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ISSUES TO BE CAREFUL ABOUT IN FINANCING AGREEMENTS, IN LIGHT OF COVID-19

COVID-19 is a major threat to world economy and the financial sector. It is for this reason that measures adopted by governments all over the world due to the pandemic as well as governmental decisions for certain sectors continue to affect commercial relations. As a result of these measures and respective practices, it is becoming more difficult for borrowers to fully and timely perform their obligations and fulfil their undertakings under financing transactions. Considering the COVID-19 pandemic's effects, parties may need to reconsider their financing agreements' provisions and make amendments or adjustments, to ensure these transactions' sustainability.

Below is a summary of the key provisions that borrowers may need to be more careful about:

- **Conditions Precedent and Conditions Subsequent:** As a result of the measures and decisions adopted due to the pandemic, it is possible that certain conditions precedent and conditions subsequent for loan utilization cannot be completed fully and timely. Taking into account possible delays, borrowers may consider requesting amendments and adjustments on deadlines of certain transactions to be conducted before official authorities (e.g., issuance of official licences and permits or establishment of mortgages over immovables).

- **Material Adverse Effect:** It would be beneficial for borrowers to review "material adverse effect" or "material adverse change" definitions set forth in their financing agreements, as the events stated under these definitions might trigger occurrence of events of default.

- **Permitted Transactions:** Several transactions that are crucial for sustainability of a borrower's commercial operations during the pandemic, may be restricted under the financing agreement. In this regard, it may be necessary to amend and adjust such provisions in a way that enables the borrower to perform, or to obtain the lender's approval/consent for these transactions. For instance, it would be useful to evaluate whether the borrower is permitted to utilize additional financial borrowings from other lenders due to urgent cash needs or to sell its assets to third parties.

- **Financial Undertakings:** Parties may also review the method of calculation to be made based on the borrower's cashflow, net profit and financial statements. Several amendments on calculation methods may be necessary to prevent failure to perform financial undertakings and to reach the ratios set under financing agreements. Carve-out provisions, in a way to cover the pandemic process, may be inserted under the definitions that directly affect calculations such as net cash flow, EBITDA and exchange currency.

- **Budget and Expense Undertakings:** Particularly in agreements concerning project finance transactions, parties may consider elaborating provisions regarding the borrower's expenditures, costs, project expenses, project budget and possible increased costs. Expense items may change due to the measures that borrowers adopt during the pandemic, or expenses may exceed estimated amounts. For these reasons, it would be necessary to amend the related provisions to cover possible additional expenses.

- **Disclosure/Reporting Undertakings:** As part of COVID-19 related measures, certain flexibilities for reporting undertakings have been provided in many sectors, particularly in the banking sector. It would be beneficial for parties to evaluate whether borrowers are able to fulfil their reporting and disclosure undertakings in their financing agreements. Due to the possible need to adjust financial statements -as a result of the pandemic- borrowers may request extensions to reporting deadlines set forth in their financing agreements.

- **Operational Undertakings and Events of Default:** As a result of the pandemic's effects on borrowers' operational activities, borrowers may breach their undertakings regarding their commercial activities and, based on these breaches, events of default may occur under financing agreements. In this regard, parties may reconsider final deadlines regarding commencement of commercial operations or completion of projects. Events of default that may be triggered by suspension/interruption of commercial operation or by public interventions must be considered as well.

- **Cross-Default Clauses:** It would be beneficial for borrowers to evaluate to what extent their financial transactions are linked and reconsider cross-default clauses in financing agreements accordingly. Cross-default clauses, which are frequently used in financing transactions, may collectively affect borrowers' other financial agreements and create a "domino effect" on these transactions. Borrowers may consider reviewing their financing agreements from a cross-default perspective, particularly for extensive provisions of general loan agreements and discussing with the respective lenders, if needed.

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