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GIPC

Case Study II

# Introduction

1. I have been asked (in early 2019) to advise Mr. Benedict Maximov in relation to the Efwon group[[1]](#footnote-1) and more specifically on: (a) facilitating a deal with KuasaNas; and (b) dealing with insolvency issues affecting the Efwon group. The Appendix hereto sets out diagrammatically the Efwon group based on my instructions.

2. The asset and capital structure position of each company within the Efwon group is summarized in Table 1 below.

Table 1. Asset and Capital Structure position of Efwon Group.

|  |  |  |
| --- | --- | --- |
| **Entity** | **Assets** | **Capital Structure (Debt or Equity) / Liabilities** |
| Efwon Investments (“Efwon USA”) | US$ 350 million loan owing from Efwon UK. | US$ 100 million in equity from Mr. Maximov investing his own money.[[2]](#footnote-2)  US$ 250 million in debt from a syndicate of banks on the following terms:  (i) repayable in 2020;  (ii) secured by a pledge on the projected revenue from participation in Formula 1;  (iii) secured by a pledge over the shares of Efwon USA; and  (iv) secured partly on a number of Mr. Maximov’s homes across the world valued in total at US$ 75 million. |
| Efwon Trading (“Efwon UK”) [[3]](#footnote-3) | US$ 450 million loan owing from Efwon Romania. | US$ 350 million owing to Efwon USA.  US$ 100 million owing to Monaco lender -high interest. |
| “Efwon Romania” | FIA licenses, team property including any contracts relating to broadcasting, and equipment | US$450 million owing to Efwon UK secured on broadcasting review.  Potentially a contingent liability in the form of damages to F1 drivers for injuries. |
| “Efwon Hong Kong” | Any preliminary contracts (such as a Non-disclosure agreement or Memorandum of understanding) with KuasaNas for investment in the Efwon group. | No information. |

3. Efwon Romania appears to be the operating company of the Efwon group. That is to say it holds the assets of the team including the license/s, equipment and receives the broadcast revenues. In 2018, the Efwon group’s F1 drivers were injured in a car crash during a race and they have brought a claim against Efwon Romania in the Romanian courts, which if they succeed will result in a substantial liability against Efwon Romania. The F1 drivers have obtained a freezing order on the assets and income of Efwon Romania and have filed for insolvency of Efwon Romania.

4. KuasaNas is a Malaysian state-controlled company that is contemplating providing funding in excess of US$ 200 million annually to the Efwon group. As a condition of this funding KuasaNas requires that it acquire a 51% stake in the team and that the team be moved to Malaysia. I am instructed that the Malaysian government must approve the KuasaNas agreement. Finally, KuasaNas requires that the insolvency issues relating to the Efwon group are resolved.

# Out-of-Court Work-Out

5. As a primary strategy I would advise that an out-of-court work-out be pursued. Whilst that process is ongoing, I would prepare the documents necessary to implement an English scheme of arrangement as described in more detail below at paragraphs 14 to 21.

6. The fact that the F1 drivers have obtained a freezing order, indicates that the litigation is strategically intended to give them leverage against the Efwon group. Efwon Romania is the owner of the FIA licenses, team assets and a receivable for the broadcasting revenue for the just completed 2018 season so that freezing the income and profits prevents any upstreaming of income to repay Efwon UK and in turn Efwon USA. The freezing order increases significantly the likelihood of the entire Efwon group being unable to pay its debts as they fall due.

7. I would advise as a first step to vigorously defend against the substantive litigation against Efwon Romania. This step should be taken immediately to prevent a default judgment or any judgment order attaching to the assets of Efwon Romania.

8. I would therefore advise that Efwon Romania promptly engage local Romanian counsel to prepare and file: (a) a defense to the claim by the drivers; (b) an application to lift the freezing injunction; and (c) a claim to strike out the insolvency petition.

