

## Act on Financial Operations and Pre-Bankruptcy Settlement (“Act”)<sup>1</sup>

GENERAL SUBJECT MATTER		SPECIFIC SUBJECT MATTER	MAJOR PROVISIONS
1.	PAYMENT TERMS FOR MONETARY DEBTS	a) Payment terms in contracts between undertakings <sup>2</sup>	<ul style="list-style-type: none"> <li>• As a rule, parties are allowed to agree on a payment term of up to 60 days.<sup>3</sup></li> <li>• Parties may agree on a longer payment term but only if (cumulatively):               <ul style="list-style-type: none"> <li>○ such payment term does not exceed 360 days; and</li> <li>○ debtor has provided a security in the form of an enforceable instrument<sup>4</sup>; and</li> <li>○ no apparent inequality was caused thereby to the detriment of the creditor.</li> </ul> </li> <li>• If no payment term is agreed in the contract, the statutory term of 30 days will apply.</li> </ul>
		b) Payment terms in contracts between undertakings as creditors and public entities <sup>5</sup> as debtors	<ul style="list-style-type: none"> <li>• As a rule, parties are allowed to agree on a payment term of up to 30 days.</li> <li>• Parties may agree on a longer payment term but only if (cumulatively):               <ul style="list-style-type: none"> <li>○ such payment term does not exceed 60 days; and</li> <li>○ no apparent inequality was caused thereby to the detriment of the creditor.</li> </ul> </li> <li>• If no payment term is agreed in the contract, the statutory term of 30 days will apply.</li> </ul>
		c) Special remuneration	<ul style="list-style-type: none"> <li>• Creditor is entitled to special remuneration (“Remuneration”) in the lump sum of HRK 300 (ca. EUR 40), from Debtor in payment default without any further notice. Creditor is entitled to, but is not obligated to use this right against Debtor.</li> </ul>
		d) Nullity of particular provisions of the contract	<ul style="list-style-type: none"> <li>• The following provisions of the contract shall be deemed null and void:               <ul style="list-style-type: none"> <li>○ limiting or conditioning the creditor’s right to receive statutory default interest or Remuneration;</li> <li>○ setting in advance the date of receipt of invoice or other payment request;</li> <li>○ setting a payment term exceeding 360 days;</li> <li>○ setting a payment term exceeding 60 days in a contract where a public entity is a debtor;</li> <li>○ setting a (i) payment term exceeding 60/30 days or (ii) term exceeding 30 days for creditor’s review of debtor’s performance; in a case where apparent inequality was caused thereby to the detriment of creditor.</li> </ul> </li> </ul>

<sup>1</sup> Official Gazette nos. 108/2012 and no. 144/2012.

<sup>2</sup> Legal persons or individuals performing economic activity for profit.

<sup>3</sup> Deadline for payment starts to run as of (i) the date when debtor received the invoice or other payment request; or (ii) the date when creditor fulfilled its obligation (if exact date of receipt of invoice by debtor is unknown); or (iii) day of expiry of statutory or contractual deadline for creditor’s review of debtor’s fulfillment of obligation.

<sup>4</sup> E.g. debenture bond (“*zadužnica*”) or an agreement in solemnized notarial form containing enforceability clause.

<sup>5</sup> Public contracting authorities and sectoral contracting authorities both as defined by the public procurement legislation.

GENERAL SUBJECT MATTER		SPECIFIC SUBJECT MATTER	MAJOR PROVISIONS
2.	<b>FINANCIAL OPERATION OF UNDERTAKINGS<sup>6</sup></b>	a) <b>Obligations of company's Management Board ("MB")</b>	<ul style="list-style-type: none"> <li>Continuously performing all measures necessary for maintenance of liquidity and solvency<sup>7</sup> of the company such as risk monitoring (market risk, credit risk, etc.) and ensuring that the company has sufficient long-term financing.</li> <li>Constantly assessing and maintaining capital adequacy.</li> <li>When losses accrued in a business year reach half of the amount of company's share capital (capital inadequacy), MB is obliged to:               <ul style="list-style-type: none"> <li>propose appropriate measures for achieving capital adequacy and submit them to Supervisory Board ("SB") within 8 days;</li> <li>initiate the process of finding adequate funding; and</li> <li>immediately convoke the General Meeting.</li> </ul> </li> </ul>
		b) <b>Obligations of company's SB</b>	<ul style="list-style-type: none"> <li>Monitoring the company's liquidity and solvency.</li> </ul>
3.	<b>CONDITIONS OF ILLIQUIDITY AND INSOLVENCY</b>	a) <b>Definitions</b>	<ul style="list-style-type: none"> <li>Company is considered illiquid when (i) company is in default for over 60 days with payment of invoices exceeding 20% of the value of total company's short-term obligations recorded in last published financial statements, or when (ii) company is late for over 30 days with payment of employee salaries and related contributions.</li> <li>Company is considered insolvent when (i) company is incapable on a more permanent basis (exceeding 60 days) to fulfill its monetary debts, or when (ii) company is over-indebted.</li> </ul>
		b) <b>Obligations of company's MB</b>	<ul style="list-style-type: none"> <li>Must not perform any payments except those necessary for regular business (e.g. salaries, operative costs, etc.).</li> <li>Must not act in a way damaging to creditors.</li> <li>Must undertake appropriate measures of financial restructuring.</li> </ul>

