MEMO

To: **Benedict Maximov**

From: **Jonathon Milne, Partner at Multinational Law Firm LLP**

Re: **Sponsorship deal with KuasaNas and related issues**

INTRODUCTION

1. We have been asked to assist with facilitating a new F1 sponsorship deal between: (i) KuasaNas, a Malaysian state-owned alternative energy company; and (ii) Efwon Hong Kong.

2. We understand that, subject to Malaysian Government approval, KuasaNas may be prepared to offer funding of c.US$200 million per annum in return for: (a) 51% equity ownership in the F1 "team"; and (b) on the basis that the F1 "team" moves to Malaysia. Based on the background material we have received, it appears that the intention is that a new F1 license would be obtained by a newly incorporated Malaysian entity.

3. We understand that the new Malaysian entity would secure use of the Sepang GP racetrack and practice facilities, as well as employ new drivers, mechanics and other staff. In essence, there would be a wholesale shift from Romania to Malaysia to accommodate the deal.

4. We are informed that one of the pre-conditions of the potential sponsorship deal with KuasaNas is that "*insolvency issues*" within the Efwon Group are dealt with promptly. Members of the Efwon Group are incorporated in the US, UK, Romania and Hong Kong. Therefore, we have been asked to consider and advise on a multi-jurisdictional strategy to provide KuasaNas (and, by extension, the Malaysian Government) with sufficient comfort to proceed with the deal.

5. For the avoidance of doubt, we have not considered (nor been asked to consider) a scenario whereby the existing sponsor simply renews the existing deal.

6. Based on the available information, we understand that:

    a. Our client, Mr. Maximov (US citizen and the "controlling mind" / "key man" of the Efwon Group), has invested US$100 million of his own money and put up various properties in different locations around the world as collateral for loans from US lenders and financiers;

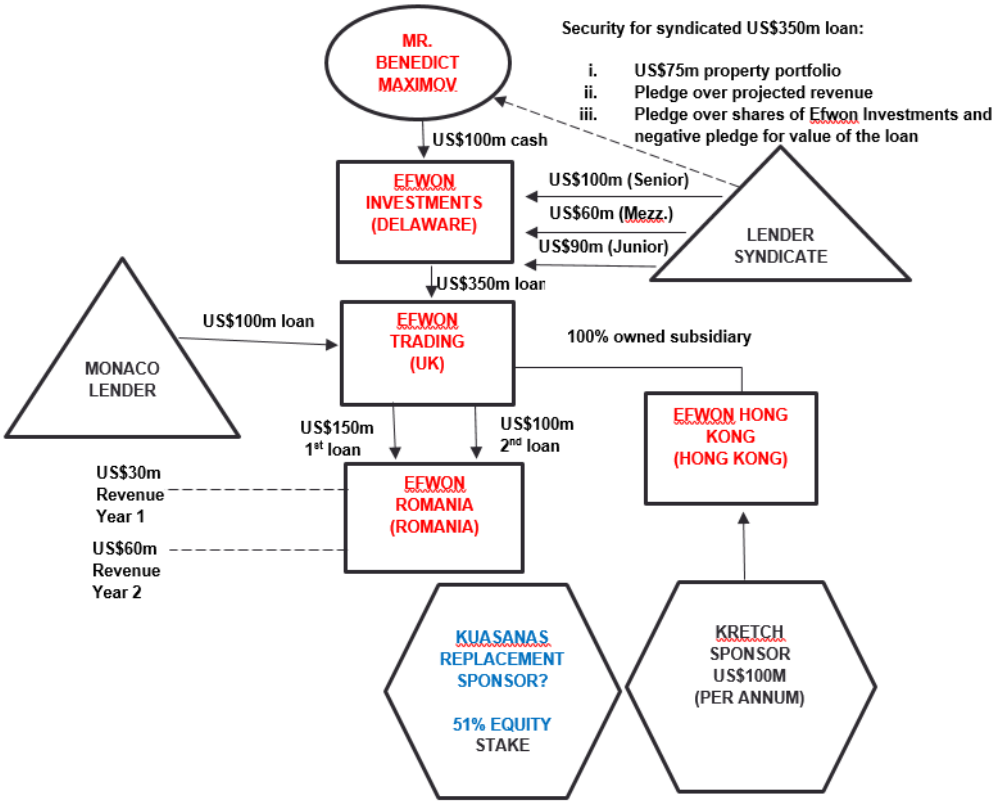
    b. Efwon Investments (US) is the principal borrowing entity for the Efwon Group and has taken on US$350 million in debt as a result of loans from external parties, including Mr. Maximov;

    c. Efwon Trading (UK) has taken on additional debt, including a US$100 million loan from an unrelated Monacan lender, and is the entity that entered into the contract to acquire the Romanian F1 team;

    d. Efwon Hong Kong (HK) is a wholly-owned subsidiary of Efwon Trading and the counter-party to existing exclusive sponsorship contracts entered into with Kretek, an Indonesian cigarette company; and

    e. Efwon Romania (Rom.) is a wholly-owned subsidiary of Efwon Trading and the entity that employs staff, owns / leases the vehicles and practice facilities.

