Global Insolvency Practice Course 2023 – Case study 2

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1. **My proposed strategy for dealing with the group**
   1. **The current situation as a whole**

In order to comprehensively analyze the circumstances under consideration within this case, it is imperative to diligently assess the factual context. The legal representatives acting on behalf of the drivers who sustained injuries during the final race of the 2018 racing season and subsequently filed claims have initiated insolvency proceedings against Efwon Romania within the jurisdiction of Romanian courts. As a consequential outcome, this insolvency filing has triggered a default event concerning the pending payment from Efwon Romania to Efwon Trading, which was slated for early 2019. This default, in turn, is poised to precipitate a cascade effect, resulting in Efwon Trading's inability to fulfill its obligations towards Efwon Investments, as elucidated in the provided case materials.

Consequently, this scenario implies that Efwon Investments is likely to encounter impediments in realizing any returns on its investment in Efwon Trading, as the latter entity's operational involvement in the racing event has been compromised due to the ensuing default circumstances. Within this trajectory, the financial creditors holding claims against Benedict Maximov for a substantial sum of USD 250 million are seeking to enforce their rights by resorting to foreclosure on the underlying security interests, with the objective of securing payment commensurate with the collateral's valuation. This collateral is principally comprised of a diverse assortment of residential properties located across various international jurisdictions, meticulously provided by Benedict Maximov.

It is pertinent to underscore that the other two securities, namely the revenue assets and the shares vested in Efwon Investments, have demonstrably diminished in value owing to the profound financial distress afflicting the conglomerate of Efwon companies. Consequently, the viability of these securities as avenues for financial recuperation has considerably waned.

Presently, KuasaNas emerges as the most prospective sponsor for the Efwon team. The financial capacity of KuasaNas allows for an annual funding allocation exceeding USD 200 million. However, KuasaNas has stipulated certain conditions germane to this prospective sponsorship arrangement. Foremost among these prerequisites is the requirement that KuasaNas secures a controlling equity interest of 51% in the Efwon team. Simultaneously, KuasaNas envisions the relocation of the team's operations to Malaysia. This move would potentially offer manifold benefits, including access to the Sepang GP racetrack for training and practice sessions, along with the recruitment of proficient drivers possessing qualifications sufficient to obtain Super Licenses. Of equal significance is the condition that expeditious resolutions are reached regarding the insolvency predicaments permeating the entirety of the Efwon corporate group.

In light of the foregoing, the central issue demanding resolution revolves around the strategic management of the prevailing insolvency quandaries. The overarching objective is to effectually address these insolvency challenges in a manner that aligns with the prerequisites outlined by KuasaNas. The attainment of a harmonious convergence between these dual objectives necessitates a judiciously crafted strategy that safeguards the interests of all stakeholders involved, while concurrently facilitating the fulfillment of KuasaNas' stipulated conditions.

* 1. **Possible strategy for the deal with KuasaNas going ahead**
     1. **Efwon Romania**

In the aforementioned context, it becomes evident that KuasaNas has exhibited a substantive interest in procuring ownership of the team situated in Romania. During the period when the Efwon consortium consummated the acquisition of the team, the contractual affiliations with the drivers were vested within the Romanian team. Subsequent to the acquisition, Efwon Romania undertook the assumption of these driver contracts, inheriting them from the antecedent team proprietor. It appears that the operational takeover of the team was facilitated through an infusion of external capital amounting to USD 50 million, sourced from Efwon Trading, thereby constituting the financial foundation for the team's acquisition endeavor.

Given this contextual backdrop, it is discernible that KuasaNas is poised to effectuate the procurement of controlling interests in the team through the acquisition of majority stakes directly from Efwon Romania. This strategic maneuver is predicated upon the fulfillment of KuasaNas' stipulated conditionality, specifically contingent upon the attainment of controlling equity ownership in the team. This substantive modification is imperative to align with the prerequisite outlined by KuasaNas in order to catalyze their envisaged sponsorship of funding for the team.

In view of the extant circumstance wherein the drivers, who are creditors by virtue of their injury claims, have instigated insolvency proceedings against Efwon Romania, a pragmatic approach to effectuate the sale of the team necessitates positioning it as a transaction involving the divestment of Efwon Romania's business operations from its parent entity, Efwon Trading. It is noteworthy that Efwon Trading enjoys sole ownership of Efwon Romania.

