

CASE STUDY 2

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Dear Mr Maximov,

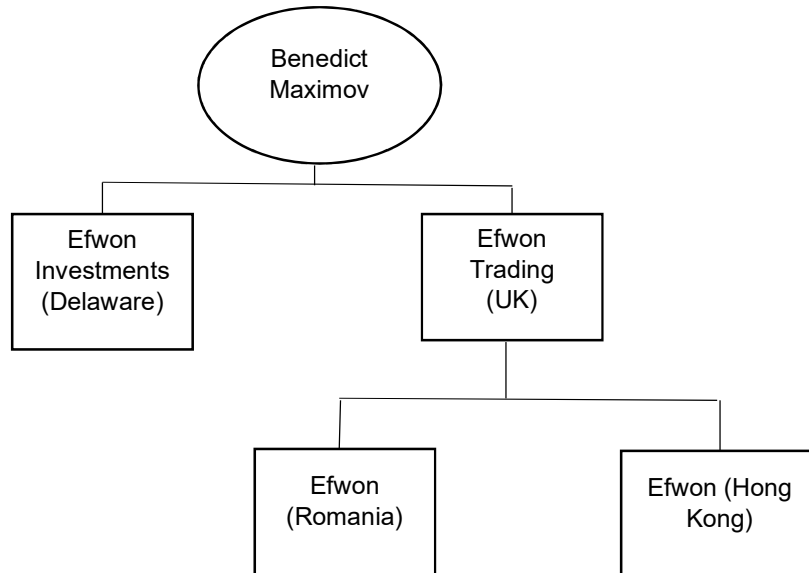
1. You have asked us to provide you with advice on how to facilitate the deal with KuasaNas, and options to deal with the insolvency issues affecting the Efwon group of companies (“**Efwon Group**”).
2. We have summarized our understanding of the facts in our opinion below. Please let us know if any of the facts are incorrect as we may need to update our advice accordingly.

(A) EXECUTIVE SUMMARY

3. We recommend that you consider taking out US Chapter 11 proceedings to implement an inter-conditional restructuring plan which involves the following steps:
 - a. FIA’s consent and approval be obtained to migrate Efwon Romania’s F1 team and operations from Romania to Malaysia.
 - b. Efwon Investments incorporate a wholly-owned Malaysian subsidiary, Efwon Malaysia, to be the corporate vehicle to house the Efwon Group’s F1 operations with effect from the 2020 F1 season.
 - c. Efwon Investments to transfer its 51% shareholding in Efwon Malaysia to KuasaNas upon receiving the requisite government approval and securing KuasaNas’ injection of a \$200m/year sponsorship for a period of between 5 – 10 years.
 - d. Pooling the debts owing by (i) Efwon Investments to you (\$100m) and the syndicate of banks (\$250m), (ii) Efwon Trading to the Monaco lender (\$100m) and (iii) Efwon Romania to Efwon Hong Kong (\$500m), in Efwon Investments. In exchange, Efwon Malaysia will implement a suitable waterfall structure to effect payment of outstanding principal and interest to all external creditors according to their relative priorities in law.
 - e. Voluntarily winding up Efwon Trading, Efwon Romania and Efwon Hong Kong to streamline the Efwon Group’s corporate structure and to ensure that any potential liabilities which Efwon Romania may have to incur as a result of the drivers’ litigation be isolated from the rest of the Efwon Group.
4. To secure interim moratorium protection against any untoward creditor action while the restructuring plan is being implemented, do consider recognizing the US Chapter 11 proceedings in the UK and Romania.

(B) SALIENT FACTS

5. The Efwon Group owns and operates an F1 team based out of Romania. To participate in the annual F1 competition, the Efwon Group is required to obtain \$100 million of financing of per year. The corporate structure of the Efwon Group is as follows:



6. For the first 5 years of operations (2010 – 2014), the Efwon Group obtained the requisite funding via (i) a \$250 million loan which Efwon Investments obtained from a syndicate of banks secured on some of your assets and downstream revenue, (ii) a \$100 million loan which Efwon Trading obtained from a Monaco lender and (iii) \$100 million of funding from you. Repayments were duly made to the banks and the Monaco lender via Efwon Romania's improved performance in the F1 rankings. However, by 2015, the financing via these channels were completely utilised.
7. For the next 5 years of operations (2015 to 2019), the Efwon Group secured a \$100m/year sponsorship from Kretek via payments to Efwon Hong Kong, which in turn loaned the monies to Efwon Romania. This allowed the Efwon Group to continue participating in the F1 races up to 2018. However, disaster struck at the end of the 2018 F1 season.

