



Warsaw, 22 April 2022

**Opinion of the Management Board of Nextbike S.A. w restrukturyzacji with its registered office in
Warsaw**

regarding the motion of shareholder LARQ Growth FUND I Fundusz Inwestycyjny Zamknięty represented by White Berg Towarzystwo Funduszy Inwestycyjnych S.A. dated 16 February 2022 on appointing a special purpose auditor to audit, at the expense of the Company, certain issues related to the conduct of the Company's affairs (re. draft resolution no. 6 of the Extraordinary General Meeting of Nextbike S.A. w restrukturyzacji convened for 27 April 2022 and the agenda of the Extraordinary General Meeting of Nextbike S.A. w restrukturyzacji announced on 2 March 2022)

The Management Board ("**Management Board**") of Nextbike S.A. w restrukturyzacji with its registered office in Warsaw ("**Company**" or "**Issuer**") presents this opinion acting on the basis of art. 84(5) of the act of 29 July 2005 on public offering, on conditions for the introduction of financial instruments to the organised trading system and on public companies (Journal of Laws of 2019, item 623, as amended) ("**Public Offering Act**").

This opinion seeks to formally and materially assess the motion filed by the Company's shareholder – LARQ Growth FUND I Fundusz Inwestycyjny Zamknięty represented by White Berg Towarzystwo Funduszy Inwestycyjnych S.A. ("**Moving Shareholder**"), for appointing a special purpose auditor to audit, at the expense of the Company, certain issues related to the conduct of the Company's affairs ("**Motion**"), that the Moving Shareholder formulated as part of the demand to convene the Extraordinary General Meeting ("**EGM**") of the Company and a resolution in this regard to be passed by the EGM ("**Proposed Resolution**"), acting on the basis of art. 400 § 1 of the Commercial Companies Code (Journal of Laws of 2019, item 505, as amended) ("**CCC**") and art. 84(1) of the Public Offering Act.

1. Introductory remarks

This opinion is addressed to the Company's general meeting to provide the shareholders with relevant information for the purposes of deciding on the Motion, which should take place by voting over the Proposed Resolution during the EGM.

In the Management Board's view, there is no material justification for the Motion, in many respects the Motion is premature, its scope exceeds the limits of a special purpose auditor's competences, and contains many theses instead of matters that should be audited, which leads to a conclusion that the Moving Shareholder's actions seek to use the function of a special purpose auditor only as an instrument for purposes other than those set forth in the Public Offering Act.

The function of a special purpose auditor seeks to protect minority shareholders, which, in turn, is aimed to increase the supervision efficiency in listed companies and to enable shareholders to identify irregularities in a company's operations. Accordingly, the function of a special purpose auditor is positive, however, provided that a respective motion is filed in good faith and is motivated by actual care of a company's interests.

Nevertheless, an analysis of the Motion leads to opposite conclusions that show that its underlying purpose was different than the one provided for under statutory regulations.

This assessment is determined primarily by the fact that the Motion concerns a period of the Company's operations that was verified by the supervisory board, for which both the management boards and the supervisory boards were granted a discharge by the extraordinary general meeting. The Motion presents theses and assertions instead of areas of the Company's operations that the auditor should examine, and concerns the operations and relationships between third parties towards the Company and their relationships with entities other than the Company. A significant part of the areas covered by the Motion indicates the persons "guilty" of the alleged acts presented in the Motion, including persons from the Company's governing bodies and third parties. Additionally, a several years' period that has passed since the events presented in the Motion should also be taken into account. This raises reasonable doubts as to the real purpose of the Motion; this is because the Moving Shareholder had and still has influence on the composition of the Supervisory Board by being entitled to appoint two of its members who (i) did not state that they had not been able to perform their duties, (ii) did not resign from their functions in the Supervisory Board, and (iii) were granted a discharge for the period in which they performed their duties (interestingly, the Moving Shareholder itself voted in favour of granting them a discharge). Moreover, the Moving Shareholder did not ever point out that the persons appointed by it to the Supervisory Board had performed their duties improperly which would give grounds for auditing the Company by an external entity. Accordingly, either the members of the Supervisory Board at that time performed their duties improperly and the Moving Shareholder approved it, or they performed their duties properly, but currently the Moving Shareholder has in view other aims than the Company's interest.

In the Motion the Moving Shareholder states that *"the assertions presented in [the Motion] were formulated with a reservation that they are speculative (and not conclusive)"*. However, an analysis of the Motion shows that its speculative nature is deceptive and is supposed to cause a potential auditor to give answers consistent with a thesis already contained in a given question.

