PRELIMINARY ADVICE

To: Benedict Maximov

From: Simon Hurry

Date: 10 August 2023

Subject: Efwon Group

1 INTRODUCTION

1.1 This is a note of preliminary advice (the **Advice**) prepared for Benedict Maximov (**Mr Maximov**). No other party may rely upon the Advice in whole or in part without the prior written consent of both Mr Maximov and the author.

1.2 Mr Maximov has commissioned the Advice in order to understand his potential options for facilitating a transaction with KuasaNas, a Malaysian state company supplying alternative energy fuels (**KuasaNas**) in connection with Mr Maximov's beneficial ownership of a Formula 1 team (**F1 Maximov**). Mr Maximov's beneficial ownership of F1 Maximov is structured through a series of companies, some of which are in financial distress, discussed further below.

1.3 I am an advocate of the Royal Court of Jersey (the **Jersey Court**), Channel Islands (**Jersey**) and qualified to advise on the laws of Jersey only. The Advice does not concern the laws of Jersey and a series of assumptions are therefore made in order to form a preliminary view. Consequently, Mr Maximov should carefully check the Advice for factual accuracy and seek specialist advice in connection with the Advice generally (including the assumptions made) in the relevant jurisdictions, namely:

(a) United States of America (**US**), in particular, Delaware;

(b) England and Wales;

(c) Hong Kong;

(d) Monaco; and

(e) Romania.

2 BACKGROUND SUMMARY

2.1 The instructions are lengthy and detailed. A summary of the salient facts are as follows.

Efwon Investments and the Bank Loan

2.2 In early 2010, Mr Maximov, an American, wished to invest in Formula 1 (**F1**). In order to do so, Mr Maximov set up Efwon Investments, registered under the laws of Delaware.

2.3 The following investment into Efwon Investments was made:

(a) US$100m of Mr Maximov's money; and

(b) US$250m borrowed from a syndicate of banks (the **Bank Loan**).

2.4 The structure of the Bank Loan is as follows:

(a) two senior banks (US$100m);

(b) two mezzanine financial creditors (US$60m); and

(c) five junior financial creditors (US$90m),

(together, the **Financiers**).

2.5 The Bank Loan is to be repaid in ten years with an interest rate of LIBOR +2%.

2.6 The Bank Loan is secured as follows:

(a) partly secured on homes owned by Mr Maximov around the world, collectively worth US$75m;

(b) a pledge on the projected revenue to flow back from the resulting investment and participation in F1;

(c) a pledge over the shares of Efwon Investments; and

(d) a negative pledge for the entire value of the Bank Loan.

Efwon Trading

2.7 Mr Maximov remitted the entire US$350m raised by way of a loan to Efwon Trading, a company registered under the laws of England and Wales (the **Efwon Trading Loan**).

2.8 The Efwon Trading Loan was secured on future revenue from Efwon Trading's activities.

Efwon Romania

2.9 In late 2010, Efwon Trading entered into a contract to acquire a Romanian F1 team and established a wholly owned subsidiary, Efwon Romania to do so.

2.10 Efwon Trading lent Efwon Romania US$150m (the **Efwon Romania Loans**), as follows:

(a) US$50m for the acquisition of the F1 team; and

(b) US$100m for the first racing year (being 2011).

2.11 The Efwon Romania Loans were secured on F1 Maximov's share of broadcasting revenue (there being no sponsorship revenue at that time). Efwon Romania took on contacts of two drivers (the **Drivers**).

2.12 In the 2011 season, Efwon Romania's return was US$30m, much of which had to be re-invested in Efwon Romania.

2.13 Mr Maximov directed Efwon Trading to advance US$100m to Efwon Romania as the budget for the 2012 season.

2.14 In the 2012 season, Efwon Romania's return was US$60m, an amount was re-invested in Efwon Romania and an amount was used to begin payments to Efwon Trading and onwards to Efwon Investments.

2.15 Around this time, Mr Maximov came under pressure from his American bankers to move from private sponsorship of F1 Maximov to a more diversified sponsorship so that Efwon Romania could (hopefully) grow the repayment stream further.

2.16 Efwon Trading transferred a further US$100m to Efwon Romania for the 2013 season.

Efwon Hong Kong

2.17 Efwon Trading set up another wholly owned subsidiary, Efwon Hong Kong, registered under the laws of Hong Kong to deal with potential sponsors.

2.18 Kretek, in Indonesia, was willing to provide sponsorship from 2015 to F1 Maximov on an exclusive basis, worth approximately US$100m annually which would add to the broadcasting revenue and other revenue and enable repayments to Efwon Trading and onwards to Efwon Investments.

2.19 In 2013, Efwon Hong Kong signed a five year agreement with Kretek for exclusive sponsorship of F1 Maximov (the **Kretek Sponsorship**).

Efwon Trading and the Monaco Loan

2.20 As the Kretek Sponsorship did not commence until 2015, further funding for the 2014 season was required. Efwon Trading obtained a US$100m from a Monaco lender (the **Monaco Lender**) at a high interest rate (the **Monaco Loan**) to advance to Efwon Romania.

2.21 The Monaco Loan was secured over Efwon Trading's revenue.

The KuasaNas Deal

2.22 At the end of the 2017 season, Kretek indicated informally that they had doubts about renewing the sponsorship of F1 Maximov.

2.23 In early 2018, Efwon Hong Kong was successful in locating an interested party, KuasaNas, who were likely to be able to offer in excess of US$200m sponsorship annually.

2.24 However, as a condition of funding, KuasaNas wished to be able to:

(a) acquire a 51% majority stake in F1 Maximov; and

(b) move F1 Maximov to Malaysia,

(together, the **KuasNas Deal**).

2.25 The KuasaNas Deal was ready to be signed in mid-2018 when an initiative occurred to review state owned company contracts which delayed matters.

Driver Claims

2.26 Unfortunately, whilst writing for the KuasaNas Deal to be reviewed, the Romanian drivers were injured.

2.27 Lawyers for the Drivers have brought claims (the **Driver Claims**) before the courts of Romania (the **Romanian Court**).