I) URGENT CONCERNS

8. Efwon Romania's drivers sustained injury in the last race of the 2018 season and commenced litigation against Efwon Romania. As such, Efwon Romania urgently needs to identify new drivers to be able to participate in the 2019 F1 season.
9. The drivers also managed to obtain interim freezing injunctions against Efwon Romania in the Romanian Courts. As a result, Efwon Romania is not in a position to continue to service its existing debt obligations to Efwon Trading. This would in turn mean that Efwon Trading cannot service its debt obligations to (i) the Monaco lender and (ii) Efwon Investments which in turn is servicing its own debt obligation to the syndicate of banks.
10. In the circumstances, the senior lenders have warned that they may foreclose on the security you provided (i.e. your houses across the globe) if there is a default by Efwon Investments. The Monaco lender has also warned that it may commence proceedings against Efwon Trading in the UK if there is a default.

II) LONG-TERM CONCERNS

11. Assuming the Efwon Group manages to address the urgent concerns above and survive the 2019 F1 season, there is still a question as to its viability post-2019.
12. Kretek has indicated that it will not be renewing its sponsorship of Efwon Hong Kong. There is an alternative sponsor – KuasaNas – which has indicated that it can provide a \$200m/year sponsorship. However, this is not a certainty. There is a possibility that the deal might fall through following a review by the Malaysian government unless the Efwon Group (i) resolves its insolvency issues promptly, (ii) takes steps to transfer a 51% majority stake in the team, and (iii) moves the team to Malaysia.
13. Further, there is a need for the Efwon Group to re-develop and upgrade the team's aging racing machines, hire competent management personnel and enhance safety processes to comply with the enhanced safety requirements by the FIA.

(C) ADVICE

14. The Efwon Group still has one year of sponsorship from Kretek for 2019, which means that it has a year of breathing space where it is not cash-flow insolvent and will be able to pay its debts as they fall due. As such, the immediate focus should be to take advantage of the breathing space to address the Romanian litigation and stabilise the Efwon Group's operations, and towards end-2019, to implement a restructuring plan involving the potential KuasaNas sponsorship deal. We elaborate below.

I) DEALING WITH THE ROMANIAN LITIGATION

15. First, please consider whether Efwon Romania can get out of the Romanian litigation quickly or at the very least take steps to lift the interim freezing injunction and drag the litigation out until 2020.
16. We suggest that you immediately review Efwon Romania's insurance policies to determine if there will be any potential payouts to be made towards compensating the injured drivers and work with the insurance companies to expedite the same. If insurance payouts are forthcoming, you may be able to enter into a consensual settlement with the drivers and get them to withdraw the claims, insolvency proceedings and interim freezing injunctions.
17. Alternatively, if no insurance is available, you may still wish to try to resolve the matter amicably with the drivers and see whether it is possible to come to a settlement with them, with payments potentially stretching for an extended period to ease cash flow.
18. If a consensual approach is not possible, we recommend taking Romanian legal advice to determine whether Efwon Romania can obtain a carve out from the freezing injunction to be able to settle payments arising in the ordinary course of business and to service its existing loans to Efwon Trading. The Romanian courts may take cognizance of the fact that Kretek is contractually obliged to continue providing a \$100m annual sponsorship for 2019 to Efwon Hong Kong, which will be channeled to Efwon Romania, and so Efwon Romania will have sufficient cash to meet any potential judgment obtained by the injured drivers should a judgment be forthcoming in 2019.

This will ensure that Efwon Trading does not default on its repayment obligations upstream.

