP) provides damage coverage in the area of motor vehicle liability insurance. The Swiss National Guarantee Fund (NGF) which assumes the compensation payments has filed an initial claim in the present bankruptcy proceedings in the amount of CHF 864,281.00 which the Trustee in Bankruptcy admitted as a privileged insurance claim at the General Review Hearing held on 30 September 2020. In the reporting period, the lodged claim was updated, and a claim for another CHF 490,002.02 was lodged. This claim too can be admitted at the next continuation of the General Review Hearing. Since CONSAP continues to handle unsettled motor vehicle liability damage claims, the NGF will file additional claims in the future.

The national guarantee scheme in Ireland (ICF) made payments in 18 Irish liability damage claims for the first time in 2021. In the reporting period, another 7 damage claims were submitted to the competent court for a review and subsequently paid by the guarantee fund. Recently, additional claims were submitted to the ICF for approval and payment. However, the Irish ICF is yet to file any claim(s).

3.2 Bankruptcy claims

Of the claims in the amount of CHF 157.7 million which have now been finally assessed, around CHF 55.5 million are (non-privileged) bankruptcy claims. The Trustee in Bankruptcy has so far admitted CHF 26.7 million as (non-privileged) bankruptcy claims.

4 Current state of the bankruptcy proceedings – Liquidation of the insurance business

As set out in the previous two interim reports, the bankruptcy proceedings have now reached a stage in which the handling of complex damage claims, the clarification of legal issues and legal disputes predominate.

For example, in the reporting period, the Trustee in Bankruptcy, in collaboration with the run-off manager Enstar, made time consuming efforts in order to make a conclusive analysis of the bases of the claims against former coverholders of the bankrupt company, and in order to take action to make them collectible, where appropriate.

In addition, following a thorough analysis, the Trustee in Bankruptcy decided to initiate liability proceedings against two former directors of the bankrupt company in England. It is foreseeable that the Trustee in Bankruptcy will have to spend a great amount of time working on these proceedings, even beyond the reporting period.

The five legal actions against the estate currently pending with the Liechtenstein courts (as of 15 March 2023) also kept the Trustee in Bankruptcy busy in the reporting period. Given that, of the 1,492 decisions dispatched following the court hearings held on 30 September 2020 and 20 December 2022, 458 (as of 15 March 2023) have not yet been served, and given that another continuation of the General Review Hearing is scheduled for 26 May 2023, it has to be expected that further legal actions will be filed.

The questions regarding the treatment of the various three-party scenarios which were the result of the EFTA Court judgement of 25 February 2021 (case no. E-5/20) could be clarified in the reporting period. Subsequently, a final assessment of numerous claims could be made, *i.e.* including with regard to their classification as privileged insurance claims or non-privileged bankruptcy claims. As a result, the Trustee in Bankruptcy will be able to submit to the Bankruptcy Court another larger package of claims at the next/continued General Review Hearing.

4.1 Policyholders

New damage claims continue to be filed. This is mainly the case in France, but also in Italy and in England. The number of outstanding damage claims, i.e. damage claims which are still in the process of being handled, is however in continuous decline.

4.2 Coverholders and claims handlers

As regards the coverholders and claims handlers, things have remained the same since the previous interim report. Reference can be made to the mentioned interim report.

4.3 Reinsurers

In the 4th interim report, the Trustee in Bankruptcy outlined its strategy in connection with the reinsurance benefits. This strategy was pursued in the reporting period.

The importance of the reinsurance benefits as an asset item in the present bankruptcy proceedings is illustrated by the figures mentioned in item 2.2.2. To date, returns in the amount of GBP 31.4 million have been made. In the year 2022, reinsurance undertakings made payments from reinsured damage claims in the approximate amount of GBP 2.8 million. The Trustee in Bankruptcy will make the careful management of this asset a top priority in the future too.

4.4 Guarantee schemes

Information on guarantee schemes has already been reported elsewhere (see item 3.1.2).

4.5 Regulators

In the reporting period, usually on a monthly basis, the Trustee in Bankruptcy exchanged information with the Liechtenstein supervisory authority (FMA) on the current developments of the bankruptcy proceedings. The FMA hardly receives any enquiries from third parties any more, in respect of which the Trustee in Bankruptcy is contacted for reply purposes.

4.6 Pending legal disputes

In the previous interim report, the Trustee in Bankruptcy informed that, as of 31 December 2021, eight legal actions against the estate had been filed. Of the eight initiated review proceedings, four have already been completed and another four are pending.