2.28 Mr Maximov's instructions state that if the Driver Claims succeed, substantial compensation is likely to be awarded.

2.29 Lawyers for the Drivers have also filed for the insolvency of Efwon Romania (the **Winding Up Application**). Pending a winding up order being made, freezing injunctions over Efwon Romania's assets and income have been obtained (the **Injunction**) pending the determination of the Driver Claims.

2.30 It if remains in place, the Injunction will result in Efwon Romania defaulting on payments to Efwon Trading due to be made in early 2019.

2.31 Efwon Trading will then default on its payment obligations to Efwon Investments.

Insolvency risk

2.32 Mr Maximov's American bankers are considering proceedings in order to foreclose on the security that Mr Maximov has provided.

2.33 Mr Maximov is considering how best to protect his position and the position of Efwon Investments.

2.34 Efwon Trading is also at risk of insolvency and, as matters stand, will be unable to meet its repayment obligations, including those under the Monaco Loan.

2.35 Further, if the KuasaNas Deal passes the government review, a pre-condition will be that the insolvency issues affecting:

(a) Efwon Investments;

(b) Efwon Trading;

(c) Efwon Romania; and

(d) Efwon Hong Kong,

(together, the **Efwon Group**), are dealt with promptly.

3 MR MAXIMOV'S OBJECTIVES

3.1 Mr Maximov wishes to facilitate the KuasaNas Deal[1].

[1] The author notes that Mr Maximov is also considering how best to protect his personal position. The advice sought does not concern Mr Maximov's personal position. However, on the basis that Efwon Investments can service the Bank Loan that should address Mr Maximov's personal exposure arising from the security that he has given in favour of the Bank Loan.

3.2 Immediate points that arise are as follows:

(a) KuasaNas requires a 51% stake in F1 Maximov;

(b) KuasaNas requires that F1 Maximov be moved to Malaysia;

(c) the Driver Claims and, in particular, the Injunction is placing considerable financial stress on the Efwon Group; and

(d) if the KuasaNas Deal passes the government review, a pre-condition is that the insolvency issues affecting Efwon Group are dealt with promptly.

3.3 These points are discussed further below and are subject to a series of assumptions.

Assumptions

3.4 It is assumed that KuasaNas' requirement for a 51% stake in F1 Maximov relates to a 51% stake in Efwon Investments, as opposed to, say, Efwon Romania. This assumption is made for two principal reasons:

(a) KuasaNas, as part of the sponsorship due diligence, will almost certainly be live to the solvency issues affecting the Efwon Group and the intra-group lending which militates in favour of being higher up the structure; and

(b) KuasaNas intends to move F1 Maximov to Malaysia, which might require or be better served by a new company being established in Malaysia.

3.5 It is assumed that:

(a) the Romanian Court has jurisdiction to determine the Driver Claims. It is unclear whether the Drivers are bringing claims in contract and/or tort (or similar). It might be that the contracts with the Drivers have exclusive jurisdiction clauses in favour of the Romanian Court or are relying on an argument that the 'damage' was sustained in Romania[2]; and

(b) the Injunction has been obtained in compliance with the laws of Romania and is not liable to be set aside quickly on procedural grounds and/or for lack of merit. This means that the Injunction could only be varied or discharged by securing the consent of the Drivers or by order of the Romanian Court.

3.6 It is also assumed that:

(a) KuasaNas' pre-condition for the KuasaNas Deal going ahead *"promptly"* is a reasonable one (i.e., that the insolvency issues affecting the Efwon Group be dealt with *"promptly"* means as quickly as reasonably possible using best endeavours, or similar[3]);

[2] Rule 3 of the schedule to the Service of Process Rules 2019 equips the courts of Jersey with jurisdiction in relation to tortious matters where *"damage was sustained, or will be sustained, within the jurisdiction"* or *"damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction."*

[3] The interpretation of *"promptly"* as a pre-condition will likely be governed by the law applying to the document memorialising the pre-conditions.

(b) the KuasaNas Deal is the only potential sponsorship deal available; and

(c) the KuasaNas Deal will pass the government review.

4 STAKEHOLDER PRESSURE AND TIMING[4]

4.1 One of the key considerations surrounding the potential facilitation of the KuasaNas Deal appears to be timing.

4.2 A *"prompt"* restructuring will be necessary in order to facilitate the KuasaNas Deal which could usefully benefit from a standstill arrangement in the meantime (discussed further below). However, the starting point is to analyse the composition of stakeholders across the Efwon Group with a view to identifying which creditors or potential creditors wield the most pressure and power (often exerted by having the benefit of security) and what timelines are applicable.

Instructions

4.3 It is not clear when the instructions from Mr Maximov were received. However, it is noted that the Drivers were (regrettably) injured in the last race of the 2018 season, being the Abu Dhabi Grand Prix, which concluded on 25 November 2018[5]. It is further noted that, due to the Injunction, Efwon Romania will default on its payments to Efwon Trading in early 2019 (i.e., Efwon Romanian has not yet defaulted).

Assumption

4.4 This suggests that the instructions from Mr Maximov have been received in or around December 2018 and the author proceeds on this basis.

The Bank Loan

4.5 It is also not clear when the Bank Loan was drawn down by Efwon Investments. However, the Bank Loan is to be repaid within ten years. On the basis that the Bank Loan was taken out in 2010 (i.e., after Mr Maximov sought to invest in F1 in early 2010), its repayment date would be at some point in 2020.

4.6 It is also unclear whether the Bank Loan is to be repaid periodically and, if so, at what intervals or, alternatively, in a single lump sum on the ten year anniversary.

4.7 Subject to the timing of the period payments, this could give rise to additional and/or earlier risks of events of default against Efwon Investments, potentially increasing the risk of action being taken under the Bank Loan (which has a corresponding increased risk to Mr Maximov personally given the security that he has provided personally). The documentation underlying the Bank Loan appears to include reporting requirements from Efwon Investments[6] and it might be that the Financiers already have a detailed understanding of the financial predicament of the Efwon Group.