Of paramount consideration is the legislative landscape underpinning the insolvency process. Romania is primed to achieve the comprehensive integration of the European Directive 2019/1023, which pertains to the establishment of frameworks for preemptive restructuring. This legislative directive is slated to be fully implemented by January 2020. Furthermore, Romania boasts a robust out-of-court or hybrid procedural mechanism tailored to address enterprises grappling with financial distress yet retaining their viability.

Within this legal framework, it becomes discernible that the insolvency process concerning Efwon Romania could seamlessly segue into the contours of an out-of-court or hybrid modality, deftly aligned with the provisions outlined in the aforementioned EU Directive. This orientation envisages a procedurally coherent strategy wherein the transaction involving the sale of Efwon Romania's equity stake to KuasaNas assumes shape within the contours of this multifaceted insolvency process.

In sum, the confluence of factors, encompassing the contractual dynamics with the drivers, the financial underpinnings of the team acquisition, and the prevailing legal and regulatory parameters governing insolvency, coalesce to delineate a pathway wherein the acquisition of a stake in Efwon Romania by KuasaNas could be executed harmoniously through the prism of the impending out-of-court or hybrid insolvency procedure delineated by EU Directive 2019/1023.

* + 1. **Efwon Trading**

In contemplation of a prospective arrangement with KuasaNas executed within the purview of the insolvency process of Efwon Romania, a strategic restructuring plan would ostensibly necessitate the judicious negotiation with creditors. This strategy would ideally encompass a certain degree of debt waiver, given the prevailing financial constraints inherent within Efwon Romania's fiscal landscape. It is evident that the assets at the disposal of Efwon Romania would not suffice to satisfy the claims of creditors, encompassing both those representing the injured drivers and Efwon Trading, which had extended a loan quantum of USD 150 million to Efwon Romania.

Despite the possibility of KuasaNas compensating Efwon Trading in return for acquisition of a majority stake in either the team or Efwon Romania, prudence dictates that the comprehensive settlement of the USD 150 million loan obligation to Efwon Trading could not be realized in full during the course of Efwon Romania's insolvency proceedings. This strategic approach is underpinned by the need to ensure equitable distribution of available resources among the stakeholders, in recognition of the scarcity of Efwon Romania's assets to cover its financial liabilities.

The implementation of this measured approach, however, instigates a subsequent financial conundrum whereby Efwon Trading becomes encumbered by an inability to honor its commitment to the Monaco-based lender, which had extended a loan sum of USD 100 million. Furthermore, this course of action also renders Efwon Investments, which had granted Efwon Trading a substantial loan amounting to USD 350 million, in a state of financial exposure.

Given the intricate web of debts surpassing the value of assets, it becomes paramount to navigate a procedural avenue that commensurately resolves these excessive liabilities. One potential recourse is the initiation of insolvency proceedings in the United Kingdom, specifically through mechanisms such as a Scheme of Arrangement. This approach is particularly germane considering that Efwon Trading was established under the legal framework of England and Wales.

In summary, the envisaged scenario mandates a meticulous negotiation process with creditors, coupled with a nuanced distribution strategy, within the overarching insolvency process of Efwon Romania. The strategic involvement of KuasaNas in conjunction with the implementation of requisite mechanisms, such as debt waivers and potentially the utilization of the United Kingdom's Scheme of Arrangement, would be essential to navigate the intricate landscape of liabilities exceeding assets in the most equitable and legally sound manner possible.

* + 1. **Efwon Investment**

Upon the occurrence of insolvency within Efwon Trading, a consequential inability to fulfill its financial obligations arises, including its USD 350 million indebtedness to Efwon Investments, as previously elucidated in section ii. It merits noting that Efwon Investments was purposefully established to channel investments into the F1 racing enterprise within the Efwon conglomerate via loans extended to Efwon Trading. In the event that the repayment of these loans becomes untenable, the financial viability of Efwon Investments is significantly compromised, rendering it bereft of any profit generation capacity.