<sup>6</sup> Provisions of this section do not apply to certain undertakings, dominantly in finance industry (e.g. financial institutions, investment, insurance or leasing companies, etc.).

<sup>7</sup> Illiquidity is defined as inability to timely fulfill due monetary obligations. Insolvency is defined as a more permanent inability to settle monetary debts.

GENERAL SUBJECT MATTER	SPECIFIC SUBJECT MATTER	MAJOR PROVISIONS
4. PRE-BANKRUPTCY SETTLEMENT ("PBS")	a) Effects of opening of PBS	<ul style="list-style-type: none"> <li>• All claims against debtor become due for payment regardless of their maturity.</li> <li>• Debtor may perform payments only with consent of particularly appointed Commissioner.</li> <li>• Litigation, enforcement, administrative procedure and procedure for establishing security of interests are discontinued on Debtor's proposal. Bankruptcy procedure over the debtor cannot be instituted.</li> <li>• PBS does not affect the right of certain secured creditors (e.g. mortgagees) to be settled separately.</li> </ul>
	b) Timelines and procedure	<ul style="list-style-type: none"> <li>• Debtor's MB <b>has to</b> initiate PBS<sup>8</sup> before regional center of Financial Agency ("FINA"):               <ul style="list-style-type: none"> <li>○ within 60 days as of the debtor entering into illiquidity (if restructuring has failed); or latest</li> <li>○ within 21 days as of the debtor falling into insolvency.</li> </ul> </li> <li>• Creditors have to notify their claims within 30 days from publication of the ruling on opening of PBS.<sup>10</sup></li> <li>• Settlement Council, Commissioner and creditors shall act in order to (i) determine creditors' claims and (ii) discuss and accept (by majority of creditors) the financial restructuring plan ("Plan") proposed by the debtor.</li> <li>• If a Plan is accepted, the Settlement (corresponding to the agreed Plan) will be entered into before competent commercial court and will represent an enforceable instrument.</li> <li>• If no agreement on a Plan can be reached, PBS will be discontinued.<sup>11</sup></li> <li>• If PBS is discontinued and the debtor is still insolvent, FINA will initiate bankruptcy procedure within 8 days.</li> </ul>
	c) Effects of Settlement	<ul style="list-style-type: none"> <li>• The debtor is obliged to pay the amounts agreed in the Settlement.</li> <li>• Until obligations under the Settlement are fulfilled, debtor may continue performing only essential payments.</li> <li>• Debtor must produce and file with FINA quarterly reports on implementation of the Plan under the Settlement.</li> </ul>
	d) Misdemeanors and fines	<ul style="list-style-type: none"> <li>• Undertaking shall be penalized with a fine in the range of HRK 10,000 – 1,000,000 (ca. EUR 1,330 – 133,000) if it:               <ul style="list-style-type: none"> <li>○ fails to fulfill a monetary obligation within the deadlines set under the Act;</li> <li>○ grants loans or distributes dividends contrary to the Act (while undertaking is illiquid or insolvent);</li> <li>○ performs prohibited payments;</li> <li>○ fails to initiate PBS when required; or</li> <li>○ fails to timely file with FINA the reports on implementation of the Plan agreed in the Settlement.</li> </ul> </li> <li>• Responsible person within the undertaking shall also be penalized in above listed instances, with a fine in the range of HRK 1,000 – 50,000 (ca. EUR 133 – 6,650).</li> </ul>

<sup>8</sup> However, a debtor is only entitled (but not obliged) to initiate PBS if debtor (i) has no assets or only has assets of small value, and (ii) has no employees.

<sup>9</sup> Debtors which were illiquid or insolvent as at 1 October 2012 have to initiate PBS by 30 December 2012.

<sup>10</sup> Public announcements and invitations during PBS shall only be published online (on FINA's web page).

<sup>11</sup> PBS will be discontinued if (i) a Plan is not accepted within 120 days as of opening of PBS, (ii) during PBS the debtor is performing prohibited payments or (iii) debtor settles all claims by the time of the hearing scheduled for voting on a Plan.

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