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[4] It is important to note that there might be other 'trigger' events which could place additional creditor pressure on the Efwon Group. It is therefore recommended that a detailed review of the stakeholder composition and terms of dealing be carried out as a matter of urgency.

[5] https://www.formula1.com/en/results.html/2018/races/999/abu-dhabi.html.

[6] The American bankers have previously suggested a diversified sponsorship strategy to improve revenue and have become *"jumpy"* given the impact of the Winding Up Application and the Injunction.

Assumption

4.8 It is assumed that the basis upon which the Bank Loan is to be repaid is a single lump sum on the ten year anniversary (which has yet to be reached) and that no event of default has occurred under the Bank Loan documentation to date.

4.9 Whilst it is noted that the American bankers[7] are considering foreclosing on the security given by Mr Maximov, it is also assumed that the Financiers would rather avoid the time, cost and distraction of enforcing the security underlying the Bank Loan and would prefer to reach an amicable restructuring of the debt and security, if possible.

Cash invested by Mr Maximov

4.10 As at the date of this instruction, the Efwon Group is wholly beneficially owned by Mr Maximov. The instructions do not address the terms, if any, upon which US$100m of Mr Maximov's cash was invested into Efwon Investments. It is unclear whether it was invested as equity and/or debt, for example.

Assumption

4.11 It is assumed that Mr Maximov, given his beneficial ownership of the Efwon Group, is willing to take a pragmatic and commercial position, particularly given his desire to facilitate the KuasaNas Deal.

4.12 It is therefore assumed that there is no time pressure for the repayment of the US$100m (if it is a loan).

Efwon Romania Loans and Efwon Trading Loan

4.13 As set out paragraph 4.3, above, Efwon Romania will default on its payments to Efwon Trading in early 2019, causing Efwon Trading to then default on its obligations to Efwon Investments.

Assumption

4.14 It is assumed that the earliest default under the Efwon Romania Loans will be early 2019, with any default in respect of the Efwon Trading Loan occurring at a later date.

The Monaco Loan

4.15 The instructions do not address the terms, if any, the Monaco Loan was extended to Efwon Trading. However, it is noted that Efwon Trading will be unable to meet its payment obligations, including those under the Monaco Loan.

Assumption

4.16 It is assumed that the earliest default under the Monaco Loan will be no sooner than the Efwon Romania Loans (i.e., early 2019).

[7] It is unclear whether the Financiers are all considering enforcing the security or just those representing the two senior banks, for example.

Kretek Sponsorship

4.17 The Kretek Sponsorship is a five year exclusive sponsorship deal and commenced in 2015.

Assumption

4.18 It is not clear precisely when the Kretek Sponsorship commenced in 2015. It is assumed that it commenced on 1 January 2015 and will therefore run to 31 December 2019 (i.e., absent a termination of the Kretek Sponsorship, it will continue for approximately one more year on the assumption that the instructions from Mr Maximov have been received in or around December 2018).

Summary

4.19 In light of the above, it appears that the immediate financial difficulty is being caused by the Injunction applied for in connection with the Driver Claims and Winding Up Application, thereby preventing the flow of funds up to Efwon Trading and onwards to Efwon Investments.

4.20 On the basis of the assumptions set out above, the earliest payment default would be early 2019, being the Efwon Romania Loans and, potentially, the Monaco Loan.

4.21 Absent a termination of the Kretek Sponsorship, a further US$100m would be received for 2019. However, and with reference to the assumption at paragraphs 3.6(a) and 3.6(b), respectively, the KuasaNas Deal requires that the insolvency issues affecting the Efwon Group need to be dealt *"promptly"* and the KuasaNas Deal is the only potential sponsorship deal available. Even then, there is no guarantee that the KuasaNas Deal will complete, given the added burden of government sanction. The latter point appears to be out of Mr Maximov's and the Efwon Group's hands. However, as set out above, for the purpose of the Advice it is assumed that government approval will be granted.

4.22 Time is of the essence and the two critical jurisdictions appear to be Delaware in the US and Romania.

4.23 It is therefore proposed that Mr Maximov consider a 'two-pronged approach' by utilising two procedures in order to facilitate the KuasaNas Deal, being:

(a) Chapter 11 (**Chapter 11**) of the United States Bankruptcy Code (the **Code**); and

(b) a rehabilitation process in Romania.

4.24 These procedures are discussed in more detail below but, having analysed the composition of stakeholders across the Efwon Group as set out at paragraph 4.2, above, communication with the major stakeholders should begin as soon as possible with a view to securing a standstill.

5 STANDSTILL

5.1 Deciding upon the final course of action to facilitate the KuasaNas Deal is not straight forward and is currently subject to a series of assumptions and outstanding legal advice.

5.2 In order to provide more time for the Efwon Group to consider its options, in particular, Efwon Investments, Efwon Trading and Efwon Romania, a standstill could be proposed with the creditors wielding the most pressure and power. In summary, a standstill is a flexible, out of court, arrangement which allows parties to agree to refrain from taking certain steps in order to promote a constructive dialogue and resolution with a view to avoiding court proceedings. Regard should be had to the eight principles in INSOL International's Statement of Principles[8].

5.3 The relevant entity with the Efwon Group should consider initiating a dialogue with[9]:

(a) the Financiers (in connection with the enforcement of the debt due by Efwon Investments and the corresponding security provided);

(b) the Monaco Lender (in connection with enforcement against Efwon Trading); and

(c) the Drivers (in connection with the staying of the Driver Claims and the Winding Up Application. The Injunction is addressed separately, below).

5.4 Securing a standstill with one or more of the Efwon Group's creditors would be useful in providing comfort that no further action would be taken without notice. However:

(a) it can be necessary to try and incentivise a creditor to enter into a standstill which might require a robust and viable restructuring plan to have already been formulated;

(b) Mr Maximov does not have the luxury of time given the timing pre-condition for the KuasaNas Deal to complete and the American bankers are already getting nervous; and

(c) a standstill would need to be tailored to enable the Efwon Group to benefit from the restructuring processes set out at paragraphs 4.23(a) and 4.23(b), respectively.