7. An outline of the fact pattern is displayed in pictorial form in the chart below:



ADDITIONAL INFORMATION NEEDED

8. In order to provide more complete and accurate advice, we would need more clarity in relation to the following points:

    a. As explained in more detail below, the Romanian F1 drivers are suing for compensatory damages in relation to injuries allegedly suffered as a result of their employment with the Romanian F1 team. We have not reviewed any employment agreements or any court filings. We are not aware of the nature or extent of the damages claimed, save that they are described as "*substantial*". We need to know whether the Efwon Group has insurance in place to compensate the drivers, in whole or in part. In any event, it would be helpful to analyse: (i) the merits of the claim; (ii) whether the claim is capable of being settled in the near term and at what cost; and/or (iii) whether it is likely that the injunction could be displaced at the first *inter-partes* return hearing;

    b. It is not clear where the "headquarters" of the Efwon Group are located. There are employees, operations and assets in Romania. The "key man" is located in the US. The arrangements with subsidiaries and contractual counter-parties in Europe and Asia appear to be managed through Efwon Trading in the UK;

    c. There are various loan agreements in place. We have not reviewed any of those agreements. We are aware of at least the following agreements: (i) loan agreements entered into with US lenders; and (ii) a "high interest rate" loan agreement with a Monacan lender. We have assumed for the purposes of this preliminary advice that all loans are governed by the law of the place of the relevant lender, but this is important for a variety of reasons, including in relation to the impact (if any) of the "Rule in Gibbs" (discussed below);

    d. Mr. Maximov has advanced US$100 million cash to finance the F1 team and we do not know the terms or nature of this arrangement. Furthermore, we do not know where the properties he has put up as security for the US lending are actually located;

    e. It is not clear whether Mr. Maximov is a director of any or all entities within the Efwon Group. Further, it is not clear who else is involved in the day-to-day management of the business and where those individuals are located;

    f. The terms of the existing sponsorship agreement with Kretek, an Indonesian entity, are unclear. The only terms we are aware of are: (i) the sponsorship is exclusive; and (ii) it is worth c. US$100 million per annum;

    g. We understand that "contracts" (plural) were prepared for the replacement KuasaNas sponsorship deal. We have not reviewed the terms of those contracts. The only prospective terms we are aware of are: (i) the F1 team must be based in Malaysia; (ii)

Malayasian Government approval is required; (iii) KuasaNas wishes to acquire a 51% stake in the "team"; and (iv) it is worth c. US$200 million per annum. It is unclear, for example, what the moving the "team" and/or acquiring a 51% stake in the "team" means in practical and legal terms.

h. We have assumed that, as things stand, Mr. Maximov is the 100% equity owner of Efwon Investments. We have also assumed, whilst it is not explicitly stated, that Efwon Trading is a wholly owned subsidiary of Efwon Investments. This is consistent with: (i) the fact that Efwon Romania and Efwon Hong Kong are wholly owned subsidiaries of Efwon Trading; and (ii) the lending and arrangements at all levels of the Efwon Group is predicated on revenue flowing upstream to Efwon Investments; and (iii) it makes sense that this group would have a Delaware HoldCo for tax purposes and potential opportunities for NASDAQ or NYSE listing;

i. It is not entirely clear, at present, which entity holds the *Federacion Internationale de l'Automobile* (FIA) license. We understand that Efwon Trading executed the contract to acquire the Romanian F1 team, but then established Efwon Romania "*to do so*". It is not clear what is meant by "*to do so*". Perhaps this means that it was a condition of the contract and FIA license that Efwon Trading formed a Romanian operating company. However, it is unclear which entity actually holds the license, which is the most important asset of the Efwon Group and allows Mr. Maximov to carry out his principal objective of participating in the F1 competition;

j. It is not clear precisely how much revenue has been used to repay lending at different levels of the Efwon Group and how much has been invested back into the business of the Group. For example, there are references to payments being made up to Efwon Investments during the period 2013 – 2017;

k. The solvency position is not clear. If the Romanian proceedings are disposed of quickly and the injunction is lifted, it may be that the revenue released upstream to Efwon Trading and Efwon Investments is sufficient to remove the prospect of foreclosure action in the US; and

l. It is not clear what the long-term impact of allegations (proven or unproven) of *"defects in safety and management*" will have on the reputation of the Efwon Group and Mr. Maximov's ability to retain the F1 license and trade out of the current financial difficulties.

