

From: Gerver, Noor <Noor.Gerver@dlapiper.com>
Sent: maandag 15 maart 2021 10:31
To: Hautvast, Tom <Tom.Hautvast@dlapiper.com>; Coenraads, Michiel <Michiel.Coenraads@dlapiper.com>
Cc: Boer, Manon den <Manon.denBoer@dlapiper.com>
Subject: RE: EBRD

Tom, Michiel,

1. We refer to our earlier email with our considerations. We reviewed the new scenario from different angles, but based on our notarial rules of conduct our position unfortunately needs to remain unchanged.
2. We understand that the proposed scenario is different from the first option is that not only the guarantee will be cancelled, but that in addition an 'at arm's length' purchase price will be paid for the shares in Danube Holding BV. We assume that in the new scenario the guarantee will also be cancelled.
3. The fact that an 'at arm's length' purchase price will be paid for the shares in Danube Holding BV does not change our position that, based on our notarial rules of conduct, we cannot execute the deed of transfer of the shares, knowing that the transfer of shares will frustrate the attachment that Bemol levied on the Moldavian assets.
4. We understand that in your view the proposed transaction may not result in an 'actio pauliana', but our opinion is not only based on the question whether the transaction would be fraudulent towards creditors, but is also based on the fact that third party rights will be frustrated. Notaries have to take interests of third parties into account when executing a notarial deed.
5. We, as notaries, cannot assess whether a sale and transfer against payment of a purchase price will bring Bemol in a better position or not. Whether this is the case or not, the transfer will still result in a tort toward Bemol. In connection herewith we note that the purchase price will not be received by Mr. Moser personally, but by Thomo Invest Ltd, as seller of the shares.
6. In a tort scenario we, as notaries, do not have the possibility to take all circumstances of the transaction into account, i.e. in this scenario whether the shares will be sold and transferred against a purchase price.
7. Our position therefor remains unchanged for all three proposed scenarios, i.e. sale, both against an 'at arm's length' purchase price as well as against the release of the guarantee, as well the vesting of a right of pledge on the Dutch shares).
8. In the end, it is a judge who needs to decide whether it is lawful to transfer the shares or not.

Conclusion

- 1 . We have no other choice than to conclude that our position remains unchanged.
- 2 . The reason for our position is not the legal title for the transaction, but the transfer of the shares resulting in frustrating Bemol's rights, and we cannot assess whether in this scenario he will be better off.

Is it still not possible to transfer shares at a higher level in the structure, to avoid Dutch notarial involvement?

Regards,

Manon/Noor

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