5.5 Notwithstanding this, unless communicating the financial difficulties being experienced by the Efwon Group is deemed to be in some way prejudicial, seeking to consensually arrive at a standstill can be an effective initial restructuring tool.

6 THE INJUNCTION

6.1 In tandem with progressing a standstill, it might be worthwhile applying pressure on the Drivers in order to withdraw the Injunction so that payments may be made to Efwon Trading and up to Efwon Investments.

6.2 As matters stand, the Injunction appears to be the primary blocker of funds flowing up the structure and the instructions do not suggest that these will be inadequate to settle the Efwon Group's short term debts as they fall due (noting that the Bank Loan matures at some point in 2020, for example).

[8] INSOL International Statement of Principles for a Global Approach to Multi-Creditor Workouts.

[9] It is assumed that the Efwon Group entities will not need to be persuaded to enter into a suitable standstill but each entity within the Efwon Group should of course consider what it in its best interests.

6.3 As set out at paragraph 3.5(b), it is assumed that the Injunction cannot be quickly set aside on procedural grounds and/or for lack of merit. However, and whilst it will be a matter of Romanian law, an applicant for an injunction can be required to provide a 'cross-undertaking in damages' (the **Undertaking**).

6.4 In summary, the Undertaking requires the applicant to indemnify the other party or other parties for any loss or damage that they might suffer should an injunction be found to be improper. In this instance, the Drivers' Romanian lawyers have, off the back of the Driver Claims, issued the Winding Up Application and obtained the Injunction pending the making of a winding up order.

6.5 This is a very aggressive approach, particularly in circumstances where the instructions are silent on whether there is any merit in the Driver Claims. Should there not be any merit, it is assumed that the Winding Up Application and, consequently, the Injunction would then also be without merit.

6.6 The fallout of having incorrectly put the entire Efwon Group at risk to the point of potential collapse could sound in extensive damages against the Drivers. This might be a point to be taken by the Efwon Group early on when seeking to vary or set aside the Injunction by consent, potentially in tandem with progressing a standstill agreement. It might be, for example, that the Drivers are prepared to enter into an arrangement which is deemed to protect their interests whilst allowing Efwon Romania to continue dealing with its assets and making payments out of its income to Efwon Trading, for example.

7 CHAPTER 11

7.1 Ultimately, a standstill requires consent and cooperation which might not be forthcoming. Furthermore, there is the overarching time pressure on Mr Maximov and the Efwon Group to deal with the insolvency issues promptly so that the KuasaNas Deal might complete (government approval being assumed) and there are potential defaults around the corner in early 2019, one of which is in respect of a third party, the Monaco Lender.

7.2 Mr Maximov should therefore consider how best to quickly protect his and the Efwon Group's position whilst a restructuring occurs. The obvious candidate is Chapter 11. It is suggested that this runs in tandem with a Romanian process, discussed further below.

7.3 Chapter 11 reflects the primary policy of US bankruptcy law for corporate debtors, namely, to preserve and protect an ailing business by encouraging a financial restructuring that is binding upon all parties. Under Chapter 11, a distressed company has the opportunity to obtain a breathing spell from the demands of creditors, remain in business with existing management, reassess its business plan and negotiate (or seek to impose) a restructuring of its capital structure which binds all existing creditors and shareholders[10]. However, where a rescue of the debtor is unachievable, Chapter 11 can also be used to effect the liquidation or sale of the debtor's assets for the benefit of its creditors.

[10] Bracewell & Giuliani – Chapter 11 of the United States Bankruptcy Code: Background and Summary 2012, para IA.

7.4 A brief summary of the application of Chapter 11 is set out below.

Eligibility

7.5 Protection under Chapter 11 is available if the debtor has had a residence, place of business or assets in the US[11].

7.6 Efwon Investments, a company registered under the laws of Delaware, US, is therefore eligible to commence Chapter 11 proceedings by petitioning (the **Petition**) the relevant bankruptcy court[12] (the **Bankruptcy Court**).

7.7 There is a school of thought that if a US parent company files for Chapter 11, its UK subsidiary should petition for similar protective proceedings. Consideration could therefore be given to whether Efwon Trading, registered under the laws of England and Wales, might also benefit from Chapter 11, given the liabilities under the Efwon Trading Loan and Monaco Loan, respectively. Efwon Trading might elect to transfer assets to the US in order to satisfy section 109(a) of the Code or, alternatively, look to invoke a local protective procedure. The respective positions of Efwon Trading and Efwon Romania are discussed further below.

Debtor in possession

7.8 Chapter 11 will permit the existing management of Efwon Investments to remain in place[13], which could be advantageous given their likely familiarity with F1 Maximov and its operations.

7.9 It is possible for a trustee to be appointed in order to investigate Efwon Investments' financial affairs and run its business. However, such an appointment is exceptional, requiring evidence of fraud, dishonesty, incompetence or gross mismanagement before or after the Petition has been filed or, alternatively, for the court to consider that the appointment of a trustee is in the best interests of the stakeholders[14].

A stay

7.10 Upon Efwon Investments filing the Petition, an automatic stay (the **Stay**) arises which prevents creditor (whether secured or otherwise) taking action against Efwon Trading[15]. Importantly, the Stay is expressed to have extra-territorial effect and is intended to prevent the commencement of proceedings in other jurisdictions. Wilful violation of the stay can result in the imposition of contempt sanctions[16].

7.11 This is particularly helpful for Efwon Investments in circumstances where the American bankers are considering foreclosing on the security given in respect of the Bank Loan.

7.12 The recognition of Chapter 11 in other jurisdictions is addressed below.

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[11] Section 109(a) of the Code.
[12] Section 301(a) of the Code.
[13] Section 1107 of the Code.
[14] Section 1104(1) of the Code.
[15] Section 362(a) of the Code.
[16] In re Crysen/Montenay Energy Co 902 F.2d 1098, 1105, 2nd Cir. 1990.

World-wide assets

7.13 The assets subject to Chapter 11 are stated to be the debtor's property wherever located and by whomever held[17]. Like the extra-territorial effect of the Stay, whether the wide ranging approach to a debtor's assets holds true might depend on whether the Chapter 11 proceedings are recognised in other jurisdictions.