9. Once the aforementioned documents are filed, I would advise that Romanian counsel pursue confidential settlement negotiates with the F1 drivers. In those negotiations I would instruct the local Romanian counsel on the basis that Efwon UK (the main creditor of Efwon Romania) has a debt which is scheduled to come due later in 2019. Furthermore, I would explore whether it would be credible to threaten that Efwon Romania’s assets and/or future income are secured (pledge) either in favour of Efwon UK or the syndicate of banks to the tune of either US$ 450 million (if to Efwon UK) or US$ 250 million (if to the syndicate of banks). The credibility of this threat will depend on the language in the relevant credit agreements. If in law the assets of Efwon Romania are the subject of a secured interest granted to either Efwon UK or the syndicate of banks then the F1 drivers’ claims would be subordinated to the claim by the secured creditor/s meaning the F1 drivers will be unlikely to receive any payment in liquidation after the payment of the secured creditor whose debt is due in 2019 or 2020. The combination of the impending maturity date and the security interest should, if the drivers are being reasonable and rational, incentivize the drivers to also pursue a settlement.

10. The Efwon group presently has two sets of outside lenders, the first is the syndicate of banks that have lent US$ 250 million to Efwon USA and the second is the Monaco lender that has lent US$ 100 million at the Efwon UK level. As another step both sets of credit agreements should be reviewed to determine: firstly, whether the driver litigation must be disclosed and secondly, whether any aspect of the claim by the drivers is a breach or event of default under either or both of the credit agreements. The goal is to prevent an event of default or to address any default early such as by seeking a waiver. It is very important that neither debt be accelerated as that would almost certainly cause a rush by the other creditor group hastening the need for some form of bankruptcy protection.

11. I have not been instructed on the maturity date of the Monaco high interest rate loan. It may be beneficial to seek an extension of this loan. I am instructed that the debt owed to the syndicate of banks is due in 2020 so that there is still some time left before this debt matures.

12. If it is possible to obtain a satisfactory settlement agreement with the F1 drivers that includes: (a) withdrawal of the insolvency petition; (b) release of existing and future liabilities present and contingent; (c) lifting of the freezing injunction, then this would essentially resolve the insolvency position of the Efwon group. Assuming any lender issues mentioned in paragraph 10 are also resolved.

13. It would just then be necessary to facilitate the investment by KuasaNas. In my view the safest way to implement the KuasaNas deal would be to migrate Efwon Romania from Romania to Malaysia. This in theory should preserve the FIA license as it would still be owned by the same entity just merely in a different jurisdiction. Any assets held by Efwon Hong Kong could then be transferred to Efwon Malaysia. Efwon Malaysian could then incorporate a subsidiary (such as Efwon Malaysia Drivers Co.) to which any new F1 drivers could be contracted to prevent a similar situation arising in the future.

# Court Restructuring – Scheme of Arrangement twinned with Pre-Pack Administration

## Background

14. Whilst trying to agree the out-of-court work-out I advise that the board of Efwon Romania explore a Scheme of Arrangement under the UK’s Companies Act, 2006[[4]](#footnote-4). The English Scheme of Arrangement is a well-established mechanism for restructuring liabilities. I would not at the present time suggest a Chapter 11 filing under the United States Bankruptcy Code (“Chapter 11”) for two (2) reasons, the first is that the syndicate of banks have strong legal rights and any attempt to restructure their debt is likely to result in Mr. Maximov being diluted due to the operation of the absolute priority rule. The second reason is that the Chapter 11 process tends to be expensive and as there is no need to carry-out a business restructuring may not be necessary to achieve the goals.

15. Among the benefits of utilizing the English Scheme of Arrangement (in 2019), are that:

* It is a tried and tested restructuring mechanism that the US and Monaco lenders should be more familiar with given its extensive usage in debt restructurings. The judges and practitioners within the UK will be familiar with cross-border debt restructurings in European Union countries such as Romania. That will give significantly more confidence in the system and certainty as to the likely outcome.
* US bankruptcy courts are familiar with the English scheme which will potentially allow for an easier path to recognition in the United States under Chapter 15 of the United States Bankruptcy Code.

