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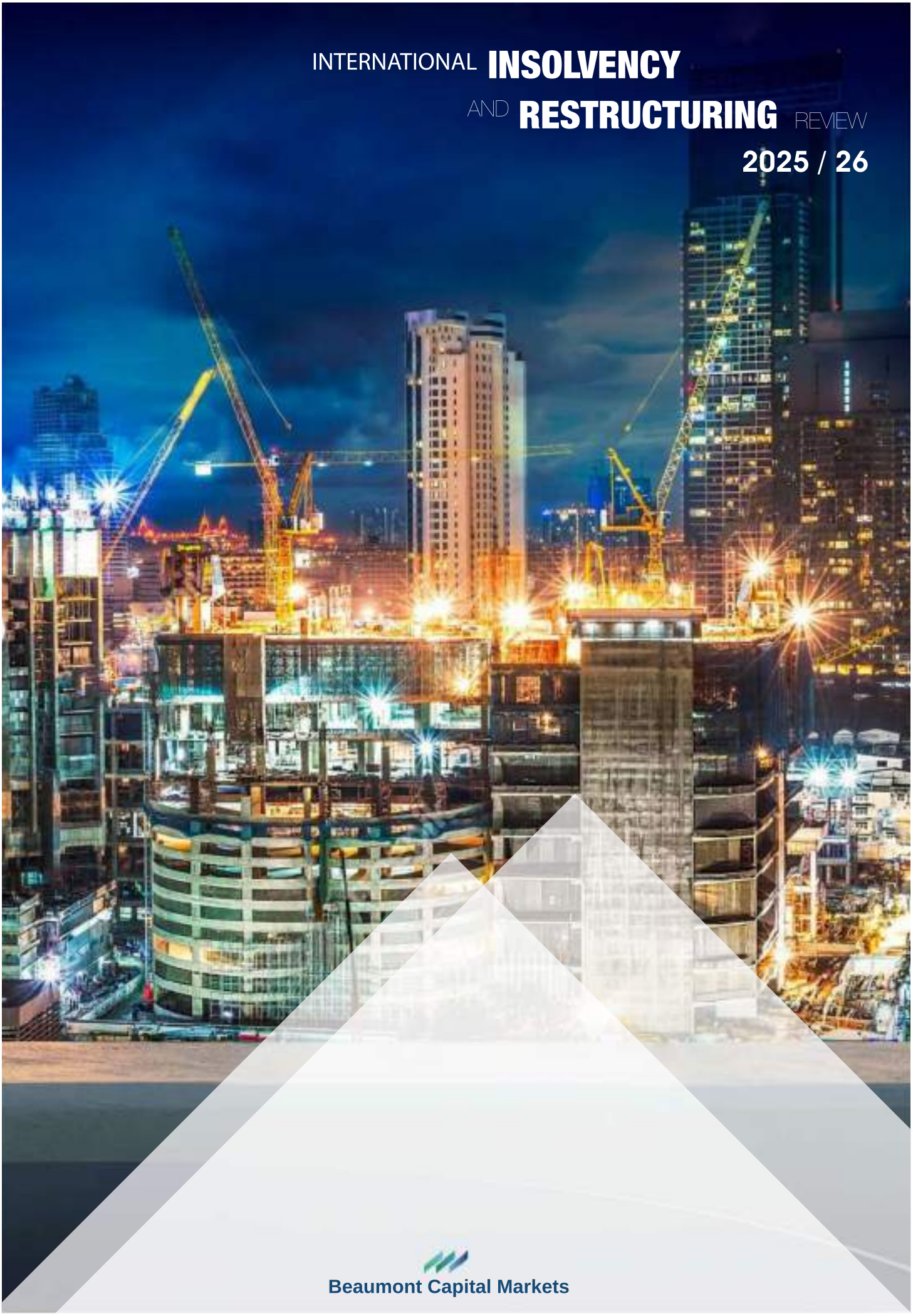

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SANCTIONING OF REORGANISATION PLANS BY LUXEMBOURG COURTS; A MARGINAL ASSESSMENT

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BIO

Ana Nicoleta Andreiana, partner, is a member of the Corporate / M&A / Restructuring practice at Loyens & Loeff Luxembourg. She has advised on numerous complex restructurings, often involving crossborder elements, liability management exercises, and distressed asset sales. Her practice includes mandates from both the company and lender perspectives. She possesses significant experience in finance and in debt and equity capital markets and acts for multinational clients, private equity investors and listed and non-listed companies on a wide range of complex corporate, M&A and financing matters. Over the years, Ana has developed a strong focus on the Latin American market and visits the region on a frequent basis.