9. The responses to each of the above items may have an impact on the final advice and proposed strategy.

BASIC LEGAL FRAMEWORK

10. To put our preliminary advice in context, in light of the international nature of the Efwon Group and its business, we consider that it is helpful to set out the basic legal framework and the scope and likelihood of co-operation between courts in different jurisdictions.

Importance of place of incorporation

11. The US, UK, Romania and Hong Kong are likely to be the most relevant jurisdictions for the purposes of this preliminary advice. That is because the Efwon entities are incorporated in those countries (and Mr. Maximov resides in the US).

12. Ian Fletcher[1] puts it well when he refers to the long accepted fundamental principle that the law of the place of a company's incorporation is primarily, "*possibly immutably*", competent to control all questions concerning a company's initial formation and subsequent existence.

13. Similarly, Dicey Rule 179[2] sets out the common law and private international law position that the authority of an office holder appointed under the law of the place of incorporation should be recognised in other jurisdictions. Furthermore, Dicey Rule 175(2) under the heading "*Corporations and Insolvency*" citing authorities dating back to 1843 states: "*All matters concerning the constitution of a corporation are governed by the law of the place of incorporation*."

14. Lord Sumption, in *Singularis Holdings Limited v PriceWaterhouseCoopers* [2014] UKPC 36 also emphasised the importance, in international insolvency cases, of respecting and having full regard to the laws of the relevant company's place of incorporation.

15. This is a fundamental principle of insolvency law, at least from an English and common law perspective. One school of thought (i.e. the "territorial" - as opposed to "universal" - approach) is that each place of incorporation should deal with the insolvency of the entity incorporated in that particular location.

16. Accordingly, this common law starting point is vital to bear this mind when deciding on the appropriate strategy, especially given that there are UK and Hong Kong-domiciled entities within the Efwon Group.

Model Law on Cross-Border Insolvency

17. The US, UK and Romania have adopted variations of the UNCITRAL Model Law on Cross-Border Insolvency (the "**Model Law**"). Hong Kong has not adopted the Model Law and, instead, follows common law traditions of recognition and comity.

---

[1] *Fletcher* on *The Law of Insolvency* 5th Edition (2020), paragraph 30-054
[2] *Dicey, Morris & Collins* on *The Conflict of Laws* (Fifteenth Edition), rules 175 and 179

18. The Model Law strives to put in place a framework for co-operation on international insolvency cases. The Model Law seeks to facilitate the process of obtaining recognition of foreign insolvency proceedings and requires courts with insolvency jurisdiction to co-operate with each other.

19. The Model Law focuses on establishing a "Main Proceeding" / primary proceeding and provides guidance and rules for "Non-Main Proceedings" or secondary proceedings. It expressly contemplates and deals with the possibility of concurrent local and foreign proceedings.

20. A short summary of the position in the US, UK and Romania is as follows:

    a. United States: The US adopted the Model Law in 2005. This is now found, in near identical form, in Chapter 15 of the US Bankruptcy Code. Litigants in the US are authorised to seek relief in aid of foreign insolvency proceedings. Chapter 15 can be used as both an "inbound" tool (i.e. a foreign court / representative seeking assistance from the US court) or an "outbound" tool (i.e. the US court / representative seeking assistance abroad). Any foreign proceeding and a case commenced under Chapter 15 are pending concurrently.

    b. United Kingdom: The UK implemented secondary legislation, i.e. the Cross-Border Insolvency Regulations 2006, which introduced a modified version of the Model Law.

    c. Romania: Romanian implemented the Model Law in 2002 and, since enacting the Cross-Border Insolvency Law 637/2002, has revised the law to ensure that it is compatible with both EU and international developments on cross-border insolvency.

21. As such, the three jurisdictions are highly compatible with and complementary of each other. Each of the jurisdictions was an early adopter and supporter of harmonizing international insolvency laws. Accordingly, the client should take comfort that the US, UK and Romania are highly likely to recognise and enforce orders to assist each other in achieving the best outcome for stakeholders at different levels of the Efwon Group.

European Regulation

22. The EU Insolvency Regulation 2015 (the "EIR") dictates the proper forum for a debtor's insolvency proceedings, the applicable law to be used in those proceedings and provides for mandatory recognition of those proceedings in other EU Member States. As at the time of writing, the UK and Romania are both Member States.

23. The office holders in parallel proceedings in EU Members States have a duty under the EIR to communicate and cooperate with each other.

COMI Analysis

24. Much of the analysis, under the Model Law and EU Regulations, turns on identifying the Centre of Main Interest ("COMI") or, put in US vernacular, "nerve centre" for a particular company in an insolvency scenario.

