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BRIDGE LOANS—AND WHAT TO KEEP IN MIND

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I. WHY THIS TOPIC IS IMPORTANT

Bridge loans are short-term financing instruments that provide companies with temporary liquidity—for example, until acquisition financing, refinancing, or a sale is finalized, or during the period required to develop a restructuring plan. In restructuring contexts, bridge loans serve to bridge the gap between the onset of financial difficulties and the implementation of viable restructuring measures, thereby preserving the company's operational continuity.

Bridge loans should be distinguished from restructuring loans: Whereas restructuring loans are designed to sustainably resolve an existing or impending cause of insolvency and provide funds for a comprehensive restructuring, bridge loans serve exclusively to secure short-term liquidity—typically for a period of one to three months—until a thorough assessment of the company's viability has been completed and, where appropriate, a restructuring loan can be arranged.

During a crisis, bridge loans are highly sensitive from a legal point of view. Lenders face the risk of being exposed to avoidance and liability claims (both civil and criminal) in the event that the borrower subsequently becomes insolvent—in particular, the allegation of unconscionable aiding and abetting the delay of insolvency. For the borrower's managing directors and corporate officers, obtaining a loan during a crisis may increase personal liability if the funds are used solely to unlawfully delay the filing of an insolvency petition. However, those familiar with the legal framework can safely structure bridge financing, avoid significant liability risks, and thereby protect the company from insolvency proceedings.

II. LEGAL BASIS AND REQUIREMENTS

A bridge loan is primarily subject to general loan law and, where applicable, banking supervisory requirements. Unlike a restructuring loan, a properly structured bridge loan typically does not require an IDW S6 opinion, as it is not intended for comprehensive restructuring but rather to secure short-term liquidity. In crisis situations, however, specific insolvency law considerations apply:

- **Insolvency avoidance:** Loan disbursements and related security grants may be challenged in the event of a subsequent insolvency—particularly as congruent or incongruent coverage, if the lender knew or should have known of the debtor's insolvency.
- **Unconscionable lending:** A lender may be held liable to other creditors if the granting of the loan objectively contributes to concealing the debtor's insolvency or delaying an insolvency petition, and the lender at least willingly accepts this consequence. The decisive factor is whether the loan serves a coherent restructuring plan or merely delays inevitable economic collapse.
- **Obligation to file for Insolvency:** The borrower's managing directors remain bound by any obligation to file for insolvency even when taking out a bridge loan. A loan eliminates illiquidity or over-indebtedness only if the funds are actually sufficient to sustainably eliminate the cause of insolvency—otherwise there is a risk of liability for delayed filing of insolvency.

III. RECOMMENDATIONS

- **Develop and document a restructuring plan:** The loan should either form part of an existing, coherent, and transparent restructuring plan that robustly demonstrates the company's ability to be restructured, or it should specifically enable the development of such a plan (e.g., through an IDW S6 opinion).
- **Carefully assess insolvency risk:** Before granting or obtaining a bridge loan, it must be determined whether the company is already illiquid or over-indebted. If either ground for insolvency exists, it must be ensured that the loan sustainably eliminates the cause of insolvency; otherwise, the obligation to file for insolvency remains in effect.
- **Stipulate designated purpose and use of funds contractually:** The loan agreement should specify the designated purpose of the loan, the term, the right to extraordinary termination if the restructuring proves unfeasible, strict reporting and information obligations, and a detailed liquidity plan. The intended use must serve exclusively to maintain operations during the transitional phase; personal interests must have no influence.
- **Define the exit scenario from the outset:** At the time the loan is granted, it should be specified which specific milestones (e.g., securing follow-on financing, implementing operational measures) must be achieved within which timeframes—and what consequences will result in each case they are not met (e.g., termination).
- **Design a security structure that is avoidance-proof:** Collateral should be granted simultaneously with loan disbursement, and its nature as a cash transaction should be carefully documented to minimize avoidance risk.
- **Ensure early legal support:** Bridge financing in crisis situations should be accompanied by specialized restructuring and insolvency lawyers. The liability risks for all parties involved are substantial and require careful legal structuring on a case-by-case basis.