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Patrick advises and represents clients in complex commercial and civil litigation. He has a particular focus on shareholder disputes (including regarding family-owned businesses), investment funds and financial litigation. He also has experience in employment and insolvency matters, particularly those cases with an international element.

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Sofia Polykandrioti, associate, is a member the Corporate / M&A / Restructuring practice at Loyens & Loeff Luxembourg. She focuses on distressed debt restructurings. As a member of the Restructuring Team, she advises multinational distressed debtors, investors and creditors in consensual and contentious restructurings across multiple industries including real estate, telecommunications, pharmaceutical, transportation, manufacturing, energy and retail. Sofia joined Loyens & Loeff Luxembourg in May 2021.

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SANCTIONING OF REORGANISATION PLANS BY LUXEMBOURG COURTS; A MARGINAL ASSESSMENT

Under Luxembourg law (law of 7 August 2023 on the continuation of businesses and modernisation of insolvency law, the **Restructuring Law**), the decision to sanction a debtor's reorganisation plan which has received sufficient support by its creditors ultimately lies with the court. For the court's decision, such review of the reorganisation plan undertaken is not holistic but is rather limited to the examination of specific requirements set out in the Restructuring Law (potential grounds for refusal).

In particular, the court shall only verify that:

1. the reorganisation plan offers a reasonable prospect of avoiding the insolvency of the debtor or ensuring the viability of the business;
2. the reorganisation plan does not excessively prejudice the interests of the creditors;
3. the applicable legal formalities under the Restructuring Law are being complied with;
4. the reorganisation plan is not contrary to public order;
5. any contemplated new financing under the reorganisation plan is necessary to implement the reorganisation plan;
6. the reorganisation plan is in the best interests of the creditors – only assessed by the court in the event that one or more creditors voting against the reorganisation plan challenges that the plan complies with this requirement;
7. the class of extraordinary creditors is treated more favorably than the class of ordinary creditors (each such class as defined in the Restructuring Law) – only assessed by the court in the event that the plan has only been approved by the class of ordinary creditors; and
8. no class of creditors receives or keep more than the total of its claims or interests as part of the reorganisation plan – only assessed by the court in the event that the reorganisation plan has been approved by one of two classes (ordinary or extraordinary class of creditors).

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Therefore, based on the Restructuring Law, the court can reject the sanctioning of a reorganisation plan when in its view, one or more of the above requirements are not satisfied. If the court considers that one or more of the requirements under 2 to 8 above have not been met, it may, prior to its decision and at its own discretion, allow the debtor to introduce a revised reorganisation plan which addresses such issues.

Despite the exhaustive and limited grounds for rejecting the sanctioning of a reorganisation plan, the court is still vested with a relatively broad discretion to determine the depth of its analysis of the reorganisation plan by reference to each condition above. Such level of analysis may differ on a case-by-case basis on account of specificities of the transaction, its complexity and other factors. Given the Luxembourg courts' traditional reluctance to intervene into the decision-making of commercial companies, it can however be expected that the courts will use their power with great caution.

Clarifications from the Luxembourg District Court

A decision rendered on 9 August 2024 (the **Decision** - *Numéro du rôle:TAL-2024-02787*) by the Luxembourg District Court (the **Court**) sheds some light on how courts tend to approach their relative discretion in deciding whether to sanction a reorganisation plan.

In the case dealt with in the Decision, only one class of creditors, holding extraordinary (i.e., secured) claims, was formed and sufficiently voted in favor of the reorganisation plan in line with the double majority prescribed by the Restructuring Law. Given that there was only one class of creditors (and presumably no new funding was contemplated in accordance with the Restructuring Law), the Court did not deal with requirements 5 to 8 above.

The Court focused on the remaining grounds for refusal and stated that requirements 2 to 4 above are met without providing any additional supporting justifications.

With respect to the feasibility of the reorganisation plan at hand and the viability of the debtor (requirement 1 above), the Court made the following important considerations:

- the Court considered that it can only perform a marginal assessment when deciding whether to sanction a reorganisation plan;

- the guaranteed success of the plan is not a prerequisite for its sanctioning;

- the existence of a risk of failure is not a sufficient ground for the Court to refuse the sanctioning of the reorganisation plan; and

- there is nothing in the reorganisation plan brought forward to the Court that would exclude the existence of reasonable prospect of avoiding insolvency.

In view of the above, the Court decided to sanction the reorganisation plan at hand.

Key takeaways

The Decision reiterates that the nature of the courts' review of a reorganisation plan is that of marginal assessment.