16. The English Scheme I would suggest is one which would seek to transfer the assets and business of Efwon Romania to a new company registered in Malaysia (“Newco Malaysia”) in exchange for Newco Malaysia assuming some of the liabilities of Efwon Romania. The claim from the F1 drivers would not be among the liabilities transferred and would not be directly compromised by the scheme. An English scheme does not have to be considered by all creditors[[5]](#footnote-5). I would therefore seek to exclude the F1 drivers from amongst the creditors voting on the scheme.

17. The end result of this English scheme would be that Efwon Romania would be any empty shell with the F1 drivers being able to continue their claim against a company with no assets. Whilst Newco Malaysia would be entirely owned by the “*in-the-money*” creditors of Efwon Romania (i.e. Efwon UK).

18. This type of English scheme has been used in *MyTravel Group Plc*[[6]](#footnote-6) and later in *Bluebrook Ltd*[[7]](#footnote-7). In those schemes junior creditors were excluded from the scheme as they were “*out-of-the-money*” creditors without any economic interest in the company undertaking the scheme. The valuation of the scheme company and the methodology in arriving at the valuation was extremely important in both cases.

19. In my view there is a strong argument to be made that the F1 drivers are akin to the junior creditors in the *MyTravel* and *Bluebrook* Schemes and that based on the indebtedness owing by Efwon Romania (US 450 million), the f1 drivers no longer have an economic interest in Efwon Romania. They can therefore be excluded from consideration by the Efwon Romania scheme.

20. The valuation of Efwon Romania will be an important consideration. It will likely be necessary to engage an accounting firm to provide a valuation of Efwon Romania. There appears to be some uncertainty in the law whether the appropriate valuation basis should be on “*a going concern basis*”[[8]](#footnote-8) or liquidation basis[[9]](#footnote-9). The liquidation basis would certainly result in a lower valuation and it is for this basis which the Efwon Romania should argue should the scheme be contested. Among the arguments would be that without the scheme Efwon Romania would need to be liquidated.

21. I would also recommend that the English scheme be executed pursuant to a pre-pack administration[[10]](#footnote-10). That is to say the English scheme after being approved by the court would be effected by an administrator pursuant to a pre-pack administration. The significant benefit is that the transaction would receive automatic recognition under the European Insolvency Regulation[[11]](#footnote-11) (“EIR”) because administration is within Appendix A of the EIR as one of the insolvency proceedings that will be given automatic effect throughout the European Union (including Romania).

## Implementation

22. Access to the English courts for Efwon Romania for purposes of effecting a debt restructuring under the English scheme requires that Efwon Romania have a “*sufficient connection*” with England. The English courts have been expansive in the factors used to determined whether a foreign company has a “*sufficient connection*” to England. Among the factors is whether the financing documents are governed by English law[[12]](#footnote-12) and where the creditors reside.[[13]](#footnote-13) Efwon Romania’s largest creditor is Efwon UK, additionally one would expect that the finance documents of those loans would be governed by the laws of England and subject to the jurisdiction of the courts of England and Wales. If the latter is not the case then it is recommended that the documents be amended to reflect a change of law and jurisdiction.

23. I would not also strongly recommend that Efwon Romania seek to shift its centre of main interests (“COMI”) to England. The purpose of the COMI-shift is to:

* ensure that the courts of England have jurisdiction over Efwon Romania’s insolvency proceedings for purposes of the EIR.
* to get the effect of the English proceedings being treated as foreign main proceedings under Romanian law.
* to ensure that the English scheme is given recognition as foreign main proceedings for implementation under Chapter 15 of the US Bankruptcy Code which implements the UNCITRAL Model Law on Cross-Border Insolvency (the “UNCITRAL Model Law”).

