

**ADDITIONAL EXPLANATION OF LIBERTY OSTRAVA A.S. TO THE
RESTRUCTURING PLAN OF 10 MARCH 2024**

Definition of

The terms used in this Supplemental Explanation of Liberty Ostrava, a.s. to the Restructuring Plan dated 10 March 2024 (the "**Supplemental Explanation**") shall have the meaning defined in the Restructuring Plan of Liberty Ostrava a.s.

1. INTRODUCTION

- (1) The Restructuring Administrator has reviewed the submitted Restructuring Plan in the course of his activities and concluded that *"the Restructuring Administrator considers the Restructuring Plan to be properly prepared, although he has formulated certain partial reservations concerning it, as set out in detail in Part II [of the Restructuring Administrator's Activity Report No 9]. The Entrepreneur has the right to comment on the reservations submitted or to explain the facts better, without changing the restructuring plan itself."*
- (2) In order to keep creditors as informed as possible, the Entrepreneur takes this opportunity to supplement the information provided to the Affected Parties through the Restructuring Plan as follows.

2. THE RANGE OF PARTIES CONCERNED

- (3) Comparing the list of affected parties attached to the rehabilitation project with the list of affected parties attached to the Restructuring Plan, it can be seen that the circle of affected parties has been reduced by 258 persons in addition to TAMEH (whose exclusion was submitted to the creditors for approval).
- (4) The entrepreneur states that it is obliged under Section 31(4) of the Preventive Restructuring Act to *"keep a list of the rights concerned for the purpose of determining the number of votes"*. The Undertaker concludes that it is its duty to monitor on an ongoing basis whether the right listed in the list of Affected Rights has been reduced or extinguished as a result of a legal event and to record such changes in the list, if any. In doing so, if it finds that any Affected Party has completely extinguished all of its Affected Rights, it must logically adjust the list of Affected Parties, as such person no longer meets the material component of the definition of Affected Parties under Section 2(e) of the Preventive Restructuring Act.
- (5) The majority of the loss of affected parties is the result of the process just described, i.e. they are persons whose originally affected rights had been extinguished in their entirety by set-off or discharge prior to the submission of the restructuring plan to a vote.
- (6) The remaining part is a consequence of a subsequently (i.e. after the initial list was drawn up) identified obstacle to the creditor's participation in the preventive restructuring pursuant to § 22(3)

Preventive Restructuring Act, i.e. the existence of ongoing and uninterrupted proceedings on such a claim initiated before the preventive restructuring was initiated. Even such claims and, if applicable, such persons originally identified as affected had to be excluded by the Entrepreneur from the circle of Affected Parties in accordance with its obligations.

3. EMISSION ALLOWANCES

- (7) In his commentary, the Restructuring Administrator expressed doubts whether the Entrepreneur did not show a future obligation to retire emission allowances corresponding to the volume of CO₂ emissions in 2023 in the off-balance sheet and whether the Entrepreneur should therefore have included information about this future obligation and the manner of its fulfilment in the descriptive part of the plan pursuant to Section 14(3)(b) of the Act on Preventive Restructuring.
- (8) The Entrepreneur states that in accordance with accounting standards, the Entrepreneur does not record this future obligation in the off-balance sheet, nor does it record future free allocations of emission allowances. However, in order to fully inform creditors, the Entrepreneur discloses the following in addition to its obligations.
- (9) The entrepreneur will be obliged to retire emission allowances corresponding to 1,322,302 tonnes of CO₂ by 30 September 2024. Before this date, the business operator expects to receive a free allocation of emission allowances corresponding to 1,936,883 tonnes of CO₂ in accordance with its legal entitlement. The undertaking will therefore not have to spend any funds to fulfil its future obligation, but will instead have surplus emission allowances corresponding to 614,581 tonnes of CO₂ at its disposal in the expected course of events, which it intends to use to finance its restructuring as set out in the Restructuring Plan.

4. UNTOUCHED COMMITMENTS

- (10) In his report, the restructuring trustee recommends a better explanation of why the liabilities reported in the balance sheet that are not affected by the restructuring plan do not threaten the viability of the plan.
- (11) As of the end of February 2024, the Company has total liabilities of approximately CZK 16.4 billion.
- (12) Of this amount, approximately CZK 3.9 billion are long-term liabilities; these liabilities, given their maturity, do not threaten the restructuring process, not to mention the fact that the vast majority of them are intra-group in nature.
- (13) Of the remaining CZK 12.5 billion, approximately CZK 2.3 billion is intra-group in nature.
- (14) In addition, CZK 1.8 billion is made up of contingent items.
- (15) Furthermore, CZK 1.2 billion is the liability to EGAP, which is repaid according to the repayment schedule envisaged in the *cash-flow* plan.
- (16) Approximately CZK 0.25 billion represent employee costs, which are paid regularly each month and are accounted for in the *cash flow* plan.