25. Where COMI is within an EU Member State, the EIR recognises that Member State as the appropriate forum for "main" insolvency proceedings concerning the debtor, and provides for automatic recognition of those proceedings by the courts of other EU Member States. Any further proceedings in other Member States (which no longer includes the UK) where the debtor has an "establishment" are secondary to those main insolvency proceedings and relate only to assets in that secondary EU Member State.

26. The Model Law also uses the concept of COMI to determine the degree to which the courts of one jurisdiction are obliged to recognise and assist insolvency proceedings commenced in a different jurisdiction.

27. Under both the EIR and Model Law, there is typically a rebuttable presumption that a debtor's COMI is the location of its registered office. The onus is on the party challenging COMI to show otherwise. However, in light of authorities involving groups with offshore entities and flimsy ties to places of incorporation, it is clear that the US courts in particular will undertake a more forensic approach[3]:

    "Whatever may be the proper interpretation of the [Insolvency] Regulation, the Model Law and Chapter 15 give limited weight to the presumption of jurisdiction of incorporation as the COMI... Accordingly, if the foreign proceeding is in the country of the registered office, and if there is evidence that the [COMI] might be elsewhere, then the foreign representative must prove that the [COMI] is in the same country as the registered office."

28. In recital 13 to the Preamble to the EIR, it is said that COMI "*should correspond to the place where the debtor conducts the administration of his interests on a regular basis and [which] is therefore ascertainable by third parties*."

29. There are various other factors which might be considered by the courts in determining COMI. For example, the location of the debtor's headquarters, the location of those who actually manage the debtor (which could be the location of the holding company), the location of the primary assets, the location of the creditors (especially those creditors affected by the case) and/or the jurisdiction whose law would apply to most disputes.

30. It is possible to shift COMI for restructuring purposes. This is sometimes referred to as forum shopping, which has negative connotations but is a legitimate way to take advantage of a more suitable regime. The courts often try to distinguish between good and bad forum shopping.

---

[3] *Re Bear Stearns High-Grade Structured Credit Strategies Master Fund* (Bankr. S.D.N.Y. September 5, 2007)

Common Law Recognition

31. Hong Kong is the outlier in that it has not adopted the Model Law, nor has it introduced a bespoke or dedicated restructuring regime. For example, in Hong Kong, there is no ability to appoint office holders to promote and implement a restructuring (i.e. nothing akin to restructuring officers, administrators or provisional liquidators).

32. However, the authorities demonstrate that the Hong Kong Court has the power under common law to, pursuant to a letter of request from a common law jurisdiction with a similar substantive insolvency law, provide assistance and recognition to a liquidator of a foreign incorporated company appointed by the court of the company's place of incorporation, if the insolvency laws of the place of incorporation grant similar powers to a liquidator to those available under the insolvency legislation in Hong Kong.

33. For example, upon receipt of a letter of request, in *Joint Official Liquidators of A Company v B & C* [2014] 5 HKC 152 at [18], it was observed that:

> *"The Companies Court may pursuant to a letter of request from a common law jurisdiction with a similar substantive insolvency law make an order of a type which is available to a provisional liquidator or liquidator under Hong Kong's insolvency regime".*

34. In *The Joint & Several Liquidators of Kong Wah Holdings Ltd v Grande Holdings Ltd* [2006] 9 HKCFAR 766, [2006] HKCU 2083 at [25], Lord Millett NPJ described the Hong Kong insolvency regime as being "*designed to meet the difficulty usually faced by liquidators (who were usually strangers to the company) in finding out about the company's assets and the reasons for its failure*."

35. Lord Millet noted that the legislative purpose required that the powers conferred on the Hong Kong Court should be wide, general and unlimited, allowing liquidators to carry out their duties as effectively, quickly and economically as possible. Accordingly, under Hong Kong's insolvency regime, it is submitted that the Hong Kong Court has wide-ranging jurisdiction and discretion to recognise and enforce powers granted to foreign office holders.

36. Further, the Hong Kong Court has previously recognised the appointment of Bermudian provisional liquidators in *Re the Joint Provisional Liquidators of Moody Technology Holdings Limited* (HCMP 2271/2019 and [2020] HKCFI 416). In that decision, the Honourable Mr. Justice William Wong states at [48] and [49]:

> *"… recognising and assisting foreign soft-touch provisional liquidators are fully consistent with Hong Kong private international law and cross-border insolvency policy. Failing to do so would create a discriminatory environment which would be unjust, unprincipled, and unsupported by authorities … Whilst our insolvency, in particular, corporate rescue regime is in need of reform for many years, there is no legitimate reason, policy or otherwise, why Hong Kong Courts should not recognise foreign provisional liquidators appointed on a soft-touch basis."*

37. As such, the principles laid down in Hong Kong case law demonstrate that the Hong Kong Court will recognise the appointment of foreign officeholders and provide assistance based on a letter of request issued by a foreign court.