7.14 For example, in Jersey, a foreign representative has no standing or power under Jersey law to carry out the foreign representative's duties in Jersey, and consequently, has no power to compel a person in Jersey to cooperate with the foreign representative. It is therefore not unusual for a foreign representative to apply to the Jersey Court for recognition so as to be able to collect in and deal with Jersey situs assets (such as shares of subsidiaries incorporated in Jersey).

7.15 It appears that Efwon Investment's assets are limited to:

(a) the receivables under the Efwon Trading Loan[18]; and

(b) the shares of Efwon Trading, a wholly owned subsidiaries of Efwon Investments.

7.16 It might not be necessary to apply for recognition in England of the Chapter 11 proceedings to deal with the assets of Efwon Investments. However, this should be considered in conjunction with English counsel and, in any event, it might be necessary to apply for recognition in England in order to prevent individual and collective actions by creditors in the UK (discussed further below).

Debtor in possession financing

7.17 The current financial statements of Efwon Trading did not accompany the instructions. However, in the event of liquidity difficulties, Chapter 11 would allow Efwon Trading to incur new debt to fund itself through the bankruptcy on the basis that the Bankruptcy Court approved[19].

Restructuring plan

7.18 Efwon Trading would have exclusivity for 120 days from the Chapter 11 order (the **Chapter 11 Order**) to propose and file a plan of reorganisation[20] (the **Plan**). Upon the filing of the Plan, Efwon Trading would have 180 days from the Chapter 11 Order to seek creditor agreement to the Plan[21]. A potential plan is discussed further below.

Confirmation of the Plan

7.19 The Plan requires the Bankruptcy Court's sanction. US counsel's advice should be sought, but it is understood that the Plan can be sanctioned if at least two-thirds in principal amount of one-half in number of the allowed claims (being claims approved

[17] Section 541(a) of the Code.
[18] The instructions do not disclose any choice of law or jurisdiction clauses applicable to the Efwon Trading Loan.
[19] Section 364 of the Code.
[20] Section 1121(b) of the Code. This period can be extended to 18 months from the Chapter 11 Order.
[21] Section 1121(c)(3) of the Code. This period can be extended up to 20 months from the Chapter 11 Order.

for payment under the Plan) of each class of impaired creditors and shareholders, respectively, have accepted the Plan[22].

7.20 A creditor and/or shareholder is impaired if the Plan alters the legal, equitable or contractual rights to which the holders of the claims are entitled, even if these rights are technically being improved[23].

7.21 It is worth noting that the Bankruptcy Court may confirm a plan even if the voting thresholds above have not been achieved in any impaired class (including shareholders) if the plan does not "*discriminate unfairly*" and is "*fair and equitable*" with respect to the dissenting class[24]. This is known as a 'cram down'.

8 RECOGNITION OF CHAPTER 11 PROCEEDINGS

8.1 As set out at paragraph 7.10, above, the Stay is expressed to have extra-territorial effect. This can arise in different ways, discussed further below.

8.2 It is unclear what creditors Efwon Investments might have beyond the Bank Loan (and, potentially, Mr Maximov). It is acknowledged that:

(a) Efwon Investments is unlikely to be a trading entity; and

(b) the Financiers have the benefit of broad security over the income, assets and shares of Efwon Trading, including a negative pledge,

this indicates that there may not be any other material creditors of Efwon Investments.

8.3 However, the instructions do not reveal where the Financiers are located, beyond referring to *"American bankers"*, which could relate to the two senior lenders only. In addition, the instructions do not reveal what governing law or jurisdiction clauses underly the Bank Loan or the corresponding security.

8.4 Consideration should therefore still be given to whether recognition of the Chapter 11 proceedings in other jurisdictions is appropriate.

Practical recognition

8.5 Recognition can arise from a practical perspective where a foreign (i.e., non-US) stakeholder has US based operations and/or a US connection. In those circumstances it might take the view that it would be unwise to not recognise the Chapter 11 proceedings and, in particular, the Stay.

Legal recognition

8.6 Recognition of Chapter 11 proceedings can be achieved from a legal perspective on the basis that the foreign court is willing to recognise the Chapter 11 proceedings. Local legal advice in the foreign jurisdiction should be sought if this is of interest.

[22] Section 1126 of the Code.
[23] Section 1124(1) of the Code.
[24] Section 1129 of the Code.

8.7 In the interim, and by way of example only, in the United Kingdom (**UK**) an application could be made for the Chapter 11 proceedings in respect of Efwon Investments to be recognised as a 'foreign main' proceeding under article 17 of the UNCITRAL Model Law on Cross-Border Insolvency (the **Model Law**), as incorporated into the Cross-Border Insolvency Regulations 2006[25] (the **CBIR**).

8.8 On the basis that Efwon Investments' centre of main interest (**COMI**) is in the US, recognition would automatically[26] ensure that the Stay applied in the UK, thereby preventing individual and collective actions by creditors in the UK[27].

9 A PLAN

9.1 A suitable and agreeable plan would need to be worked through with the stakeholders of Efwon Investments, namely, the Financiers, Mr Maximov and KuasaNas, given the latter's requirement to own 51% of Efwon Investments as a condition for the KuasaNas Deal.

9.2 As Mr Maximov wishes to facilitate the KuasaNas Deal, it is assumed that he is prepared to relinquish 51% of Efwon Investments to KuasaNas. However, the Bank Loan is secured by, *inter alia*, a pledge over the shares of Efwon Investments and a negative pledge (typically preventing the creation of further security without the secured party's consent).

9.3 It would be a matter for KuasaNas, but it might be unlikely that KuasaNas would accept a 51% stake in Efwon Investments which was pledged pursuant to the Bank Loan obtained by Mr Maximov. Consequently, a negotiation will need to be undertaken to explore whether the Financiers are comfortable with a 51% stake in Efwon Investments being transferred to KuasaNas on an unencumbered basis.