A pertinent facet of this intricate financial framework is Benedict Maximov's acquisition of USD 250 million capital via a consortium of banks, secured by the collateralization of his residential properties, the anticipated returns stemming from the resultant investment, and his ownership stake in Efwon Investments. In the event that the insolvency predicament enveloping the Efwon group, spanning both the Romanian and UK jurisdictions, precipitates a scenario devoid of profitability for Efwon Investments, the banks presiding over the aforementioned syndicated loan would be predisposed to safeguard their financial interests by resorting to the security interest vested within Benedict's homes.

In light of these considerations, Benedict Maximov is contemplating the initiation of Chapter 11 proceedings, as stipulated in the case details, with the overarching objective of safeguarding his position as well as preserving the integrity of Efwon Investments. However, a salient concern emerges wherein, even if Efwon Investments were to seek refuge under Chapter 11, thereby invoking the automatic stay mechanism that precludes the enforcement of securities by creditors against the entity, the banks in question could potentially foreclose on Benedict's residential properties. This course of action becomes feasible due to the nature of the indebtedness, which is intrinsically connected to Benedict as an individual. It remains an unresolved aspect whether Efwon Investments itself holds any liabilities vis-à-vis external parties.

In essence, the efficacy of invoking Chapter 11 for Efwon Investments to effectively shield Benedict's residential assets is subject to ambiguity. On a parallel trajectory, there exists a strategic opportunity for both Benedict Maximov and the involved banks to consider a comprehensive restructuring endeavor aimed at preserving the structural integrity of Efwon Investments through the channel of Chapter 11. This approach could potentially facilitate an avenue for optimizing the overall repayment potential derived from Efwon Investments' revenue streams.

To synthesize, the intricate crossroads delineated herein necessitate astute deliberations on both the legal implications and financial ramifications. The optimal course of action to safeguard Benedict's assets and optimize repayment prospects from Efwon Investments warrants meticulous analysis and discernment.

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)**

As alluded to in the preceding point (a), the insolvency proceedings in Romania necessitate, at the very least, the divestiture of a stake within the race team to KuasaNas. This strategic imperative aligns with the stipulated precondition of resolving the insolvency challenges pervading the broader Efwon consortium. Concurrently, to fulfill the condition precedent of addressing the Efwon group's insolvency concerns, the commencement of insolvency proceedings pertaining to Efwon Trading becomes imperative within the jurisdiction of the United Kingdom, as explicated in the prior discourse.

It is prudent to acknowledge that while not intrinsically interwoven with the KuasaNas transaction, the potential involvement of Efwon Investments assumes significance in the broader context of the Efwon group's restructuring endeavors. However, the precise contours of Efwon Investments' indebtedness remain enshrouded in uncertainty, as previously delineated. Ascertaining the extent and nature of these debts assumes paramount importance in formulating a comprehensive restructuring strategy for the larger Efwon consortium.

In essence, the interplay of insolvency proceedings across Romania and the United Kingdom, while intertwined with the KuasaNas deal, inevitably extends to encompass the overarching viability of Efwon Investments. The confluence of these multifaceted elements underscores the intricate nature of the restructuring scenario and demands a meticulous appraisal of the facts, regulatory frameworks, and financial dynamics in order to chart an optimal course forward.

1. **Where these proceedings will take place**

The potential jurisdictions for restructuring Efwon Investments encompass three primary regions: (i) the United States, the jurisdiction of incorporation for Efwon Investments, (ii) the United Kingdom, where Efwon Trading was established, and (iii) Romania, the jurisdiction of incorporation for Efwon Romania.

As previously noted in section (a), a restructuring is imperative for at least Efwon Romania and Efwon Trading. As elucidated in section (h), within EU member states, the European Insolvency Regulation (EIR) is applicable to insolvency proceedings when the center of the debtor’s main interest (COMI) is situated in an EU jurisdiction (Recitals, paragraph 25). COMI serves as the determinant of jurisdiction for the insolvency process, with the presumption that, for incorporated debtors, COMI corresponds to the debtor’s registered office. Preceding December 2019, both the United Kingdom and Romania were EU member states, thereby rendering the EIR pertinent to insolvency proceedings in these nations. COMI consequently plays a pivotal role in designating jurisdiction. Efwon Romania and Efwon Trading, given their circumstances, exhibit no overriding factors that could significantly challenge the presumption aligning their places of incorporation with their respective COMI. Hence, the most judicious course of action is to conduct insolvency proceedings in Romania for Efwon Romania and in the United Kingdom for Efwon Trading.