REASONS TO UTILISE US CHAPTER 11

38. With that brief description of the facts and fundamental legal principles in mind, we set out the rationale behind the proposed strategy below.

39. It is noteworthy that insolvency proceedings have already been filed against Efwon Romania by the F1 drivers, in their capacity as contingent creditors and / or employees, based on a claim for compensatory damages, in Romania. Local freezing injunctions over the assets of Efwon Romania have been obtained. We understand that the domestic Romanian injunction will cause payment defaults up the chain from Efwon Trading to Efwon Investments.

40. Accordingly, US secured lenders at Efwon Investments have indicated they may enforce security and that decision is imminent. This is, understandably, the most immediate concern for Mr. Maximov and drives the strategy. Our client has advanced US$100 million of his own money and granted security over his own property portfolio, which is valued at approximately US$75 million.

41. One of the key considerations in the strategy is where any primary and, if necessary, secondary insolvency proceedings should take place. As explained above, the COMI position of each entity is important in establishing primacy and the framework for any multinational reorganisation.

42. For reasons set out below, we consider that utilizing Chapter 11 of the US Bankruptcy Code is the best option in the circumstances, especially if a pre-packaged deal can be formulated in short order. This will allow time to negotiate and, in our view, is most likely to maximise recoveries to stakeholders across the Efwon Group.

US Chapter 11

Advantages

43. These are the advantages for the Efwon Group of proceeding with an immediate Chapter 11 filing:

    a. COMI of Holding Company: it is almost certain that the US bankruptcy courts would consider that they have jurisdiction over Efwon Investments and Mr. Maximov himself.

       There are various reasons that it makes sense, from a factual standpoint, to assert that a US insolvency proceeding concerning Efwon Investments (and encompassing the Efwon Group generally) should be the primary insolvency proceeding:

       i. The key decision-maker and founder is a US citizen and resides in the US;

       ii. The Holding Company is a Delaware entity;

iii. The major creditors of the group are US financial institutions;

iv. It is assumed that there are multiple US bank accounts;

v. It is assumed that the principal loan agreements are governed by New York or Delaware law; and

vi. It is assumed that at least some of the properties which have been put forward as security for the loans are held in the US.

In order to utilise Chapter 11, a company only needs assets in the US. US bankruptcy courts have confirmed that this threshold is exceptionally low. In some cases, funds deposited in a US attorney's trust account have been deemed satisfactory to create a sufficient nexus to the US. Accordingly, assuming Efwon Trading can meet the low threshold for connection, Efwon Trading may petition to take part in a consolidated Chapter 11 proceeding on the basis that its major creditors are based in the US and to streamline the restructuring process.

Looking it at through the recognition lens, Chapter 15 states that: "*in the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the [COMI]*". In the present case, it is assumed that Efwon Investments has a registered office in Delaware and, as set out above, there are various substantial ties to the US. Therefore, at least from the Holding Company perspective, the US is the more appropriate forum.

b. Centralised forum: From a philosophical standpoint, the US is a leader in the move towards universalism and Chapter 11 is an attempt to create a centralised forum for the benefit of stakeholders and the relevant company. Chapter 11 is designed to prepare, confirm and implement a plan of reorganization. There is a well-trodden path and roadmap for dealing with multinational groups using Chapter 11 as the foundation.

The recent Chapter 11 precedents dealing with major airlines, car rental companies and retail giants with international reach create a helpful blueprint. These examples will provide comfort to the sophisticated US lenders with the most at stake, which may assist with forbearance and co-operation. Familiarity is important when selling a solution to influential stakeholders.

c. Management control: As our client is the founder and driving force behind the Efwon project, it is assumed that he would wish to maintain control of the Efwon Group to the greatest extent possible and have a central role in the preparation of a global plan. An important distinguishing feature of Chapter 11 is that the existing board and management continue to run the business in Chapter 11.

Mr. Maximov and Efwon Investments have the exclusive right to propose a plan under the US Bankruptcy Code. Rather than responding to plans from sponsors, private financiers and the US secured lenders, pursuant to Chapter 11, Efwon Investments is able to develop a proposal and seek feedback from a range of interested parties. In the UK and/or Romania, this process would be led by office holders and may lead to a less competitive process with very little commercial leverage for our client.

Efwon Investments and/or Efwon Trading would be given an exclusive period of 120 days to file a plan of reorganisation with the US bankruptcy court. The plan must set out a proposed compromise and/or reorganisation. Creditors may put forward their own plan(s), if 180 days pass without Efwon's plan being approved. Accordingly, there are prescribed timeframes and milestones which can be shared with KuasaNas, as the prospective investor and sponsor, to demonstrate progress and an expedited timetable.

d. Automatic stay (including against secured creditors): Perhaps most importantly, in contrast to the UK equivalent, a Chapter 11 filing puts in place an extensive automatic stay against claims enforcement which applies to both secured and unsecured creditors and purports to have worldwide operation. The US banks, which extended US$350 million in credit and have security over revenue, shares and the client's property, would be prevented from taking enforcement action for a period of time. This protection and breathing space is essential.