As Luxembourg jurisprudence on the topic evolves, it remains to be seen how Luxembourg courts will continue to interpret and apply the above-mentioned grounds for refusal when sanctioning a reorganisation plan. It may however be expected that the courts will reject plans only with great caution.

Luxembourg courts are likely to proceed with sanctioning a reorganisation plan despite the existence of some degree of risk that the reorganisation plan is ultimately deemed unsuccessful. Even though qualifying or quantifying such risk is challenging, it is clear that the concept of "viability of the business" under the Restructuring Law cannot be interpreted as a guarantee of viability of such business.

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> Luxembourg's court sanctions reorganisation plan with a marginal review, affirming that risk of failure alone won't block approval under the Restructuring Law.

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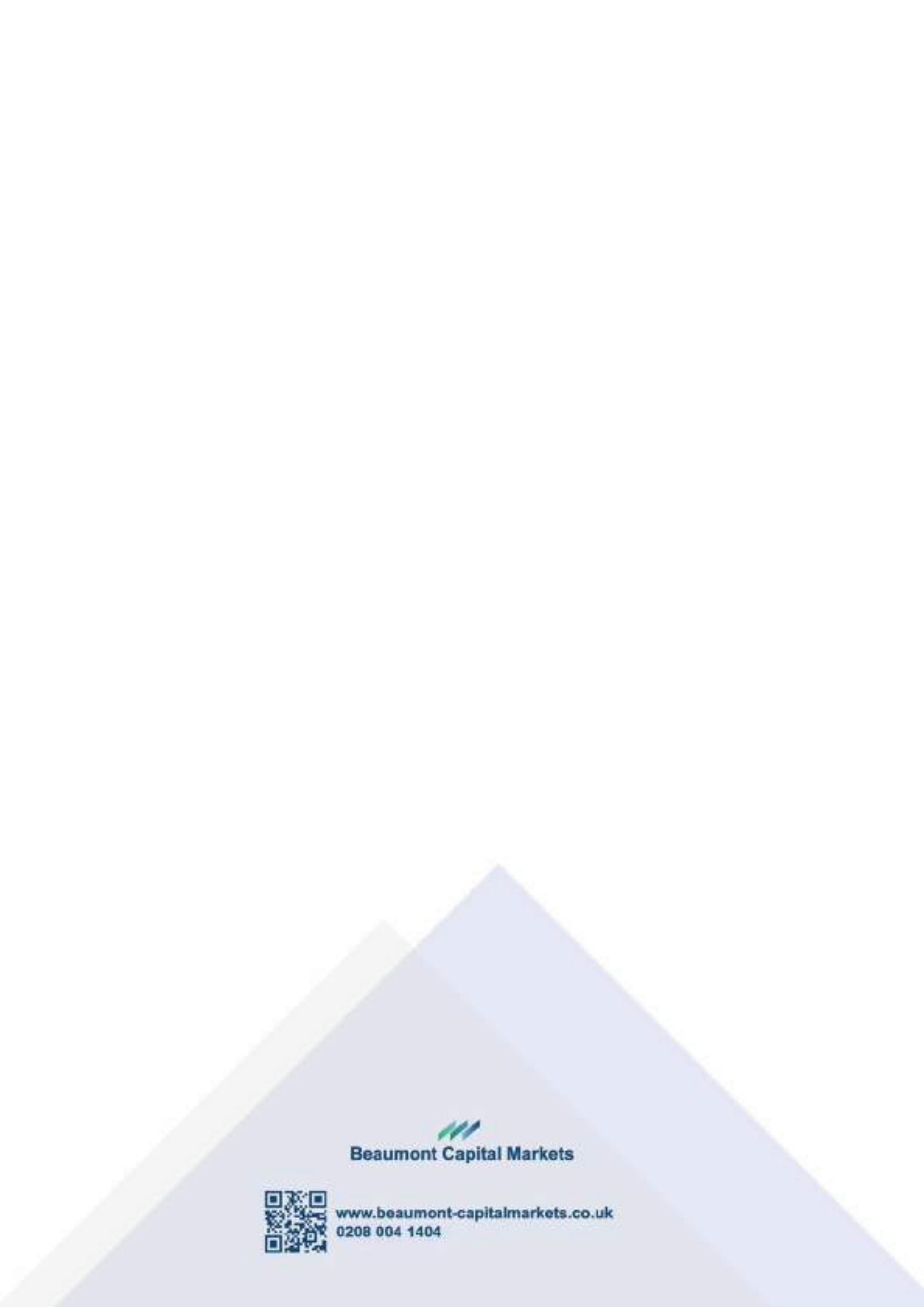
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