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RISK OF INSOLVENCY – RESTRUCTURING

Due to the SARS-CoV-2 pandemic, the activities of many enterprises remain closed or significantly limited. Although the government partially opens certain areas of the economy, the economic activity remains reduced.

In the light of the government's decision to open shopping malls from May 4, 2020, many retail chains and smaller stores are deciding to close some of their premises. This decision is mainly due to the need to pay the full rent in the amount, as it was before the pandemic, but it is obvious that traffic and the assumed turnover will be incomparably lower.

These restrictions have a negative impact on the entire economy. In certain cases individual enterprises may require protective measures. When the first signs of losing financial liquidity appear, legal regulations may be reached to help saving the company and protecting its assets. The choice of acts to undertake depends on the current financial situation of the company. It's worth reacting quickly. If the event, the company is not insolvent yet, but there is or may be signs of insolvency in the near future, it is advisable to take appropriate legal action - opening the restructuring procedure. Such a situation may take place, e.g. in the necessity of paying the full rent, knowing that the turnover will be many times lower than previously expected.

Pursuant to the provisions of the Act of 15 May 2015 - Restructuring Law ("Restructuring Law"), restructuring proceedings may be conducted towards a debtor who risks the insolvency or an insolvent debtor. A debtor who risks insolvency means a debtor whose economic situation indicates that he may soon become insolvent. Especially in the current situation, the above may apply to entities that have ceased or significantly reduced their activities.

The restructuring procedure is undertaken to avoid bankruptcy. The debtor has a possibility to restructure its business by an arrangement with creditors, and in the case of remedy proceeding - also by carrying out remedy measures. Undertaking the restructuring proceedings can save entities who risk insolvency, providing protection against enforcement proceedings and maintaining contracts and business, giving the company a chance to survive. It is however crucial to take action quickly. Anticipating insolvency, the application for debt restructuring shall be filed as soon as possible. Such an application starts the restructuring procedure. Then, using the protective mechanisms, the company may focus on rebuilding its business. Such actions can effectively overcome difficulties.

The Restructuring Law provides for the following restructuring procedures: arrangement approval procedure, accelerated arrangement procedure, arrangement procedure, recovery procedure. Each of these restructuring procedures is aimed at concluding an arrangement with creditors. The form of

restructuring results from the current situation of the debtor and its needs. The decision as to the form of the procedure requires a detailed case study.

When submitting an application for the given debt restructuring procedure, it is necessary to submit a restructuring plan (or initial restructuring plan). Then, an agreement with the creditors regarding the proposed and planned concessions shall be undertaken. Requirements of the restructuring plan and the further procedure, including costs, duration, participation of the court supervisor, administrator, judge in charge of the proceedings or creditors, scope of protection, will depend of the form of the restructuring.

Under the restructuring plan, there is a wide range of options to offer to creditors. Of course, it all depends on the particular company. Proposals and opportunities should be adapted. The most important element will usually be debt restructuring, which may involve spreading the repayments of liabilities, reducing them or setting a grace period. An important element may be the possibility of obtaining judicial protection against enforcement proceedings. The stronger protection shall be provided through the recovery proceeding. This proceeding permits to withdraw from unfavorable mutual agreements or may have impact on employment relations in the company.

The procedures of the Restructuring Law may also apply to entities that have already become insolvent, according to the provisions of the Bankruptcy Law. It should be emphasized that conducting the restructuring procedure in relation to such entities is independent of the obligation to file for bankruptcy. However, given the interest of the debtors, the provisions give priority to the restructuring procedure. In case, a bankruptcy petition and a restructuring petition are filed, the restructuring petition is recognized first. Moreover the bankruptcy cannot be declared within the period from the opening of the restructuring procedure to its termination or cancellation.

Everyone feels the impact of restrictions on the functioning of the economy. The situation is dynamic. If it turns out that there is a risk that the company will become insolvent, it is necessary to take appropriate action as soon as possible to protect it - an application for debt restructuring should be filed to open the restructuring proceeding.

Choosing the right restructuring procedure, results from the situation of the company and its needs. Further actions – preparation of the restructuring plan, choosing the right restructuring procedure will certainly require legal advice. Having many years of experience in the field of restructuring and bankruptcy proceedings, we remain at your disposal in case of any further questions or doubts.

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