9.4 As set out at paragraph 4.9, it is assumed that the Financiers would rather avoid the time, cost and distraction of enforcing the security underlying the Bank Loan and would prefer to reach an amicable restructuring of the debt and security, if possible. In this regard the Financiers might take the view that:

(a) the injection of at least US$200m per annum by KuasaNas (being at least double that provided under the Kretek Sponsorship); and

(b) the relocation of F1 Maximov to Malaysia,

are overwhelmingly positive developments and compensate for the lack of security over the shares held by KuasaNas.

9.5 It might be that, in exchange for the sponsorship, KuasaNas requires security of its own and this should be clarified (noting the negative pledge referred to at paragraph 9.2). However, Mr Maximov and KuasaNas should tread carefully with the Financiers. Chapter 11 requires that the rights of secured creditors are adequately protected. If this

[25] Introduced pursuant to section 14 of the Insolvency Act 2000.
[26] Article 20 of the CIBR.
[27] See In the matter of Videology Ltd [2018] EWHC 2186 (Ch): if the COMI was not in the US, the Chapter 11 proceedings would be deemed to be 'foreign non-main' proceedings and there would be no automatic stay under article 20 of the CIBR and discretionary relief under article 21(1) would need to be applied for.

is not the case, the secured creditor can apply for permission from the Bankruptcy Court in order to enforce their security rights[28].

9.6 There is no statutory definition of 'adequate protection', but the primary means for a debtor to supply adequate protection are for the debtor to[29]:

(a) offer periodic cash payments to the creditor to the extent that the Stay results in a decrease in the value of the creditor's interest in its collateral;

(b) provide the creditor with additional or replacement security over other property; and/or

(c) grant relief as will result in the creditor's realisation of the *"indubitable equivalent"* of the value of the creditor's interest in its collateral.

9.7 Ideally, a plan would have the unanimous consent from the various classes connected with Efwon Investments. Were that not the case, the criteria set out at paragraphs 7.19 and 7.20 would need to be met[30]. Mr Maximov might also need to consider how to provide the Financiers with adequate protection.

10 EFWON TRADING

10.1 With reference to paragraph 2.34, above, Efwon Trading is expressed to be also at risk of insolvency and, as matters stand, will be unable to meet its repayment obligations, including those under the Monaco Loan. With reference to paragraph 4.16, above, it is assumed that the earliest default under the Monaco Loan will be no sooner than the Efwon Romania Loans (i.e., early 2019).

10.2 Consequently, thought should be given to placing Efwon Trading into a protective procedure pending the restructure of the Efwon Group more generally.

10.3 As set out above at paragraph 7.7, above, it might be open to Efwon Trading to invoke the jurisdiction of Chapter 11 by placing transferring or placing assets in the US. However:

(a) accounts being set up two weeks before the Chapter 11 filing to try and base jurisdiction has been frowned upon[31]; and

(b) whether a UK court would recognise the Chapter 11 as a 'foreign main' proceeding would turn on whether the UK court consider Efwon Trading's COMI to be in the US. In very general terms, the UK courts have held that a debtor's COMI is presumed to be the location of its registered office, and this presumption can only be rebutted by objective factors that are ascertainable to third parties who deal with the company[32].

10.4 If Efwon Trading's COMI is determined to be in the UK, the recognition of the Chapter 11 proceedings as 'foreign non-main' proceedings would not result in an automatic stay

[28] Section 362 of the Code.
[29] Bracewell & Giuliani – Chapter 11 of the United States Bankruptcy Code: Background and Summary 2012, para IIE.
[30] Having first established the full creditor body and the value of the respective claims and any security held.
[31] See In re Yukos Oil Co (chapter 11 petition).
[32] In Re Stanford International Bank Ltd (in liquidation) [2010] EWCA Civ 137.

pursuant to article 20 of the CBIR. Instead, it would be necessary to apply for discretionary relief for a stay pursuant to article 21(1) of the CBIR[33].

10.5 Given the uncertainty surrounding the recognition of Chapter 11 proceedings concerning Efwon Trading, consideration could be given to placing Efwon Trading into administration, a corporate insolvency procedure available under the UK's Insolvency Act 1986.

10.6 The primary purpose of administration is to rescue a company in financial difficulty by allowing it to restructure its business with a view to returning to profitability and, importantly, it is accompanied by a moratorium on all claims against the debtor.

10.7 Although an administration moratorium does not have extra-territorial effect (unlike a stay in Chapter 11), depending on the Monégasque recognition regime, the administration of Efwon Trading might be recognised in Monaco, thereby potentially extending the moratorium to Monaco and, in particular, to the Monaco Lender.

10.8 However, the administration process is an insolvency process. Efwon Trading would have to show that it *"is, or is likely to become, unable to pay its debts"*[34] to invoke this regime (unlike Chapter 11) and satisfy the UK court that the administration appointment is likely to achieve its purpose.

10.9 Furthermore, an administration does not permit the management of Efwon Trading to remain in possession (unlike Chapter 11), with an administrator or administrators, being appointed to manage the affairs of Efwon Trading. Finally, placing Efwon Trading into administration – an insolvency process - might also trigger events of default and ultimately be prejudicial to the prospects of the restructuring of the Efwon Group.

10.10 Whether to proceed with an administration requires careful thought in conjunction with advice from specialist English counsel. A standstill with the Monaco Lender would seem to be the preferential outcome, but administration might be an alternative to potentially shoe-horning Efwon Trading into a Chapter 11 process.

11 RECOGNITION OF A PLAN

11.1 To the extent that a court sanctioned plan binds US stakeholders, no further recognition is necessary.

11.2 However, if a plan is to bind foreign stakeholders (i.e., non-US stakeholders), absent voluntary consent and adherence, it will be necessary for the plan to be recognised and given effect to by the relevant foreign courts.