19. If a consensual approach is not possible, then we suggest that we explore with Romanian lawyers whether Efwon Romania can provide security for the amount of the drivers' claims (e.g. by way of a bankers' guarantee or payment into court) as an alternative to keeping the interim freezing injunction in place. However, this option should only be regarded if we consider that there is a definite risk that Efwon Romania will lose the litigation.
20. If that is not possible, the more aggressive option would be to challenge the freezing order in its entirety on the basis that (i) there is no risk of dissipation of funds, (ii) the merits of the drivers' claims are weak, and (iii) it is an entirely disproportionate order as it would impact the viability of the entire Efwon Group which will be obtaining \$100m in sponsorship monies from Kretek for the 2019 F1 season and generating revenue from participating in the 2019 F1 season.
21. Once the interim freezing injunction is lifted or withdrawn (as the case may be), the Efwon Group will have the necessary breathing space to stabilize and restructure its operations. It may be expedient to consider if Romanian lawyers can find ways to drag out litigation proceedings till 2020 when the possibility of the KuasaNas sponsorship funding comes in so that there is additional budget to provide a cushion to satisfy any orders made by the Romanian courts.

II) SHORT-TERM STABILISATION EFFORTS FOR THE EFWON GROUP

22. Next, please consider taking steps to ensure that Efwon Romania is able to participate in the F1 2019 season otherwise its primary source of operational revenue would be decimated. There will be no point exploring the further funding from KuasaNas for the 2020 F1 season onwards if the Efwon Group does not even have a viable F1 team to participate in the 2019 F1 season.
23. As an immediate priority, your management team needs to make a decision to either hire new drivers to replace the 2 injured Romanian drivers or promote reserve drivers to participate in the 2019 F1 season. Please also consider engaging in a marketing and publicity campaign to counter the negative effects of the Romanian drivers' litigation.
24. To free up additional finances towards re-developing and upgrading the team's aging racing machines, hiring competent management personnel and enhancing safety processes to comply with the enhanced safety requirements by the FIA, we also suggest that you enter into consensual negotiations for an informal workout with the external creditors to stretch out or defer loan repayments to 2020 when the new funds from KuasaNas are scheduled to come in. We suggest that you encourage the Efwon Group's external creditors to abide by INSOL International's Statement of Principles for a Global Approach to Multi-Creditor Workouts.
25. In this regard, please seek the senior lenders' commitment to provide some time (i.e. a standstill period) for the Efwon Group to develop a long-term restructuring plan to rebuild the team in Malaysia via the KuasaNas deal. Primarily, do seek to obtain undertakings from the senior lenders to refrain from taking enforcement steps against

your security and the Monaco lender's commitment not to take enforcement steps against Efwon Trading. A creditors' committee can be formed to allow for efficient flow of information. The key point to highlight is that when the entire debt will be unsustainable should the Efwon Group's operations not be able to continue.

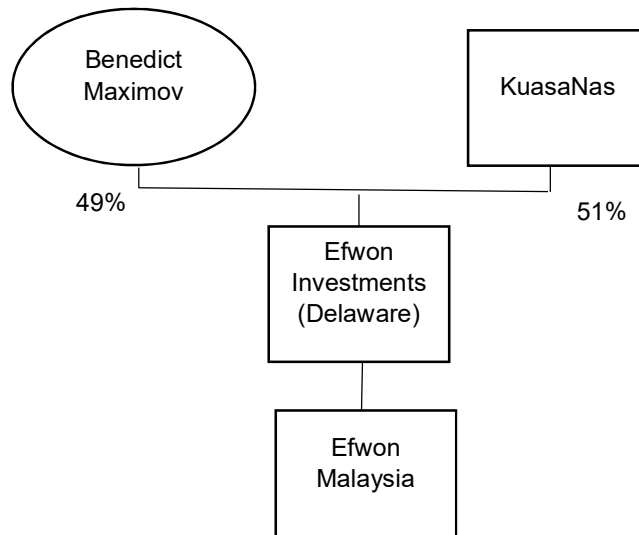
26. It would be helpful to consider appointing a Chief Restructuring Officer (“**CRO**”) to plan for and oversee the implementation of a long-term restructuring plan which will see the Efwon Group shifting its operational base from Romania to Malaysia over the next few years. The CRO will be in charge of getting the buy-in from the respective stakeholders the long-term restructuring plan.
27. Do highlight that the prospect of KuasaNas as a white knight will be an exciting prospect for ensuring that the Efwon Group will remain as a going concern beyond 2019. KuasaNas will be providing *double* the annual sponsorship amount that Kretek had provided, plus provide the team with the opportunity to make use of racing facilities, infrastructure and a ready pool of Malaysian drivers who can obtain Super Licences to participate in the F1 races. KuasaNas' sponsorship will effectively provide the Efwon Group with the financial capability to re-invent itself for the 2020 F1 season and onwards.