24. Under the EIR the COMI is presumed to be the location of the debtor’s registered office. That presumption is rebuttable based on objective evidence. In my view it is very important for Efwon Romania to take all the steps necessary to implement a COMI-shift; such as:

* changing the registered office to England.
* moving the books and records of Efwon Romania to England.
* moving the principal operating office to England.
* moving the day-to-day administrative activities to England.
* making a public statement about its change of location.

25. Upon effecting the COMI-shift I would advise that both a local English solicitor’s firm be retained as well as an English licensed insolvency practitioner that would be able to act as an administrator to effect the pre-pack administration.

## Risks

26. There are important risks that must be taken into account before implementation.

* The first is whether the English court will exercise “*jurisdiction*” over the Efwon Romania scheme. Prior to exercising its jurisdiction to order the convening meeting to consider the scheme the English court must be satisfied that Efwon Romania is a company “*liable to be wound up under the Insolvency Act 1986*”[[14]](#footnote-14) The caselaw has interpreted this to mean that there are “*three core requirement*”[[15]](#footnote-15). The only element of those requirements I consider herein is the “*sufficient connection*”. This test can be satisfied based on the finance documents being governed by the law of England. More significant is the COMI-shift, because if the COMI is not shifted to the UK, the English courts will only be able to exercise jurisdiction if Efwon Romanian has an “*establishment[[16]](#footnote-16)*” in the UK and secondly only over the assets of Efwon Romanian in the UK. The assets with which we are concerned are based in Romania hence it is imperative that the COMI is shifted to England to ensure the English courts have jurisdiction over all the assets of Efwon Romania.
* The second risk is whether the English scheme once approved will be given “recognition” in Romania. The scheme suggested will result in the F1 drivers having a claim against an empty shell as the assets would have been transferred to Newco Malaysia. The English case law would not treat their rights as having been varied however potentially based on Romanian law transferring the assets and certain liabilities out of Efwon Romania may not be given recognition in Romania. In the case of *Equitable Life[[17]](#footnote-17)* the German Federal Court denied recognition of an English Scheme. That case however could be distinguished as it involved insurance policy holders. The method used mitigate this risk is to utilize the administration which by way of the EIR should be automatically effective in Romania. That still however does not end the matter as the EIR in Article 33 provides for a public policy exception whereby Romania may refuse to give effect to the scheme (although implemented by an administration) on the basis that it is contrary to public policy. The English courts may be alive to this situation and so it will be necessary to obtain expert opinions from Romanian academics on whether the English scheme I have recommended would be given recognition in Romania.
* The fourth risk is from the upstream lenders. The suggested process would only adopt an English scheme for Efwon Romania, and not Efwon UK or Efwon USA. The upstream lenders all appear to be sophisticated and strongly adjusting creditors. Getting their support to the English scheme will be important. If the Monaco lender is amenable it would also be possible to implement a scheme over Efwon UK to extend the maturity of its debt or to exchange its debt for tradable debt such as high yield bonds. In my view the Monaco lender effectively has a veto right to any scheme over Efwon UK because of the requirement for a majority in number of the class of creditors to approve an English scheme. So that even if the Monaco lender were to be in the same class as Efwon USA which owns 77% of the debt, a vote against the scheme by the Monaco lender would cause that scheme to fail. One way to obtain buy-in by the upstream lenders would be emphasizing that they will be remaining in the structure because Efwon UK will wholly own Newco Malaysia which will have assumed all the assets and some of the liabilities of Efwon Romania. Furthermore, Newco Malaysia once it receives the investment from KuasaNas can use part of those proceeds to repay part of their debts. That would hopefully be sufficient for those lenders to support the transactions.
* The fifth risk is that the English scheme does not trigger an automatic stay on enforcement, instead it is up to the discretion of the court whether a stay should be granted. There are two matters which are relevant:

1. the first is that if the COMI is shifted to England then commencing the English scheme should allow a foreign representative to stay the proceedings in Romania on the basis that England is the COMI and pursuant to the UNCITRAL Model Law a stay on enforcement is automatic once there is sufficient proof that the English proceedings are foreign main proceedings.
2. The second consideration is that triggering administration in England results in an automatic stay on enforcement proceedings. The trade-off with triggering administration early in the process (i.e. in a scenario other than a pre-pack administration) is that the board of directors are displaced in favor of the administrator.