A Scheme of Arrangement in the UK and/or Hong Kong is unlikely to be as effective as Chapter 11 as US secured creditors would retain veto power over the restructuring process with no mechanism to compel an unwilling or dissenting secured creditor to agree to any modification of its contractual rights. Therefore, in the absence of Chapter 11, there is a greater risk of multiplicity of proceedings and value destruction.

The moratorium in a US Chapter 11 context is longer than the UK equivalent. In Chapter 11 the stay last for the duration of the proceeding. The UK moratorium is not automatic and is only in place for 20 days (unless extended). Further, the UK equivalent has more exceptions, such as the requirement to continue to pay bank debt.

The Chapter 11 stay is not automatically recognised outside of the US. However, international financial institutions with any presence in the US, such as the Monacan lender, are unlikely to violate the stay and risk sanctions from the US bankruptcy court. Furthermore, where a Chapter 11 case is recognised as the foreign "main proceeding" in other jurisdictions which have adopted the Model Law, such as the UK and Romania, stays in those jurisdictions would be likely to mirror the far-reaching Chapter 11 automatic stay.

Under principles of comity and common law recognition, although Hong Kong law has not adopted the UNCITRAL Model Law on cross-border insolvency, the Hong Kong Court is likely to be pragmatic and recognise foreign office holders and foreign restructuring

arrangements which have been approved overseas. The focus in Hong Kong will be to prevent a local creditor from gaining an unfair advantage over other foreign creditors who observe such a restructuring plan, especially more substantial secured creditors.

e. Interim funding: in light of potential cashflow constraints, the Chapter 11 process allows Efwon Investments to take advantage of Debtor-in-Possession ("DIP") financing and the US capital markets. This type of financing is often attractive to new money lenders as they take super-priority status and the US bankruptcy court may also approve new security interests which take precedence over existing security arrangements.

   If the existing secured lenders are unwilling to advance further funding to allow the Efwon Group to prepare and implement a plan, the US bankruptcy court will wish to ensure that they are not unduly prejudiced and have adequate protection. For example, the US lenders have a negative pledge in place to the effect that Efwon Investments is prevented from pledging any further assets, if doing so may jeopardize the US syndicate's security.

   The combination of the automatic stay and the prospect of the priority afforded to DIP financing is the most likely route to getting the US secured lenders to the negotiating table.

f. Reject onerous contracts: Both Efwon Trading and Efwon Investments have material obligations under existing contracts. The Chapter 11 process allows the debtor to terminate unfavourable contractual arrangements, subject to exposure for damages for breach of contract.

   Further, the Chapter 11 process means that termination clauses based on an insolvent event are unenforceable for the duration of the proceeding.

g. Cross-class cram down: if the requisite voting thresholds are not met to pass the reorganization plan, Chapter 11 includes a procedure by which hold-out creditors can be prevented from blocking an otherwise viable plan (assuming the plan is "fair and equitable").

h. Low voting threshold: approval must be granted by not less than two-thirds in value and one-half in number of each impaired class. The former threshold is lower than many common law jurisdictions in particular, which require approval of 75% by value of creditors present and voting.

44. As Efwon Trading is incorporated in the UK, it makes sense to consider a voluntary administration and a potential scheme of arrangement to deal with different classes of debt. However, either a UK administration or Romanian liquidation procedure involves the appointment of office holders. Directors and management lose control to a large extent. This is the case even if the objective is to propose a Company Voluntary Arrangement ("CVA"). Either process will also include a degree of independent examination and a report on the actions of the directors of the company. This can result in disqualification as a director, or having to repay monies to the company which have been handled improperly.

45. As there are cashflow concerns and we are not aware that the Monacan lender is openly threatening enforcement action against Efwon Trading at this stage, a standalone UK administration seems unnecessary and unduly expensive. As noted above, the better solution to achieve a wide-ranging moratorium and a unified approach is to try to initiate concurrent / consolidated proceedings under Chapter 11 for the two holding entities (Efwon Investment / Efwon Trading) and deal with any debate over COMI in that context.

Disadvantages

46. The disadvantages of seeking to reorganise the Efwon Group via a Chapter 11 process are as follows:

    a. Chapter 11 is notoriously expensive: A typical Chapter 11 is a long and complex process with the need to engage a variety of experts and professionals.