Efwon Investments, having been established in the United States, naturally designates the U.S. as the locus for its restructuring proceedings.

An additional company within the corporate group, Efwon Hong Kong, operates in Hong Kong and was established to facilitate engagement with potential sponsors in the Far East, a region demonstrating renewed economic vigor following the aftermath of the 2008 Global Financial Crisis. Efwon Hong Kong is a wholly-owned subsidiary of Efwon Trading and a sibling entity to Efwon Romania. Importantly, the insolvency of Efwon Romania is not directly germane to the financial standing of Efwon Hong Kong, thus ensuring that Efwon Hong Kong remains unaffected by the insolvency situation in Romania.

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

As delineated earlier, the insolvency proceedings for Efwon Romania could potentially follow an out-of-court or hybrid process as outlined by EU Directive 2019/1023. This procedure would encompass the pivotal sale of a stake in Efwon Romania, a transaction orchestrated between Efwon Trading and KuasaNas. However, it remains prudent to acknowledge the potential emergence of alternative sponsors, expressing interest in acquiring the stake through a competitive bidding process.

In the event that offers from these alternate sponsors, along with their associated terms and conditions, exhibit greater competitiveness when juxtaposed with those presented by KuasaNas, it becomes imperative to consider their selection for further evaluation within the purview of the court. Such a development bears the potential to exert a substantial influence on the ongoing negotiations and the overall trajectory of the agreement between Efwon and KuasaNas. Thorough examination of these circumstances, guided by due legal diligence and regulatory scrutiny, is integral to ensure optimal outcomes in alignment with prevailing legal norms and commercial prudence.

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

Primarily, due to the fact that the business sale is slated to transpire within the context of the insolvency process, judicial involvement is intrinsic to the transfer of the Romanian business. The court's role extends to scrutinizing the transaction's legitimacy and the subsequent absolution of debts. This judicial oversight serves to instill confidence among creditors, substantiating the fairness of the deal and the integrity of the insolvency proceedings.

Furthermore, the presence of a prospective sponsor, notably KuasaNas, considerably mitigates the likelihood of a dearth in sponsorship interest for the Efwon business. This advantageous circumstance augments the expediency of the insolvency proceedings vis-à-vis scenarios devoid of potential sponsors. The involvement of a committed sponsor facilitates a streamlined progression of the process, underlining the necessity to expedite proceedings while concurrently ensuring meticulous adherence to legal and regulatory parameters.

* 1. **Disadvantage**

Conversely, introducing a judicial component to the proceedings introduces an element of discretion, wherein the court retains the prerogative to withhold approval of both the transaction and the prospective buyer. This introduces a layer of unpredictability to the transaction from the buyer's perspective, potentially engendering uncertainty regarding the consummation of the deal.

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

Addressing the previously mentioned drawback, it is pertinent to underscore that the present scenario is characterized by the presence of a highly competitive sponsor poised to assume control of the business. To this end, the formulation of the restructuring plan hinges upon the terms set forth by KuasaNas, encompassing substantial annual funding amounting to USD 200 million, coupled with detailed conditions stipulated by the sponsor. This comprehensive plan necessitates meticulous review and subsequent endorsement by both the creditors and the court.

Importantly, the proactive stance demonstrated by KuasaNas in offering significant financial backing bolsters the prospects of a successful restructuring for the Efwon business. This commitment not only augments the likelihood of a favorable outcome but also resonates as a powerful indicator of KuasaNas' vested interest in the business's resurgence.

Moreover, if the business transitions to KuasaNas ownership, the potential to secure access to the Sepang GP racetrack for training purposes, alongside the prospect of enlisting qualified drivers capable of obtaining Super Licenses, augments the viability of this sponsorship arrangement. Given the formidable challenges associated with obtaining such licenses and certifications, these provisions substantiate the rationale for KuasaNas as an optimal sponsor for Efwon.