III) LONG-TERM RESTRUCTURING PLAN

28. Once you have addressed the Romanian freezing injunction and stabilized Efwon Romania's operations, there will be some time during the 2019 F1 season to take steps towards implementing the long-term restructuring plan for the Efwon Group.
29. We recommend that you consider a US Chapter 11 filing for each of Efwon Investments, Efwon Trading and Efwon Romania as part of a group-wide restructuring plan (the “**Efwon Restructuring Plan**”) by end-2019. The Efwon Restructuring Plan will include the following inter-conditional steps:
 - a. FIA's consent and approval be obtained to migrate Efwon Romania's F1 team and operations from Romania to Malaysia.
 - b. Efwon Investments incorporate a wholly-owned Malaysian subsidiary, Efwon Malaysia, to be the corporate vehicle to house the Efwon Group's F1 operations with effect from the 2020 F1 season.
 - c. Efwon Investments to transfer its 51% shareholding in Efwon Malaysia to KuasaNas upon receiving the requisite government approval and securing KuasaNas' injection of a \$200m/year sponsorship for a period of between 5 – 10 years.
 - d. Pooling the debts owing by (i) Efwon Investments to you (\$100m) and the syndicate of banks (\$250m), (ii) Efwon Trading to the Monaco lender (\$100m) and (iii) Efwon Romania to Efwon Hong Kong (\$500m), in Efwon Investments. In other words, all debts will be consolidated in Efwon Investments with a stretched out repayment period to tie in with the period of KuasaNas' sponsorship. In exchange, Efwon Malaysia will implement a suitable waterfall structure to effect payment of outstanding principal and interest to all external creditors according to their relative priorities in law.

- e. Voluntarily winding up Efwon Trading, Efwon Romania and Efwon Hong Kong to streamline the Efwon Group's corporate structure and to ensure that any potential liabilities which Efwon Romania may have to incur as a result of the drivers' litigation be isolated from the rest of the Efwon Group.

30. At the end of the Efwon Restructuring Plan, this will be the new corporate structure:



31. You can assure KuasaNas that the successful filing and implementation of the Efwon Restructuring Plan via Chapter 11 proceedings will insulate KuasaNas from any insolvency concerns of the Efwon Group.

IV) US Chapter 11 Proceedings

32. Chapter 11 proceedings allow debtor companies to have a meaningful opportunity to preserve their businesses as a going concern. During the period of the Chapter 11 filing, the Efwon Group will be able to continue operating its business as a debtor-in-possession, force retention of contracts, re-write secured debt and maximize value.

33. Importantly, the Chapter 11 filing immediately triggers an automatic stay prohibiting all actions affecting the affected companies and their property for an initial period of 120 days so that the restructuring plan can be put up for voting. This stay is extendable if more time is required to finalize the restructuring plan.

34. In this case, the stay will provide the requisite moratorium protection against:

- a. the senior lenders trying to enforce their security against your houses,
- b. the syndicate of banks taking out insolvency proceedings against Efwon Investments,