       Before making a decision that is considered outside the "ordinary course of business", the Efwon entity must obtain permission from the US bankruptcy court. Although the Efwon Group and debt arrangements are not particularly complex, the level of oversight adds to the cost and burdensome nature of the process.

    b. Lack of privacy and adverse publicity: The Efwon Group would need to file voluminous and detailed documents with the US bankruptcy court listing sensitive information. These details may include a summary of Mr. Maximov's personal estate and property portfolio, given the US lending arrangements. These documents are public record, and are available to anyone who reviews the court files.

    c. Personal exposure: a successful Chapter 11 process will not necessarily lead to an automatic discharge of Mr. Maximov's guarantees or other personal liabilities.

    d. Jurisdictional issues and parallel proceedings: As there are extant proceedings in Romania in relation to a key subsidiary and substantial ties to other jurisdictions, there is likely to be potential for disruption and procedural skirmishes.

    e. Uncertainty regarding contractual counter-parties: It is unclear how the Monacan lender or existing Indonesian sponsor will react to a Chapter 11 filing or indeed any foreign insolvency process. It is essential that an interest holiday or renegotiation of the Monacan lending is negotiated as a priority in light of the relatively "high interest rate". Monaco is not a member state of the EU. We understand that Monaco has adopted the Hague Convention on service of process, but that a letter of request from the UK / US courts may need to be routed through diplomatic channels to make contact with and serve the Monacan lender.

    f. Costly recognition exercise: The major source of revenue for Efwon Trading and Efwon Investments is through the operating subsidiaries of Efwon Hong Kong and Efwon

Romania. If the primary proceedings for the Efwon Group are dealt with in the US, it is likely to be necessary to seek recognition of the moratorium and insolvency process in other jurisdictions, such as Romania, the UK and Hong Kong.

REQUIREMENT FOR OTHER PROCEEDINGS

Ongoing Romanian Proceedings

47. Insolvency and other proceedings are already on foot in Romania in connection with Efwon Romania, which is an important wholly-owned operating subsidiary of Efwon Trading. The importance of Efwon Romania is at least two-fold: (i) it appears to hold the license and employ the key members of the F1 team; and (ii) there is a freezing injunction in place which effects the operation and solvency of the entire Efwon Group.

48. From an EU standpoint, as the court that first asserts jurisdiction over the main proceedings determines COMI, any challenge against a finding of COMI for Efwon Romania must be brought in Romania. As an EU Member State, the UK will be bound to respect and uphold the Romanian court's decision on COMI. The EIR do not permit main proceedings to be brought in multiple jurisdictions.

49. The Model Law does not address the question of proper forum *per se* and does not restrict the opening of proceedings. The Model Law focuses on recognition of insolvency proceedings and officeholders. However, as discussed above, the concept of COMI is recognised as a means of establishing the available relief. For example, if Romania is treated as COMI, certain relief will be automatic in the US and UK. However, if the debtor only has an establishment in Romania, then the relief is discretionary.

50. It is difficult to argue that the existing Romanian action should not be the "main" insolvency proceeding for Efwon Romania:

    a. The insolvency proceedings already exist and it is not clear how much time has passed since they were initiated;

    b. The headquarter, tangible assets (e.g. cars, buildings etc), employees and operations are in Romania; and

    c. There is ongoing litigation with the drivers in Romania.

51. If COMI is in Romania, an office holder appointed in Romania will be able to exercise all the powers conferred on him or her by Romanian legislation in the UK.

52. Given that there are links to the US, a liquidator appointed in Romania may, pursuant to the Model Law, apply to the US courts for recognition of the Romanian proceedings as foreign main proceedings. The recognition of the proceedings may also enable the Romanian liquidator to use US insolvency legislation, such as powers under Chapter 11, to maximise returns to creditors.

53. The Model Law provides, as a result of the recognition, an automatic stay on any proceedings commenced against the debtor's assets, execution on those assets, or any transfer of those assets located in the US. In other words, the debtor's assets are protected for the liquidator so that they can be realised, and appropriate distributions made to creditors.

54. However, the debt is in the UK and US. The Romanian entity is a wholly owned subsidiary and was created as a Special Purpose Vehicle to secure the F1 license. Furthermore, the Romanian insolvency regime is likely to create uncertainty and concern for sophisticated lenders in the US and Monaco.

55. It is noted that Article 297 of Romania's Cross-Border Insolvency Law requires the Romanian court to cooperate to the fullest possible extent with a foreign court or foreign representatives. Such cooperation may occur through Romanian appointees to the extent officeholders have already been appointed.

UK Scheme of Arrangement

56. Depending on the progress made in the US Chapter 11 process, it may be prudent to draw up a scheme of arrangement proposal for creditors and take that through the UK courts. This may assist with the implementation of the Chapter 11 reorganisation and avoid disputes over English law governed obligations.