In 2022, a new action was filed, and another one was filed in early 2023. In light of the fact that at the same time one of the pending order actions was withdrawn in 2022, five review proceedings are currently (as of 15 March 2023) pending.

Outside of Liechtenstein, the bankrupt company is currently involved in 164 pending legal cases. These court proceedings are related to insurance damage claims and, thus, to the regular liquidation of the bankrupt company's insurance business.

4.7 Legal challenges

In the reporting period the Trustee in Bankruptcy dealt with the following issues:

4.7.1 Claims against coverholders (trapped funds)

When the present bankruptcy proceedings were initiated, due to the large balance sheet values for the collection of insurance premiums which were, however, still kept by the coverholders, there were huge expectations that considerable assets could be made collectible from these coverholders. These hopes have largely not materialised.

Together with the run-off manager Enstar, the Trustee in Bankruptcy made a huge effort in 2022 to establish the factual foundations and to clarify any open questions. Given that the situation of the English coverholders, in particular, had not yet been finally assessed, but given that there was a risk that any claims which might exist against coverholders in England might become time-barred in November 2022, intense negotiations were started with them some of which - on the bases of statute of limitations waivers - are still ongoing. This situation raises offset and other insolvency law issues in particular.

4.7.2 Claims against former body members (directors' liability)

Given that the Liechtenstein public prosecution authorities indicted two (former) directors of the bankrupt company, the bankrupt company has now also taken civil action against these persons in England where they live. The Trustee in Bankruptcy believes that they caused damage to the bankrupt company due to their unlawful and culpable action, *i.e.* by violating the duties incumbent on them as directors (as described in the Persons and Companies Act). This legal action required time consuming preparatory work. Pursuing these liability proceedings will continue to be one of the great legal challenges in the current calendar year.

4.7.3 Contestation of asserted creditor claims (review proceedings)

The pending review proceedings kept the Trustee in Bankruptcy busy in the reporting period. It is one of the duties of the Trustee in Bankruptcy to continue managing these proceedings appropriately in the current calendar year. It is expected that further legal actions will be filed against the estate after the next part of the continued General Review Hearing at the latest, because some claims in a high amount are due for review and submission to the bankruptcy court. The pending review proceedings and those to be expected involve some complex legal issues, e.g. regarding the applicable law and the interaction of Liechtenstein (bankruptcy) law and foreign (substantive) law.

4.7.4 Treatment of claims from third parties (classification)

In the previous interim report, the Trustee in Bankruptcy gave a thorough account on this aspect. In 2022, the Trustee in Bankruptcy defined the future strategy for dealing with so called three-party scenarios, in respect of which the EFTA Court's judgement (case no. E-5/20) laid down binding guidelines. In this context, the ultimately decisive factor is the assessment as to whether a claim lodged in the bankruptcy proceedings can be qualified as a (privileged) insurance claim or not. If this is the case, the creditor of any such insurance claim benefits from prior satisfaction. Insurance claims in this sense are privileged because they are entitled to satisfaction before the ordinary bankruptcy claims (classes 1 to 4).

According to the clear text of the relevant provisions of Directive 2009/138 (Solvency II), which were implemented in Liechtenstein in the Insurance Supervision Act, the Trustee in Bankruptcy will classify claims of injured third parties as insurance claims, provided that these injured third parties have a direct claim against the bankrupt company, it being understood that such direct claim can have its foundation either in national law or in harmonised European law.

By contrast, privileged insurance claims lose their entitlement to privileged satisfaction if they are assigned to a third party, irrespective of whether this involves an assignment by means of a legal transaction or a legal assignment (subrogation), and irrespective of whether the insurance claim originates from an insured person, a policyholder, a beneficiary or an injured third party with a direct claim. In the opinion of the Trustee in Bankruptcy, the EFTA Court judgment mentioned above must be interpreted in such a manner that the entitlement to

privileged satisfaction is linked to the person of the creditor rather than to the claim. Therefore, claims from assignment creditors (assignees/new creditors) will be qualified as bankruptcy claims in the 4th class.

There is one exception with regard to guarantee schemes. If guarantee schemes satisfied creditors with justified insurance claims and if their (privileged) insurance claims were assigned to them, they will be classified as privileged creditors. This is inter alia evident from Art. 277 of the Directive mentioned above (*e contrario*).

At the next/continued General Review Hearing, the Trustee in Bankruptcy will submit assessed claims to the bankruptcy court in line with what has been set out above.

Vaduz, 18 April 2023

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