- c. the Monaco lender taking out insolvency proceedings against Efwon Trading, and
 - d. the Romanian drivers continuing the insolvency proceedings against Efwon Romania.
35. This automatic moratorium will be necessary in case the Malaysian government confirms KuasaNas' funding a little later than expected beyond end-2019.
36. To qualify for Chapter 11 proceedings, first you will need to show that each of Efwon Investments, Efwon Trading and Efwon Romania (the "**Efwon Chapter 11 Companies**") have either residence, domicile, place of business or property in the USA. Efwon Investments is a Delaware company so that satisfies the threshold relatively easily. However, for Efwon Trading and Efwon Romania, you may need to place a deposit with US lawyers to assist with the filing of the US Chapter 11 proceedings so that you can say that they have "*property*" in the USA.
37. Next, we have to classify creditors to group them into claims which are substantively similar to each other. Classification is important because the Efwon Restructuring Plan must be separately voted by each class of creditors.
38. As a general rule, each secured claim is placed in its own special class while all general unsecured creditors are ordinarily placed in the same class. In this case, given that the plan is to pool all debts into Efwon Investments (or another way is to make Efwon Investments co-obligor of all the Efwon Group's debts), the senior lenders (\$100m) will be in their own class while the other creditors, namely the junior and mezzanine lenders (\$150m), Monaco lender (\$100m) and Efwon Hong Kong (\$500m) will be in another class.
39. The pooling of debt is permitted in the USA for the purposes of a Chapter 11 filing. It can be done under the equitable doctrine of substantive consolidation or as a deemed consolidation where creditors of various entities within a corporate group simply assert their claims and vote as if assets and liabilities of the consolidated group belonged to a single entity for plan voting and distribution purposes only. See *In re Owens Corning* 419 F 3d 195 (3rd Cir, 2005). This effectively means that the US bankruptcy court can disregard distinctions between parent companies, subsidiaries and affiliates that operate together as a corporate group for the purposes of voting on the Chapter 11 reorganisation.
40. Depending on how well you are able to manage the external creditors, you may wish to consider a pre-pack Chapter 11 plan. The pre-pack process mostly proceeds out of court, with the Chapter 11 filing taking place only once key creditor constituencies consent to the proposed restructuring.
41. If the Efwon Chapter 11 Companies are able to secure the votes of the pooled creditors constituting 50% in number and 2/3 in value of the claims, then it can thereafter proceed to file the Chapter 11 petition and have the process closed off in 30 – 60 days¹.

¹ Primoff, Rich and Balmond, "*Transatlantic Restructurings: Two Avenues to Restructure US High-Yield Debt*" in *Restructuring & Insolvency 2020* (Lexology, 2019) at pages 7 - 8

42. If there is some doubt about whether the requisite approval thresholds can be obtained, the Efwon Chapter 11 Companies can go through the normal Chapter 11 process. This process is initiated by the Efwon Chapter 11 Companies filing a petition for relief with the clerk of a bankruptcy court, together with schedules setting out their assets and liabilities, current income and expenditure and business and financial affairs.
43. We anticipate that the 50% in number and 2/3 majority in value needed to pass the Efwon Restructuring Plan will be obtainable from the class of unsecured creditors. Efwon Hong Kong, the Monaco lender and the junior and mezzanine bank lenders have an interest in seeing the Efwon Group's F1 operations continue beyond Kretek's sponsorship as they have no security and will be paid only from revenue generated from continued operations.
44. There may be some difficulty in obtaining the requisite approval from the senior lenders as they presently have approximately \$75m worth of security against their \$100m loan. They may not be incentivized to enter into the Efwon Restructuring Plan as it would drag out repayment schedules on the possibility of a successful cash injection by KuasaNas. However, Chapter 11 has a 'cram down' mechanism that allows for objecting creditors to be crammed down as long as the Court is satisfied that the Efwon Restructuring Plan is in the 'best interest of the creditors' as a whole and is 'fair and equitable'.
45. Under the 'best interest' test, the Court will compare (i) the probable distribution to the dissenting creditors if Efwon Investments were liquidated with (ii) the present value of the payments or property to be received or retained by the same creditors under the restructuring plan.
46. Under the 'fair and equitable' test, the Court will only allow for cramdown of a secured class if the restructuring plan provides for (i) the secured creditors to retain a lien to the extent of their secured claims and will receive deferred cash payments which have a present value equal to at least the value of their interest in the collateral, (ii) for the sale of the secured creditors' collateral with the creditors' security interests attaching to the proceeds, or (iii) for the realization by the secured creditors of the 'indubitable equivalent' of their secured claims.
47. We believe that these two tests will be fulfilled under the Efwon Restructuring Plan. The senior lenders' debt will remain at the Efwon Investments level post-restructuring and they will still retain the same security, save that the charge on the revenues generated will be on Efwon Malaysia's revenue rather than Efwon Romania. Overall, all creditors benefit.
48. Once voting is done, the US Court will confirm the Efwon Restructuring Plan and make it binding on all the creditors. But given that the Efwon Restructuring Plan is inter-conditional on a number of conditions taking effect, the plan will be held in suspense for the time that the moratorium is applicable.