* The sixth risk is transferring the FIA license which may be non-assignable or almost certainly will require a consent from the FIA. Additionally, the F1 drivers may be able to raise a challenge by making representations to the FIA that the purpose of the transfer is to deny them from recovering on their claim. If there is an issue with the transfer of the license then much of the value in Efwon Romania would be lost. It will be important to convince the FIA that the purpose of the English scheme is to facilitate the investment by KuasaNas that should in turn grow the sport.

# Court-Restructuring – US Chapter 11

27. I would not recommend utilizing the US Chapter 11 process to achieve the desired goal. Indeed, I would not recommend any court restructuring processes with respect to Efwon USA. Efwon USA has borrowed US$ 350 million from a syndicate of banks, with Mr. Maximov investing (as equity I assume) US$ 100 million as well. In my view if Efwon USA is brought into any restructuring process Mr. Maximov is likely lose a significant part of his investment. As matter of principle it would be incongruent with the absolute priority rule under US bankruptcy law for Mr. Maximov to be able to retain the entirety of his investment without significant dilution or impairment if the lenders are being requested to themselves be compromised. If the KuasaNas transaction occurs Mr. Maximov will already no longer be the majority owner of the team. Any Chapter 11 reorganisation plan will likely result in Mr Maximov also being further diluted or his interest diminished in the Efwon group even before the KuasaNas investment. If the instead the Chapter 11 is merely extend the maturity of the loans in Efwon USA the cost of the US Chapter 11 is likely to outweigh the benefit.

28. The circumstances in which a US Chapter 11 filing would make sense in my opinion is if the syndicate of banks took enforcement action against Efwon USA. In that case a US Chapter 11 filing would be justified. I note that Mr. Maximov is a guarantor to Efwon USA and has supported its borrowing by mortgages over various of his homes. As Mr. Maximov is a secondary obligor I would assume that the syndicate of banks would need to first claim against Efwon USA before seeking to enforce against Mr. Maximov.[[18]](#footnote-18). Furthermore with that many jurisdictions it is likely to take significant time to enforce on the homes in each jurisdiction. This would give us time to evaluate the steps that could be taken to address the enforcement action.

# Specific Questions

29. For completeness you have asked certain specific questions to which I will provide a brief response below.

1. *Your proposed strategy for dealing with the group*

I would focus on Efwon Romania. Firstly, I would try for an out-of-court work-out with the F1 drivers. If successful I would then migrate Efwon Romania to Malaysia. KuasaNas would then be able to investment in Efwon Malaysia. Secondly, I would propose an English Scheme of Arrangement with a pre-pack administration. The English scheme would transfer the assets of Efwon Romania and certain liabilities (excluding the contingent liability owing to the F1 drivers). The F1 drivers would be excluded from voting on the scheme on the basis that they had no economic value remaining in Efwon Romania. The assets and assumed liabilities would be received by a Newco Malaysia in which KuasaNas would invest.

1. *Whether one or more insolvency proceedings are required to achieve the goal of selling a stake in the group to KuasaNas (should the intended contract receive Government clearance);*

The English Scheme of Arrangement and an administration under the Insolvency Act, 1986 would be the two processes utilized with respect to Efwon Romania. Potentially there could be some benefit to Efwon UK engaging in an English scheme in order to extend the maturity of the debt owed to the Monaco lender or to exchange its debt to tradable debt (such as bonds) with a lower yield.