In the Management Board's view, such formulation of the Motion would make a special purpose auditor exceed the statutory frameworks of its responsibilities, which justifies a negative assessment of the Motion.

What is more, the matters covered by the Motion concern actions taken by the then-current management board of the Company which were verified and approved by the then-current Supervisory Board. These events took place several years ago and were not questioned by the Moving Shareholder. Therefore, the current Management Board had no reasons to verify these matters again. Nevertheless, after receiving the Motion, the Management Board took measures to clarify this situation (i.a. it requested the current member of the Supervisory Board Mr Rafał Federowicz to present clarifications regarding the circumstances of the conclusion by the Company, represented at that time i.a. by Mr Rafał Federowicz, of an agreement concerning contractual penalties with Nextbike GmbH, which agreement is criticised in the Motion). In the Management Board's opinion, demanding verification of events that were approved by the management board, the Supervisory Board and the general meeting of the Company by granting a discharge, before their verification by the current Management Board is premature and exposes the Company to unreasonable, substantial costs.

2. Circumstances relevant in terms of the moment when the Motion was filed

In the market practice there have been cases where moving parties used a special purpose auditor to gain certain benefits; this is defined as "corporate blackmail". Filing the Motion structured in such a specific way may raise concerns of both investors (as it may hinder the Company's ongoing operations and negatively affect its reputation), and the management board (by raising doubts when assessing its operations).

Therefore, to assess the Motion properly it is necessary to put it in the context of the ongoing restructuring proceedings regarding the Company. In the Management Board's view, the scope of the filed Motion suggests that the Moving Shareholder is trying to use it to put pressure on the Company and its Management Board to achieve its own interests.

Larq's conduct may result from the fact that some of third-party liabilities towards the Issuer are secured with a mortgage established on the Larq's ownership right to premises in Warsaw. For this reason, Larq's active efforts seem to be aimed at protecting its property, whereas the Company's interests are secondary.

The Company understands the Moving Shareholder's concerns, however, the Moving Shareholder's actions substantially hinder the negotiations with the Company's creditors and negatively affect the Issuer's reputation in the eyes of its business partners (as it has to correct the information that Larq disseminates among the Company's creditors).

3. Motion assessment

3.1. Scope of the audit

In the Proposed Resolution the Moving Shareholder requests that the manner of managing the Company's affairs is audited and an auditor establishes facts in the nine following areas:

- a) determining sanction charges regarding handling of contracts and amounts recovered from Nextbike GmbH in the years 2016–2021 under a licence agreement concluded between the Company and Nextbike GmbH;
- b) analysing the Company's performance of the project within the Metropolitan Area Gdańsk-Gdynia-Sopot through its subsidiary NB Tricity Sp. z o.o. with respect to an alleged material breach of a licence agreement by Nextbike GmbH;
- c) analysing correspondence and other actions between Ralph Eric Kunz and Leonhard von Harrach and Management Board members: Agnieszka Masłowska and Rafał Federowicz between 15 October 2019 and 19 May 2020, allegedly aimed at transferring funds to Nextbike GmbH;
- d) verifying the actions taken by the Company's governing bodies with respect to the ongoing accelerated arrangement procedure;
- e) verifying the exposure of the Company's shareholders and creditors to a risk of deterioration of their situation as a result of the Management Board's actions taken during the ongoing accelerated arrangement procedure;
- f) inspecting the Company's actions that may qualify as mismanagement, acting despite a conflict of interest, or acting to the Company's detriment;
- g) inspecting the Company's actions with respect to the sale of 3,316 bikes being in the Company's possession;
- h) analysing transactions, cash flows, agreements and other documentation between the Company and Nextbike GmbH in the years 2016–2021;
- i) analysing the Nextbike GmbH's termination of the exclusivity right granted to the Company with respect to services stipulated in a licence agreement, about which the Company informed in the current report no. 7/2021 of 26 January 2021.

The Moving Shareholder indicated a number of "sub-areas" for each of the areas listed above that should make the main areas more specific. However, the scope of an audit that the Moving Shareholder requests goes beyond the frameworks stipulated under art. 84(1) of the Public Offering Act.

First, in fact, the Moving Shareholder does not provide factual grounds for examining the circumstances covered by the Motion, but only points out to existing "problems", which is not

in line with the market practice and the interpretation of applicable laws. Pointing out to alleged “problems” without specifying their source (and the circumstances of becoming aware of them) does not constitute grounds for filing a legally binding motion; this may only be considered highly subjective unjustified assertions; in particular that in the Motion the Moving Shareholder criticises the transactions carried out by the previous Management Board and after having been verified and approved by the Company’s Supervisory Board.