V) Recognition of US Chapter 11 proceedings in UK and Romania

49. For Efwon Trading and Efwon Romania to enjoy the moratorium protection offered by the US Chapter filing, it will be necessary to recognise the said proceedings in UK and Romania respectively.

50. The UK and Romania are UNCITRAL Model Law on Cross-Border Insolvency signatories. As such, there is a mechanism to facilitate the recognition process. Generally, if the centre of the debtor's main interests ("**COMI**") is in the country where the foreign insolvency proceedings were brought, there will be automatic recognition of the foreign insolvency proceedings. If not, the local courts will have to exercise its discretion to determine if the recognition should be granted and whether the reliefs that flow from such recognition should be permitted.
51. In the absence of evidence to the contrary, the debtor's registered office is presumed to be its COMI. However, there are non-exclusive factors that might shift the COMI, namely: the location of the debtor's headquarters, the location of those who manage the debtor, the location of the debtor's primary assets, the location of the majority of the debtor's creditors, the jurisdiction whose law would apply to most disputes.
52. Efwon Trading is a company incorporated in the UK, and hence its presumed COMI would be in the UK. However, as in the case of *In re OAS S.A.* 533 BR 83 (2015), Efwon Trading is effectively a special purpose financing vehicle to on-loan the monies obtained from Efwon Investments and the Monaco lender. It does not have any operations in the UK, own assets, have a physical location or employ anyone in the UK. Efwon Trading's only business is to pay off the loans taken from Efwon Investments and the Monaco lender, upon receiving dividends received from Efwon Romania from its operations. In light of the different touchpoints, it is likely that the COMI would remain in the UK.
53. As such, Efwon Trading would have to persuade the UK courts to exercise its discretion to either extend the US Chapter 11 moratorium or grant an injunction against creditor action as in *Re Videology Ltd* [2018] EWHC 2186 (Ch), on the basis that the US Chapter 11 proceedings are foreign non-main proceedings. Here, the UK courts will query whether the creditors (in this case, the Monaco lender and Efwon Investments) will be prejudiced if the moratorium was granted. As the Efwon Restructuring Plan envisages that the Monaco lender and Efwon Investments will be able to vote in the unsecured class and will obtain a deferred return on the basis of the Efwon Group continuing as a going concern with KuasaNas' support, there is a strong likelihood that the UK Courts will grant the stay sought.
54. Please note the English courts will not give effect to the discharge of English-law governed claims in foreign insolvency proceedings as a result of the rule in *Gibbs*. This was recently affirmed in *Chang Chin Fen v Cosco Shipping (Qidong) Offshore Ltd* [2021] CSOH 94. Therefore, if the governing law of the loans from the Monaco lender and Efwon Investments is English law, then additional consideration needs to be given to whether the governing law needs to be changed first to perhaps New York law before the Efwon Restructuring Plan will work.
55. As for Efwon Romania, it is a company incorporated in Romania with operations in Romania. Hence, its COMI would likely to be located in Romania.
56. However, in contrast with Efwon Trading, the Romanian courts may be less inclined to extend the Chapter 11 stay for Efwon Romania. The Efwon Restructuring Plan envisages that Efwon Romania would be stripped bare save for sufficient assets to address the Romanian litigation, and would eventually be liquidated. While the sole

creditor of Efwon Romania, Efwon Trading, may vote in favour of the Efwon Restructuring Plan, the Romanian courts may be inclined to protect the Romanian employees (who are potential creditors if they succeed in the litigation) and decline to extend the stay. This is something that we need to explore with Romanian counsel to ascertain the risk of the stay not being extended in Romania.

VI) Implementation of Efwon Restructuring Plan

57. As soon as the conditions for the implementation of the Efwon Restructuring Plan are met, then the Efwon Restructuring Plan can proceed to completion.
58. We hope the above advice has been useful. Please do not hesitate to contact us if you have any queries or clarifications.

Yours sincerely,

Danny QUAH