57. Schemes can be used to reorganise solvent international groups or to achieve a debt restructuring for an insolvent company. Assuming the relevant Efwon entity can meet the statutory thresholds and follow the court procedure, schemes can be used to bind all members of the relevant class(es) of creditors and/or members to almost any type of reorganisation. The scheme process may be completed within 50 days.

58. A UK Scheme of Arrangement is available to UK companies, but also overseas companies with a "sufficient connection" to the UK. Similar to the US Chapter 11 threshold, the connection for scheme purposes in the UK has been established in a variety of ways. For example, by a company having: (i) assets in the UK; (ii) an establishment in the UK; (iii) its centre of main interests in the UK; or (iv) the basis that any obligations to be compromised by the scheme are governed by English law. Accordingly, there are multiple ways that the Efwon Group entities could meet pass through the gateway.

Impediments

59. The main impediments to a successful reorganisation appear to be as follows:

    a. The pending Romanian litigation is a significant roadblock due to the freezing injunction in place, the prospect of a substantial damages award, reputational damage to the brand and the absence of suitably-qualified drivers. It is vital that the litigation is dealt with rapidly and cost-effectively. Ideally, there would be an out-of-court settlement within weeks.

b. The Monacan lender is problematic. The terms of the loan appear to be highly unfavourable. It is unclear whether the lender would be prepared to be bound by any restructuring plan and would engage in the process in a constructive manner.

c. The move to Malaysia and the ability to retain the F1 license. Any and all creditors will wish to have certainty in relation to the future outlook of the business. The unknowns connected with the Malaysian sponsorship deal are problematic. The need for Malaysian Government approval is also a major potential issue.

d. There may be a jurisdictional debate between each of the relevant places of incorporation. Any initial procedural hearings of this nature can be time-consuming and may delay the substantive progress of the reorganisation.

PROPOSED STRATEGY

60. Based on the detail above, in order to obtain the KuasaNas sponsorship and move the F1 team to Malaysia, our proposed Chapter 11-centric strategy is as follows:

    a. Prepare a pre-packaged deal for creditors on the following outline basis:

        i. Sale of Efwon Romania and its assets through the Romanian liquidation process;

        ii. Encourage an early settlement and insurance pay-out to the F1 drivers in Romania. If there is no insurance coverage, use the proceeds of sale to settle the Romanian litigation and lift the freezing injunction;

        iii. Extend the maturity dates of the syndicated lending at Efwon Investments from 2020 to 2025, whilst releasing revenue as soon as the injunction is discharged to demonstrate ability to repay. Negotiate debt-for-equity arrangements with US lenders and sell certain of Mr. Maximov's properties to make repayments (if necessary);

        iv. Engage with the Monacan lender to negotiate an interest holiday or reduced interest rate in return for a combination of equity and early repayments from revenue. In an ideal world, the plan would lead to a repayment and cancellation of this loan in short order;

        v. Whilst the plan is being negotiated, allow Efwon Hong Kong to continue to trade and take the benefit of the existing sponsorship arrangements with Kretek, which are yet to expire, and pay the revenue upstream to facilitate the plan; and

        vi. Replace Efwon Romania with Efwon Malaysia. Use the first payment of US$200 million per annum sponsorship monies to set up in Malaysia and invest in drivers, new equipment and practice facilities to improve future outlook.

b. File for Chapter 11 in relation to Efwon Investments and Efwon Trading (shifting COMI to the US, if necessary) to obtain the benefit of the automatic stay and propose a pre-packaged deal as soon as possible to manage costs and timing.

c. Endeavour to secure DIP financing as an interim measure and/or as a bargaining chip to encourage co-operation from US lenders.

d. To take advantage of the automatic stay and the other benefits associated with Chapter 11, it is important to seek recognition of the Chapter 11 in Romania and the UK under the Model Law, and Hong Kong using common law recognition.

61. The proposed outline strategy is subject to obtaining further information and understanding whether the impediments are surmountable.

BREXIT

62. Before leaving the EU from 1 January 2021, recognition and enforcement of insolvency procedures between the UK and EU Member States was subject to common EU regulations. This meant that, in essence, there was automatic recognition.

63. As Romania has also implemented European Directive 2019/1023, it is easier for viable companies in Romania to access restructuring measures at an early stage to prevent them becoming insolvent. Accordingly, Romania has an EU-led procedure akin to Chapter 11 or administration, which means there is a possibility of a company in a Romanian process remaining totally or partially in control of its assets and day-to-day business activity while restructuring.

64. As EU Member States, an alternative option may have been to take advantage of this early out-of-court process in the UK and Romania. However, as the Model Law still applies in the UK and because the proposed strategy is centred on a US Chapter 11 process, the impact on the analysis above is largely unaffected by the UK's departure from the EU.