Second, even if it is assumed that the adoption of the Proposed Resolution is justified, in the Management Board’s opinion, the Proposed Resolution is to a great extent impractical as it covers assessment falling outside an auditor’s powers. The Moving Shareholder requests principally that an auditor audits the Company’s entire activity (including with respect to the foundations of its operation), which does not meet the formal requirements for a motion to appoint a special purpose auditor that should be appointed to audit certain matters related to running a company’s affairs. Moreover, the Motion requires obtaining information from former members of the Management Board that no longer perform their functions and were granted a discharge for their duties, which is beyond the capacities of a private entity that has no legal measures available to obtain information from third parties towards the audited Company.

Third, some aspects of the Motion (in particular point 6) regard matters that may be established relatively quickly and cost-free by the Supervisory Board (and in particular by the Supervisory Board member appointed especially for verification matters Mr Włodzimierz Parzydło who was appointed by the Moving Shareholder as part of the selection of supervisory board members in groups). Therefore, appointing an auditor to get the same answers as the Supervisory Board member (the Supervisory Board in a broader sense) would get is pointless and would only generate unnecessary costs. Already at this point, with respect to Issue 6 the Management Board may indicate that:

- a) IT agreements are concluded (i) within the scope necessary to secure the proper operation of the Company, (ii) on an arm’s length basis, and (iii) with entities not related to the Company (6.a);
- b) the Company has not concluded any agreements with the persons indicated by the Moving Shareholder (6.b);
- c) the Management Board took all necessary measures to secure the winter maintenance of bikes in the 2021/2022 season. In particular, it reviewed and verified agreements concluded by the previous management board with persons responsible for the maintenance. It took necessary steps in relation to the suspected exposition of the Company to damage as a result of these agreements. Additionally, the best example of the maintenance being properly ensured is the timely launch of the Company’s services in the 2022 season, without any reservations on the part of the contracting party (6.c);

- d) the costs of celebrating the tenth anniversary of the Company were insignificant (approx. PLN 35,000 net) and it was combined with a marketing campaign and testing the possibility to commercially use the electric bikes being in the Company's possession (6.d);
- e) the cooperation with N42 sp. z o.o. generated income from the advertisement multiple times higher than the remuneration of this contractor (6.e);
- f) the amount of the charged contractual penalties was multiple times lower than predicted in the budget; the Management Board also took measures that considerably reduced the Company's exposition to the risk of contractual penalties (6.f);
- g) thanks to the efforts taken by the Management Board, the theft rate was lower than predicted in the budget, and also lower than during the term of office of the previous management board (6.g).

Fourth, an auditor would be supposed to audit documents and information being in possession of third parties (e.g. Co-Investor Deutschland GmbH) with respect to the Issuer. Additionally, the Moving Shareholder seems to expect that the audit will include almost investigative activities (examination of former members of the Management Board to establish, for instance, whether they "*felt emotional pressure*" or to examine "*the circumstances of making a statement*") that are reserved for judicial authorities and are correlated with their powers. However, this is not the role of a special purpose auditor. Please note that any analyses carried out by auditors paid for by the Company should concern only a specific matter relating to the management of its affairs, and therefore concern only the Company's interests and affairs. It is not in the Company's legitimate interest to cover costs of examining matters regarding affairs of other entities.

Fifth, as mentioned above, the way of indicating the concerned areas is defective and already contains theses just to be confirmed by an auditor; the Motion should indicate circumstances that an auditor should examine and potentially establish, e.g. damage, instead of "*evaluating the damage suffered by the Company*" (see e.g. area 2f)).

Sixth, in the Management Board's opinion, an auditor's competences do not include a *strict* procedural assessment of the "*legitimacy of a lawsuit*" regarding the circumstances indicated in areas 1h), 2i), 5f), 7g) 8k) or 9f).

Seventh, the costs of the examination that at this point are estimated at PLN 750,000 would negatively affect the Company's ongoing operations and its financial standing (this issue is discussed in more detail below), and the Moving Shareholder must be aware of it as it is actively participating in the Company restructuring. The Management Board also underlines that the conclusion of an agreement with an entity to perform the tasks of a special purpose auditor will require the Management Board to obtain corporate approvals and approvals

related to the ongoing restructuring proceedings (including the approval of the court-appointed supervisor).