11.3 Whether a plan would be recognised and given effect to turn on the laws of the foreign jurisdiction which is beyond this preliminary advice. However, it is worth briefly mentioning that, insofar as the UK is concerned, the UK courts do not currently have power under the CBIR in order to enforce a judgment (i.e., a plan) given by the Bankruptcy Court in the course of the Chapter 11 proceedings[35], although effect might

[33] In the matter of Videology Ltd [2018] EWHC 2186 (Ch).
[34] Section 123 of the Insolvency Act 1986.
[35] Rubin and another v Eurofinance SA and others and New Cap Reinsurance Corporation (in liquidation) and another v Grant and others [2012] UKSC 46.

still be given under the UK courts' common law jurisdiction based on the principles of modified universalism.

11.4 In addition, to the extent that a creditor of Efwon Investments (or Efwon Trading, were it to be part of the Chapter 11 proceedings) had an English governed debt and refused to submit to the Chapter 11 proceedings, they will continue to be able to enforce against assets in the UK pursuant to the 'Rule in Gibbs'.

12 EFWON ROMANIA

12.1 A plan could address the immediate pressure in the US and, potentially, England. It is arguable that a plan could also address the (considerable) immediate pressure in Romania which, as set out above, appears to be the root cause of the financial difficulties which has gone on to set off a 'chain reaction' up the Efwon Group.

12.2 The Model Law was adopted by Romania in 2002[36] which promotes cross-border insolvency assistance based on pragmatic and commercial principles. However, absent extremely robust advice on the laws of Romania (which is backed by a large insurance policy) it would not appear prudent for Mr Maximov to gamble on whether the Romanian Court will recognise Chapter 11 proceedings and, in particular, the Stay (noting the extant Winding up Application and Injunction).

12.3 In this regard, the author understands that:

(a) there is at least one significant deviation from the Model Law, namely, a condition for the recognition in Romania of foreign proceedings being that the courts of the relevant foreign state must recognise the judgments of Romanian courts (although this does not mean that the other state must have implemented the Model Law); and

(b) if the Romanian Court determined that the Chapter 11 proceedings were neither 'foreign main' or 'foreign non-main' proceedings, having assessed Efwon Romania's COMI, the Romanian Court might not grant protection to Efwon Romania [37].

12.4 It is noted that:

(a) Efwon Romania was created due to existing F1 licenses from the *Fédération Internationale de l'Automobil*, indicating that Efwon Romania is required for those licences;

(b) Efwon Romania acquired the team underlying F1 Maximov;

(c) Efwon Trading has transferred at least US$250m to Efwon Romania; and

(d) the Efwon Romania Loans were secured on F1 Maximov's share of broadcasting revenue, indicating that F1 Maximov's broadcasting revenue flows through Efwon Romania.

[36] No 637/2002 Concerning Conflict of Laws in the Area of Insolvency.
[37] Matei Florea - Corporate Rescue and Insolvency Journal 2008 Volume 1 Issue 3 - Recognition of foreign insolvency proceedings — a comparative view - (2008) 3 CRI 87.

12.5 However, one of the conditions of the KuasaNas Deal is that F1 Maximov move to Malaysia. Were this to happen, it might be likely that a new special purpose vehicle would be created to address the consequential requirements of F1 Maximov being based in Malaysia and Efwon Romania might no longer serve a purpose[38]. A question therefore arises as to whether it might be advantageous to hive off Efwon Romania, allow it to be liquidated, and distribute its assets amongst its stakeholders with a potential distribution to Efwon Trading.

12.6 As set out at paragraph 4.21, the Advice proceeds on the basis that government approval for the KuasaNas Deal will be forthcoming, opening the door to immediate funding in excess of US$200m annually. As a condition for this, KuasaNas requires that the *"…insolvency issues affecting the companies in the* [Efwon Group] *are dealt with promptly."*.

12.7 It is unclear whether Efwon Romania is technically insolvent. That would be a matter of the laws of Romania. However, the Injunction will cause it to default on payments due to, at least, Efwon Trading in early 2019 and it might take some time for the KuasaNas Deal to complete, with the tangible value of the Efwon Group (i.e., F1 Maximov) sitting with Efwon Romania. This Advice therefore considers what options might be available to allow Efwon Romania to continue to trade (also noting that, absent a termination of the Kretek Sponsorship, a further US$100m would be received for 2019).

12.8 It appears that the cause of Efwon Romania's difficulties are the Injunction and the Winding up Application. As set out at paragraph 3.5(b), it is assumed that the Injunction cannot be quickly set aside on procedural grounds and/or for lack of merit.

12.9 It is unclear whether the Winding Up Application could be dismissed on grounds that there is no claim for a liquid and due debt (the Drivers seeking unquantified damages as part of the Driver Claims), for example[39]. This would be a matter of the laws of Romana and should be explored as soon as possible.

12.10 On the basis that it is not possible to dismiss the Injunction and the Winding Up Application, Efwon Romania should consider what the potential for compromise with the Drivers might be, failing which, it should consider seeking protection from the Romanian Court.

Compromise options

12.11 A swift compromise with the Drivers in respect of the Driver Claims might be helpful in removing the 'block' on the flow of funds from Efwon Romania.

12.12 If a compromise is not achievable, or achievable quickly, consideration might be given to:

(a) offering the Drivers an indemnity from one or more entities within the Efwon Group or security from a third party (such as Mr Maximov) in respect of the Driver Claims; and/or

[38] The author notes that Efwon Romania was created due to existing F1 licenses from the Fédération Internationale de l'Automobile.

[39] The author understands that the solvency test in Romania is whether there are certain liquid and due debts of at least 50,000 Romanian lei, or the equivalent of six average salaries, with an overdue maturity of 60 days. However, this should be confirmed with Romanian counsel.

(b) setting up a 'litigation trust' to ring-fence the Driver Claims and enable them to progress without disrupting the business of the Efwon Group, subject to satisfactory security for any damages that might be payable being provided.

Protection from the Romanian Court

12.13 It is understood that Romanian law contains pre-insolvency procedures which enable a debtor to restructure. However, the debtor's protection against potential enforcement procedures is less effective. This leads to most Romanian debtors preferring to open insolvency proceedings in Romanian in order to propose a plan of reorganisation which has the benefit of a moratorium.