- (17) In the remaining approximately CZK 6.8 billion there is CZK 0.4 billion of disputed liability towards ČEZ Distribuce; this dispute is at an advanced stage, a provision for the event of final failure is included in the *cash flow* plan.
- (18) Furthermore, approximately CZK 2 billion represent alleged liabilities towards TAMEH; the Entrepreneur denies the liabilities towards TAMEH, TAMEH has sued about a quarter of them so far, the dispute is before the first hearing in the case; the Entrepreneur expects to succeed in this dispute, but the final decision is in any case beyond the time horizon of the Restructuring Plan.
- (19) Approximately CZK 4.5 billion remain. Of this, approximately CZK 2,3 billion is dealt with in the submitted plan (these are the affected liabilities), the remainder being represented by continuously repaid post-moratorium liabilities or disputed liabilities.
- (20) In view of the foregoing, the Entrepreneur therefore maintains its belief that, if adopted, the Restructuring Plan has a reasonable prospect of preventing the Entrepreneur's bankruptcy and restoring its plant to full operational capability.

5. THE BEST INTEREST OF THE CREDITOR TEST

- (21) In accordance with its statutory obligations, the entrepreneur explained in the Restructuring Plan why it believes that the solution proposed in the plan is in the so-called best interest of the Affected Parties, i.e. that the value of the benefits the Affected Creditors will receive therein is *at least the same as in* a hypothetical insolvency proceeding. The restructuring trustee notes that the considerations do not take into account the fact that the creditors are to receive 100 % of the principal but not of the proceeds under the plan and that the discounting does not take into account the timing of the performance.
- (22) The Entrepreneur believes that the aforementioned aspects balance each other and therefore the Entrepreneur considered and continues to consider them to be negligible.
- (23) More specifically, the theoretical default interest on the Affected Rights to date is 5% of the principal amount.
- (24) According to the statistical data published by the Ministry of Justice, the average length of insolvency proceedings in the case of joint stock companies at the KS Ostrava in 2023 was 1632 days (the national average was even longer, i.e. 1710 days). Taking into account the complexity of the Entrepreneur's hypothetical insolvency proceedings, it can therefore be considered virtually certain that the distribution of proceeds among creditors in the Entrepreneur's hypothetical insolvency would not take place before five years after the commencement of insolvency proceedings. Until then, no payment to unsecured creditors can be expected.
- (25) According to the Restructuring Plan, the participating creditors are to receive 25% of the Affected Rights this year and the remainder in instalments ending in December 2025 and March 2026 respectively, i.e. in a maximum of two years. The creditors will therefore receive the full benefit at least three years earlier.
- (26) Let us now discount both options to present value by e.g. a 5% discount rate (the real rate would certainly be higher, which would further deepen the demonstrated effect).

- (27) If we consider a model claim of CZK 100, the discounted present value of the successive principal payments under the Reorganisation Plan is approximately CZK 94-95, depending on the individual variants. The similarly discounted present value of a single repayment of the entire principal plus 5% interest on arrears over five years is approximately CZK 82. In other words, the time delay of the contemplated performance in a hypothetical bankruptcy more than wipes out the benefit of the accrued interest until the commencement of the hypothetical insolvency proceedings.
- (28) The entrepreneur reiterates that he does not consider it realistic that the principal claims of unsecured creditors would be fully satisfied in a hypothetical bankruptcy, let alone that the assets accrued before the proceedings were initiated would also be satisfied. According to a study by L. Smrčka et al., the average rate of satisfaction of unsecured creditors in bankruptcy in the Czech Republic is 1.4%. The undertaking does not expect that a significantly higher satisfaction rate could realistically be expected in this case.

6. FORM

- (29) Finally, the Restructuring Administrator expressed some doubt as to whether the "*form of writing*" of the Restructuring Plan had been complied with, since it was not electronically signed by the Entrepreneur.
- (30) The Entrepreneur notes that the Preventive Restructuring Act does indeed declare a restructuring plan to be a "writing", but not a written legal act. However, the Civil Code links the requirement of a signature only to written legal acts (Article 561 of the Civil Code), whereas in the case of 'documents' it is sufficient that the document is in paper or electronic form (Article 3026 of the Civil Code), while the law directly provides for the possibility of not being signed (Article 566(1) of the Civil Code).
- (31) In this case, there is no legal act (just as a reorganization plan or a conversion project, for example, is not a legal act), since the only legal act is its submission by the entrepreneur for a vote (it was signed), the creditors' vote on it (for which the law requires a qualified form) and finally its adoption (which must be stated in a notarial record).
- (32) However, in order to avoid unnecessary confusion, the Entrepreneur has today published a new file on the page where the Restructuring Plan is available for download, which is an unchanged version of the Plan supplemented with the electronic signature of the Entrepreneur's statutory body. This has added an additional (in the Entrepreneur's view superfluous) form requirement within the meaning of Section 582(1) of the Civil Code, while creditors still have more than the minimum period required by law to vote.

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