1. *Where these proceedings will take place*

These proceeds would take place in England and Wales.

1. *What impediments may exist to proceedings taking place*

In brief: (a) obtaining jurisdiction in England and Wales to effect a scheme over Efwon Romania; (b) the Romanian courts may not give effect to the transactions; (c) the English scheme does not trigger an automatic stay of enforcement; (d) the FIA license will need to be transferred as part of the assets; (e) the consent of the upstream lenders will likely be required.

1. *What advantages/disadvantages may exist in relation to proceedings being organized in the way you propose?*

The main advantages are:

* It addresses the exact problem which is the claim by the F1 drivers. If successful the Efwon group would have a clean company based in Malaysia with all the assets and assumed liabilities that are desired. If possible Efwon UK could also adopt its own scheme of arrangement to obtain an additional benefit if the Monaco lender is amenable.
* The suggested proceedings do not vary the rights of the syndicate of banks or the Monaco lender. These constituents are likely to have strong rights, to be sophisticated and may be difficult to deal with as there are several of them with varying rights.
* It allows Mr. Maximov to retain his full interest in the Efwon group (prior to the sale to KuasaNas). In my view if a US Chapter 11 is triggered Mr. Maximov’s interest is likely to be diluted prior to the sale.
* The UK (during 2019) was still a part of the European Union, and therefore subject to the EIR. So that once the pre-pack administration was completed it would automatically take effect in Romania.
* The English scheme will likely be given recognition in the US under Chapter 15 of the US Bankruptcy Code.

The main disadvantages are:

* There are significant risks with implementation as set out above at paragraph 26.
* Efwon Romania will need to shift its COMI to the UK. This will involve time, effort and expense.
* The English scheme does not trigger an automatic stay of proceedings. So that a request will need to be made of the court to do so. This may potentially be addressed based on the COMI-shift to England so as to obtain a stay of proceedings in Romania under the UNCITRAL Model Law on the basis of the UK proceedings being foreign main proceedings. Secondly, appointment of an administrator results in a stay of proceedings.
* Administration is an insolvency proceeding that could trigger an event of default under the credit agreements with the US and Monaco lenders.

1. *The factors that will allow you to determine the above;*

The most important factors are firstly the valuation report from the accounting firm and secondly the expert opinion from the Romanian academic on the recognition of the transaction in the Romanian courts.

1. *Any further factors or information that may be needed to answer the question;*

As ancillary factors the posture of the syndicate of banks and the Monaco lender and the specific terms under their credit agreements will also be pertinent considerations.

1. *Where you envisage the application of the European Insolvency Regulation and/or UNCITRAL Model Law in achieving this?*

Yes, I would envisage the EIR applying between the UK and Romania. The UNCITRAL Model Law would apply between UK and Romania and also between the UK and US (if necessary).

1. *In particular how the provisions of these texts may assist or impede the strategy you propose to implement?*

* The EIR would be used to give automatic recognition to the transactions based on administration being within Annex A of the EIR. the UNICTRAL Model Law would be used to obtain a stay of proceedings in Romania based on the COMI-shift to England. It could also be used to obtain recognition in the US under Chapter 15.

1. *In December 2019, Brexit finally happened. Advise as to the possible effect if any, of Brexit on your solution.*

* Brexit means that the EIR is no longer effective in the UK meaning that the transactions would not automatically gain recognition based on the administration. The English scheme alone could potentially effect the transaction (with the approval of Efwon UK the sole shareholder of Efwon Romania). I would then potentially consider using the US Chapter 15 process which would effect a world-wide stay on enforcement action against Efwon Romania.
* The English Scheme could still gain recognition in Romania through the UNCITRAL Model Law. However, unlike the EIR the effect would not be automatic and requires a court application that could be challenged by the F1 drivers.