Furthermore, the concomitant sale of Efwon Hong Kong, contemporaneous with the primary business transfer, holds strategic merit. This approach sustains the established rapport and sponsorship linkage with Kretek, under conditions amenable to both KuasaNas and Kretek as stipulated by their extant 5-year agreement. This multi-pronged strategy is well poised to bolster Efwon's position, thereby potentially facilitating the renewal of Kretek's sponsorship in 2020. While it might not single-handedly cover all forthcoming races, securing Kretek's sponsorship within the admissible terms is inherently prudent.

Cumulatively, the array of advantages stemming from the KuasaNas partnership constructively addresses the initial apprehension raised, thus positioning Efwon favorably to persuasively petition the court for the approval of the arrangement with KuasaNas. The synergy of these favorable aspects effectively counterbalances the identified disadvantage, affording a comprehensive framework to surmount this challenge with measured confidence.

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

Firstly, as delineated in section (a), legal representatives acting on behalf of drivers who incurred injuries during the final race of the 2018 season have initiated insolvency proceedings against Efwon Romania through the Romanian judicial system. This action, in turn, has triggered a default scenario in which Efwon Romania's anticipated payment to Efwon Trading, scheduled for early 2019, is now in default. This default, as posited in the case, consequently has the potential to cascade into a default by Efwon Trading in its financial obligation to Efwon Investments. However, due to the limited exposition of specific terms in the provided texts, the precise modalities by which Efwon Romania's default influences Efwon Trading's default in the loan agreement with Efwon Investments remain unelaborated. A comprehensive understanding of these circumstances necessitates the inclusion of pertinent details from the loan agreement.

Secondly, the intricacies surrounding potential defaults on the syndicate of bank loans and the resultant foreclosure of securities remain veiled by ambiguity. To achieve a comprehensive analysis of the intricate legal relationships entailing loans among the banks, Benedict, and Efwon Investments, it is imperative to acquire an exhaustive understanding of the underlying conditions and stipulations governing these loan agreements.

Thirdly, while the ownership structure of Efwon Trading appears to implicate either Benedict as an individual or Efwon Investments, the exact ownership entity remains shrouded in uncertainty. Concurrently, it is apparent that Efwon Investments extended a loan amounting to USD 350 to Efwon Trading, which was subsequently injected into Efwon Investments as capital, facilitated by Benedict. The precise ownership dynamics necessitate elucidation to accurately establish the ownership lineage and the financial transactions among these entities. Comprehensive clarity regarding these intricate aspects is indispensable to facilitate a meticulous evaluation of the overall corporate landscape.

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

The European Insolvency Regulation (EIR) is applicable to insolvency proceedings where the center of the debtor’s main interest (COMI) is situated within the EU, as outlined in Recitals paragraph 25. This regulation is legally binding across all EU Member States except Denmark. COMI serves as the determinative factor in establishing the jurisdiction for insolvency processes, and for incorporated debtors, it is presumed to coincide with the debtor's registered office.

In the context of this case, Efwon Romania's incorporation in Romania designates its presumed COMI within the boundaries of the same country. No compelling factors have been presented to counteract this presumption. Romania being an EU Member State necessitates adherence to the EIR, thereby affirming Romania as the fitting jurisdiction for initiating the insolvency process of Efwon Romania, consistent with its COMI.

The primary proceedings established in the jurisdiction of COMI hold significant implications, notably universal effects such as automatic recognition in other Member States, as stipulated in articles 19 and 20, and governance under the laws of the Member State where the proceedings have been initiated, governed by article 7 with exceptions noted in articles 8 to 18.

In the current case, the primary proceedings are underway in Romania, thereby mandating the automatic recognition of these proceedings in other EU Member States, including the United Kingdom, contingent upon its sustained membership prior to Brexit.

Furthermore, upon initiating the insolvency process in Romania, the procedure would be governed by Romanian law. Given Romania's commitment to full implementation of the European Directive 2019/1023 on preventive restructuring frameworks by January 2020, and its provision of a comprehensive out-of-court/hybrid approach tailored to financially-distressed yet viable enterprises, the insolvency proceedings for Efwon Romania could be accommodated under this specific framework, aligned with EU Directive 2019/1023.