12.14 The author notes as follows:

(a) an *ad-hoc mandate* pursuant to Law no 85/2014 on preventing insolvency and insolvency proceedings, arts 10-15 is a confidential procedure, which is initiated at the request of the debtor in financial difficulty. An ad-hoc agent is designated by the Romanian Court and negotiates with creditors to reach an agreement between one or more of them and with the debtor having the overall aim of overcoming the financial difficulties[40]; and

(b) a *preventative concordat* is a contract between the debtor and creditors of at least 75% of accepted and undisputed value of claims, which is then confirmed by a judge. The key effect of the approval of a *preventive concordat* is that an insolvency procedure cannot be opened against the debtor during that period.[41]

12.15 Helpfully, it appears that whilst an expert or administrator will need to be appointed, they do not take over the business with management remaining in control (debtor in possession). In addition, and although a moratorium does not automatically arise under the *ad-hoc mandate*, in practice creditors are expected to accept a moratorium. Under the *preventative concordat*, a debtor may request a provisional stay against forced execution. If the *preventative concordat* is ordered, it appears that the moratorium will endure for as long as the *preventative concordat* continues. [42]

12.16 It should be checked that the Driver Claims are not excluded or otherwise carved out from the moratoriums referred to above.

Restructuring Directive

12.17 The instructions confirm that Romania will have implemented the European Directive 2019/1023 on preventative restructuring frameworks (the **Restructuring Directive**) by January 2020.

12.18 The Restructuring Directive is based on three key elements[43]:

[40] Judge Nicoleta Mirela Năstasie, Dr Cristian Drăghici - Mapping Preventive Restructuring Frameworks and the EU Directive for the JCOERE Project – Romania.
[41] *Ibid*.
[42] *Ibid*.
[43] Corporate Rescue and Insolvency Journal 2022 Volume 15 Issue 3, INSOL Europe/Lexis®PSL Joint Project on EU Harmonisation Directive 2019/1023: implementation status across the EU Member States - (2022) 3 CRI 94.

(a) common principles of the use of early restructuring frameworks;

(b) rules to allow entrepreneurs to benefit from a second chance (specifically, individual debtors will be fully discharged from their debt after three years without further conditions, with safeguards to prevent abuse and deal with dishonesty or fraud); and

(c) measures for EU members in order to increase the efficiency of insolvency, restructuring and discharge procedures.

12.19 Based on the assumptions made in the Advice, it appears that significant steps will have to be taken well in advance of January 2020 in order to salvage the Efwon Group. A detailed analysis of the Restructuring Directive is therefore beyond the scope of the preliminary advice. However, to the extent that the Restructuring Directive was or became applicable, it is worth noting that it:

(a) permits a debtor to apply for and obtain a moratorium in support of a restructuring plan[44];

(b) the moratorium is available for four months in the first instance[45], but can be extended to a maximum of 12 months[46] on the basis that *"relevant"* progress has been made and that such an extension will not unfairly prejudice the rights of affected parties and/or result in the liquidation of the debtor under national law[47];

(c) enables the EU member to set its own threshold for approving a restructuring plan (of a particular class or classes) so long as it does not exceed 75% of a percentage of debt;

(d) incorporates a cross-class cram-down where the plan might still be sanctioned by the court as long as the dissenting classes are treated "*at least as favourably as any other class of the same rank*" and "*more favourably*" than any junior classes, and the plan has been approved by[48]:

(i) a majority of the voting classes of affected parties, which must include at least one class of secured creditors or creditors senior to unsecured creditors; or

(ii) one class of affected parties who are not equity holders, or similar; and

(e) a prohibition on *ipso facto* clauses, where a clause enables a contract to be terminated purely on the grounds of an insolvency filing even where the company has complied with all of its obligations under the said contrac[49]t.

[44] Article 6(1) of the Restructuring Directive. However, the moratorium does not appear to always apply to *"worker"* claims which brings the categorisation of the Driver Claims into focus (see article 6(5) of the Restructuring Directive).
[45] Article 6(6) of the Restructuring Directive.
[46] Article 6(8) of the Restructuring Directive.
[47] Article 6(7) of the Restructuring Directive.
[48] Article 11 of the Restructuring Directive.
[49] Article 7 of the Restructuring Directive.

Recognition

12.20 Efwon Romania, being the operating company for F1 Maximov, might have assets and debts in or governed by a number of different jurisdictions. However, to the extent that those jurisdictions are in the EU, Efwon Romania would have the benefit of the Insolvency Regulation (Regulation (EU) No. 2015/848) (the **EIR**).

12.21 The EIR determines in which member state proceedings may be opened and the law which governs those proceedings and provides for the automatic recognition of proceedings between European Union (**EU**) member states[50]. A detailed analysis of the EIR is beyond the scope of this preliminary advice but, in summary, the EIR is an effective tool in order to give primacy to the proceedings brought in Romania and effect a coordinated restructuring process across the EU.

12.22 To the extent that the EIR does not apply and there are no other bilateral agreements in place with other jurisdictions, a Romanian insolvency process might be recognised under common law and/or the relevant foreign court's inherent jurisdiction.

Brexit

12.23 As set out at paragraph 4.4, it is assumed that the instructions from Mr Maximov have been received in or around December 2018. Brexit occurred approximately a year later, in January 2020.

12.24 Whilst the UK left the EU on 31 January 2020, there was a transitional period following that date until 31 December 2020 pursuant to the European (Withdrawal Agreement) Act 2020. During this period, the EIR continued to apply during this period.

12.25 Brexit would only be relevant to the extent that recognition of a Romanian insolvency process was to be recognised in the UK after 31 December 2020. It is assumed that the Efwon Group would have been restructured well in advance of this date if the KuasaNas Deal is to complete. Consequently, the impact of Brexit, based on the assumptions made in the Advice, is not relevant.

Efwon HK

12.26 Finally and for completeness, it does not appear that a restructuring of Efwon HK, which is a wholly owned subsidiary of Efwon Trading and is understood to only have the benefit of the Kretek Sponsorship, is necessary at present.

I hope that this preliminary advice is helpful and I look forward to discussing the matter at your convenience.

Simon Hurry

[50] Apart from Denmark.