1. *Effect of European Directive 2019/1023 on preventive restructuring framework?*

* As explained the out-of-court work-out is the preferred option with the court-approved scheme of arrangement with the administration as a back-up. In fact, in two of the cases where similar schemes were utilized the creditors that were excluded ultimately agreed to a compromise with the company so that the scheme did not need to implemented. Similarly even though the English scheme would be progressing if the out-of-court work-out is not effective that would not prevent the F1 drivers from settling after becoming apprised of the scheme and its effect.
* The European Directive 2019/1023 would have required Romania to create a legal mechanism which allows for a debtor in possession process that imposes an automatic stay on individual enforcement actions. This mechanism would therefore make it more likely that an out-of-court arrangement would be arrived without having to carry-out the English scheme. That could be a significant benefit because the FIA license would not need to be transferred and instead the entity itself (Efwon Romania) could be migrated to Malaysia.

# Appendix

* US$450 million owing to Efwon UK.
* Owns the F1 team operating assets.

100%

* US$350 million owing to Efwon USA.
* US$100 million owing to Monaco lender.
* US$450 million on-lent to Efwon Romania.
* US$250 million borrowed from syndicate of banks.
* US$100 million invested by Mr. Benedict Maximov.
* US$350 million on-lent to Efwon UK.
* US$75 million guarantee secured on various homes around the world.
* US$100 million invested in Efwon USA.

100%

100%

**Efwon Romania**

**Efwon Hong Kong**

**Efwon UK**

**Efwon USA**

100%

1. Efwon Investments incorporated in Delaware; Efwon Trading incorporated in the England; Efwon Romania incorporated in Romania; and Efwon Hong Kong incorporated in Hong Kong. [↑](#footnote-ref-1)
2. It is not clear if Mr. Maximov’s investment was in the form of debt or equity or a combination of debt and equity. I assume it was in the form of equity rather than debt. [↑](#footnote-ref-2)
3. There is some ambiguity as to whether Efwon UK is truly a subsidiary (i.e. the shares are held by Efwon USA) versus an associated company that is common controlled by Mr. Maximov. I assume that Efwon UK wholly-owned subsidiary. [↑](#footnote-ref-3)
4. Part 26 of the Companies Act, 2006. [↑](#footnote-ref-4)
5. See MyTravel Group Plc [2004] EWCA Civ 1734 [↑](#footnote-ref-5)
6. [2004] EWHC 2741 (Ch); [2004] EWCA Civ 1734 [↑](#footnote-ref-6)
7. [2009] EWHC 2114 (Ch) [↑](#footnote-ref-7)
8. See In Re Bluebook Ltd [2009] EWHC 2114 (Ch) [↑](#footnote-ref-8)
9. See MyTravel Group Plc [2004] EWHC 2741 (Ch); [↑](#footnote-ref-9)
10. Schedule B1, Insolvency Act 1986 [↑](#footnote-ref-10)
11. Council Regulation (EC) 1346/2000 [↑](#footnote-ref-11)
12. See Icopal AS & Ors, Re [2013] EWHC 3469 [↑](#footnote-ref-12)
13. See Rodenstock GmbH [2001] EWHC 1104 (Ch) [↑](#footnote-ref-13)
14. Companies Act 2006, section 895 [↑](#footnote-ref-14)
15. See per Knox J in Real Estate Development Co, Re [↑](#footnote-ref-15)
16. Article 2(f) UNCITRAL Model Law on Cross-Broder Insolvency defines “*establishment*” as “any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services” [↑](#footnote-ref-16)
17. Equitable Life in 2009 (OLG Celle 8 U 46/09). [↑](#footnote-ref-17)
18. In any event if the syndicate commences enforcement against Efwon USA it could be in Mr. Maximov’s interest to stay at a home in a place outside the USA where service of the court process on him would be more difficult. Assuming the credit agreement does not include a process agent that accepts service on his behalf. [↑](#footnote-ref-18)