3.2. Other important facts

3.2.1. Attempt to extend the statutory scope of an auditor's competences

In case of appointing an auditor, a special information obligation would arise for the Company's governing bodies with respect to disclosing documents covered by the Motion to an auditor, as pursuant to art. 86(1) of the Public Offering Act the Management Board is required to provide an auditor with existing documents specified in the Proposed Resolution and being in the Company's possession.

In this context, the Management Board points out to the following issues.

First, in the Motion such documents are described in a very general way (e.g. as email correspondence) without any details in relation to all audit areas.

Second, there are no legal grounds to impose on the Management Board an additional, non-statutory obligation to provide an auditor with documents *"in whatever form and within the full scope indicated by the Auditor with respect to the Audit Subject and its purpose"*. It should be stressed that in light of art. 86(1) in conjunction with art. 84(4)(3) of the Public Offering Act it is not within an auditor's competences to specify the scope of documents to be audited. In our view, leaving it to an auditor could be a circumvention of the said provisions.

Moreover, the Management Board also states that in some aspects of the Motion the Moving Shareholder relies on information that in principle are not disclosed to shareholders as part of their access to Company information. Therefore, the sources of obtaining this information by the shareholder should be verified regardless of the assessment of the Motion.

3.2.2. Audit costs

Another important issue that justifies a negative assessment of the Motion are costs that the Company would have to incur in connection with appointing an auditor.

Engaging an auditor for the examination of matters covered by the Proposed Resolution would generate substantial costs on the Company's part, including i.a. an auditor's remuneration, reimbursement for audit costs incurred by an auditor, and costs incurred by the Company.

It should be noted that such a broad scope of an audit as contained in the Motion (regardless of its defectiveness) requires engagement of entities with certain technical and human resources. In other words, the Issuer would be forced to use services of the so called "big four" entities or others at least equally specialised. It should also be mentioned that there are restructuring proceedings underway with respect to the Company. The Company does not have assets available to cover such costs without negative consequences for its operations; this is not in the interest of either the Company or the shareholders. Based on very preliminary

cost estimates obtained by the Company (and indicated by the Moving Shareholder), the cost of such broad examination would be at least PLN 750 000 (seven hundred fifty thousand zloty). Considering the market practice, it cannot be ruled out that the costs would exceed PLN 1 million, given that the scope of the Motion is broad and general, and none of the indicated service providers would submit a lump-sum offer that would cover the requested scope without reservations (which the Management Board has already preliminarily confirmed by market research).

It should also be stressed that generally the Management Board does not have any legal measures available to refuse to have the audit carried out. The only measure that the Company may use to protect it against abuse of right to request appointing an auditor is issuing a negative opinion of the Management Board on the Motion. In light of art. 84 et seq. of the Public Offering Act, the Company does not have a claim for the reimbursement for audit costs if an auditor does not identify any abuses or irregularities. In other words, the Motion forces the Company to spend funds that it will never recover.

3.2.3. Insinuating nature of the allegations presented by the Moving Shareholder

It should be stressed that the purpose of art. 84 et seq. of the Public Offering Act is not enabling the Moving Shareholder to demand the appointment of an auditor to make an impression that there are irregularities taking place in the Company, and consequently to paralyse its operations. Such conduct should be considered at least as legal abuse with respect to rights conferred on minority shareholders. The allegations presented by the Moving Shareholder are insinuations; in the justification for the Proposed Resolution the Moving Shareholder did not even credibly establish what defaults or breaches occurred during the management of the Company's affairs.

4. Summary

Taking into account the facts and the conclusions presented above, the Management Board expresses its negative opinion as to the legitimacy of the Motion. In the Management Board's opinion, the Motion is not materially justified, and the actions taken by the Moving Shareholder may be qualified as abuse of a minority shareholder's rights by using the function of a special purpose auditor only as an instrument and thereby exposing the Company to serious legal, financial and corporate consequences.

At the same time the Management Board Member states that this negative opinion does not mean that the Management Board is not open to conducting an audit falling within the legal limits. The Management Board is open to having any areas of the Company's operations audited and it continually cooperates with the Supervisory Board in this respect. Therefore, the Management Board does not rule out its positive opinion on another motion filed by Larq for appointing an auditor, however, provided that it contains specific and exact areas to be audited and material grounds, without ready conclusions. Nevertheless, at this point, the



suggestions, assertions and theses presented in the Motion do not meet the statutory requirements.

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