



## EMERGENCY LEGAL KIT FOR BUSINESS SERIES

Year 2, Issue 2, September 2014

### **Financial leasing & new insolvency law**

As of June 2014, the new Insolvency Law no. 85/2014 has modified the regime of financial leasing agreements in insolvency proceedings.

All in all, there are both good and bad news for leasing companies. Good news are mainly related to leasing companies' right to terminate leasing agreements even after commencement of the insolvency proceedings, whilst bad news mainly concern newly imposed limitations on value of receivables that can be registered in insolvency by a leasing company.

#### **1. Terminating the leasing agreement due to insolvency**

Under the new Insolvency Law, leasing companies may choose, within three months as of commencement of the insolvency procedure, to either terminate or maintain the financial leasing agreements concluded with the company undergoing insolvency.

If the company chooses to terminate a financial leasing agreement, it can either repossess the assets or choose to transfer ownership over the same to the debtor. In case the assets are repossessed, the leasing company shall be registered on the table of creditors with a receivable equating to (i) installments and accessories that had been invoiced and

remained unpaid as at the date of commencement of the insolvency procedure, plus (ii) the balance between the rest of the amounts owed by the debtor according to the leasing agreement and the market value of the assets (to be established by an independent valuator).

If the leasing company chooses to transfer the ownership over the assets to the debtor, it shall be registered on the table of creditors with a receivable consisting of principal and penalties until commencement of the procedure, plus remaining installments according to the financial leasing agreement. The leasing company will be a secured creditor for this receivable, holding a statutory mortgage on the formerly leased assets. The registered receivable may not however exceed the market value of the relevant assets making object of the financial leasing agreement.

## **2. Maintaining the leasing agreement in insolvency**

In case the financial leasing company decides to maintain the financial leasing agreement, the installments and penalties accrued until commencement of the procedure are registered on the table of creditors. If the remaining installments are paid during the procedure, the ownership over the assets is transferred to the debtor and the leasing company's registered receivable shall become secured by a mortgage on the same assets.

However, the receiver has at its turn a right to terminate any leasing agreements in case it reckons that the assets of the insolvent company will be thus maximized. In such case, the leasing company will be entitled to damages that will be registered as a high priority claim in the table of creditors.

## **3. Agreements terminated before insolvency**

The new law also contains new provisions regarding financial leasing agreements terminated before the commencement of the insolvency procedure. Receivables resulting from such agreements shall be registered as the balance between all amounts owed under the leasing agreement and the market value of the repossessed assets.

## **4. Caveats**

The option to terminate or not a leasing agreement as per the above should rely on a thorough assessment of actual legal and financial risks in each of the above scenarios, as well as the factual circumstances surrounding the insolvent company, including the real causes of the insolvency. For instance, if there is real potential for the company to continue the business and to be restructured, and the leased assets are deemed to play an important part in such scenario, maintaining the agreement may be a more favourable solution for all parties involved.

In any case, the new insolvency law contains grey areas and unclear provisions that will be prone to different interpretations (at least until a consistent court practice is formed). Accordingly, leasing agreements should contain specific provisions aimed at mitigating potential difficulties arising therefrom.

\*\*\*\*\*

This publication contains general information only, and it should not be considered as legal, tax, accounting opinion or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

For additional information, you may contact:



**Alina Popescu**

**Co-Managing Partner**

[alina.popescu@maravela.ro](mailto:alina.popescu@maravela.ro)



**Marius Pătrășcanu**

**Partner**

[marius.patrascanu@maravela.ro](mailto:marius.patrascanu@maravela.ro)



**Mirela Metea**

**Associate**

[mirela.metea@maravela.ro](mailto:mirela.metea@maravela.ro)