Delving deeper into the Directive's provisions, Member States are mandated to establish preventive restructuring frameworks that meet specified standards, such as circumscribing the involvement of judicial or administrative authorities, as emphasized in article 4, section 6, and enacting mechanisms that institute a stay on individual enforcement actions, as detailed in article 6.

* 1. **UNCITRAL Model Law**

When examining cross-border insolvency cases, particularly situations where a foreign insolvency proceeding necessitates recognition and efficacy in another jurisdiction, the UNCITRAL Model Law assumes significance. This legal framework is especially pertinent when seeking the recognition of a foreign insolvency proceeding through court filings, a crucial mechanism in preserving the debtor's assets within that specific jurisdiction.

As previously outlined in section (a), within the context of EU nations, the insolvency proceedings within the jurisdiction of the debtor's COMI hold primacy as the main proceedings. These main proceedings confer universal effects, including automatic recognition in other EU Member States, in accordance with the provisions of articles 19 and 20 of the EIR. This implies that in the present case, the insolvency proceedings occurring in both Romania and the UK (prior to Brexit) are poised for mutual automatic recognition between these jurisdictions. The quandary arising pertains to the application of the UNCITRAL Model Law, particularly concerning the question of whether the proceedings in Romania and the UK should be recognized in the United States under Chapter 15 of the US Bankruptcy Code, and conversely, whether the US proceedings should find recognition in Romania and the UK.

Regarding the recognition of Romanian or UK proceedings in the US, it appears that neither Efwon Romania nor Efwon Trading possess assets within the United States. Although Efwon Investments, incorporated in the US, holds the position of creditor to Efwon Trading, it is reasonable to conclude that the filing of Chapter 15 for the recognition of the insolvency proceedings of Efwon Romania or Efwon Trading in the US may be unnecessary.

Conversely, the recognition of the US insolvency proceeding for Efwon Investments within Romania or the UK warrants thorough contemplation. Notably, Efwon Investments maintains substantial interests in its loan agreement with Efwon Trading, an entity incorporated in the UK. Pertaining to creditors such as the syndicate of banks, the deliberation hinges upon whether the recognition of the US insolvency process for Efwon Investments should be pursued within the UK. Similarly, the feasibility of recognition within Romania necessitates assessment, including a comprehensive analysis of potential ramifications on Efwon Investments' interests in Efwon Trading, particularly in Romania, encompassing stakes in Efwon Romania owned by Efwon Trading. Despite the distant financial relationship between Efwon Investments and Efwon Romania, the impact on these interests necessitates judicious consideration.

Ultimately, the incorporation of the UNCITRAL Model Law in this cross-border insolvency scenario adds a layer of complexity that mandates meticulous evaluation of the interplay between the legal systems of Romania, the UK, and the US, particularly with respect to recognition and the ensuing consequences on various stakeholders' interests.

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

As reiterated, the overarching principle governing main proceedings lies in their capacity to yield universal effects, encompassing automatic recognition across other EU Member States, as stipulated by articles 19 and 20 of the pertinent regulation. Simultaneously, the administration of these proceedings is subject to the laws prevailing within the Member State where such proceedings have been initiated, in accordance with article 7, subject to specific exemptions outlined in articles 8 to 18. The articulation of these principles serves as an invaluable tool in addressing cross-border cases involving multiple EU jurisdictions, much like the scenario presented in this case. The explicit delineation of these universal effects provides a structured framework for resolving complex cross-border matters that frequently necessitate extensive and intricate analysis of pertinent laws with international implications. In such intricate scenarios, the lucidity offered by the governing legal provisions is of paramount importance, alleviating ambiguities and facilitating well-informed decisions in the realm of transnational affairs.

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

As a consequence of Brexit, the United Kingdom ceased to retain its status as an EU Member State as of December 2019. This outcome entails the cessation of the applicability of the European Insolvency Regulation (EIR) to proceedings within the UK, thereby encompassing the relinquishment of automatic recognition across other EU Member States. This transformation necessitates a recalibration of the recognition framework, potentially mandating a recognition filing to substantiate the recognition of the UK-based insolvency process pertaining to Efwon Trading within Romania, contingent upon the circumstances that may arise.