

Private and Confidential
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Legal Advice

Sought By: Mr. Benedict Maximov
Founder: Efwon Group Companies

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Background

1. Car racing competitions popularly called as The Formula 1 (F1) is organized by *Federation Internationale de l'Automobile* which began in Europe, now consists of teams and races (*Grand Prix*) from all over the world and held at circuits around the world. To be able to participate in the competition as teams or as drivers one needs to have proper licenses which are difficult to avail and has strict criteria's to be eligible.
2. Racing is an expensive sport and requires annual budgets of USD 100 to 400 million for any participating team. To earn on the invested money, car racing teams get sponsorships and broadcasting rights of the races.
3. No one was unaffected by the Global Financial Crisis of 2008 and F1 was no exception. In the span of 2008-2009 many big brands of automobile industry withdrew from F1 citing economic slowdown. Bucking the trend many new teams entered the sport in 2010 who were backed by either national governments or other powerful backers/sponsors.

The Case in hand- Introduction/Problem statement

1. A wealthy American, Mr. Benedict Maximov, who had been following the sport and was looking for some unconventional investment sets up a company in Delaware, called Efwon Investmemnts for buying a team and participating in F1 competitions in 2010. He puts USD 100 millions of his own in the company and borrows USD 250 million from a consortium of banks. The terms of the loan are stated below:
 - First security was provided by pledging number of homes owned by Mr. Maximov across the world worth USD 75 millions.
 - A pledge on the projected revenue from the investments.
 - A pledge over the shares of the Efwon and a negative pledge for the entire value of the loan.
 - The term of the loan is 10 years.
 - The interest rate is LIBOR + 2%.
 - Bifurcation of the loan is: USD 100 million by 2 senior banks, USD 60 million by two mezzanine financial creditors and USD 90 million is procured from 5 junior financial creditors.
2. The entire amount of USD 350 million was then remitted to a company by way of loan, which he set up under the law of England and Wales in the name of Efwon Trading, as most of the F1 teams were located in Europe. The loan such remitted was secured on the revenue from the company's trading activities.
3. As F1 is a heavily regulated sport and have multiple eligibility criteria's and requires licenses, the agents, as instructed, of Mr. Maximov looked for a team which had all these licenses and permissions but was no longer interested to participate in the sport, which they found in Romania and could acquire the company's business and its stock.

Rest of the events are tabulated below for a better understanding:

S. NO.	YEAR	FACTS
1.	2010	<ul style="list-style-type: none"> Benedict Maximov, American, setup a company Efwon Investments. Owned Funds- - - - - US \$ 100 M Borrowing from Banks- US \$ 250 M Security- Partly by value of Homes- US \$ 75 M Pledge of projected revenue Pledge of shares of Efwon Investments Negative Pledge for entire value of loan Repayment- 10 yrs. @ LIBOR+ 2%
2.	2010	<ul style="list-style-type: none"> Setup a new company under laws of England and Wales Name of the Company- Efwon Trading Remitted US \$ 350 M Loan to the company
3.	2010	<ul style="list-style-type: none"> Efwon Trading established a wholly owned subsidiary named Efwon Romania Gave loan of US \$ 150 Million which was used: US \$ 50 Million for cost of acquisition of team US \$ 100 Million projected budget for 2011 racing year Security- Sharing of Broadcasting revenues
4.	2011	<ul style="list-style-type: none"> Efwon Romania- Played its first race - Returns were disappointing @ US \$30 Million which was reinvested in the Company
5.	2012	<ul style="list-style-type: none"> Efwon Trading- Advance of US \$ 100 M given to Efwon Romania Efwon Romania generated revenue of US \$ 60 M Some amount reinvested in the Company Some repayment to Efwon Trading which was further repaid to Efwon Investments
6.	2013	<ul style="list-style-type: none"> Efwon Trading- Further advance of US \$ 100 Million for the 2013 season It was suggested that agents to look for opportunities in Far East As Europe and North American Companies were heavily invested already
7.	2013	<ul style="list-style-type: none"> Efwon Trading formed wholly owned subsidiary Efwon Hongkong One Indonesian sponsor (Kretek) willing to provide exclusive sponsorship of US \$ 100 M annually for 5 years from 2015, agreement signed To fund 2014 season Efwon Trading took a loan of US \$ 100 Million with high interest rates from a lender based in Monaco, with a view to advance monies to Efwon Romania, securing its own revenues
8.	2015-2017	<ul style="list-style-type: none"> Season went well and team reached at 6th ranking

		<ul style="list-style-type: none"> • Income better, more payments to Efwon Trading which repaid Efwon Investments • Substantial amount also reinvested
9.	End of 2017	<ul style="list-style-type: none"> • Despite improvement in team's ranking Kretek indicated doubts about renewing the sponsorship in 2020, Efwon Hongkong looked for replacement
10.	Early 2018	<ul style="list-style-type: none"> • Malaysian State Company (KuasaNas) offered to fund in excess of US \$ 200 M annually, with condition to acquire 51% majority stake in the team and the team moved to Malaysia, where benefits like use of racetrack, training and new drivers could obtain Super Licenses
11.	Mid 2018	<ul style="list-style-type: none"> • KuasaNas interested in finalizing deal in short order, when Malaysia saw elections of new government • Due to allegations of corruption the government wanted to review actual or intended contracts with state companies • Disaster Struck, the Romanian drivers were injured in the last race of 2018 season
12.	2018	<ul style="list-style-type: none"> • Drivers, citing defects in safety and management, brought claims before Romanian Courts, substantial compensations may be awarded • Lawyers of drivers filed insolvency of Efwon Romania • Obtained interim freezing injunction of Company's assets and income • Efwon Romania may default to Efwon Trading for payments due in early 2019, who in turn may default to Efwon Investments
13.	2018	<ul style="list-style-type: none"> • American Bankers considering foreclose on security provided by Benedict Maximov • Maximov considers protecting his position and of Efwon Investments by recourse to Chapter 11 • Similarly, Efwon Trading is at risk of insolvency- unable to meet repayment obligation to Monaco Lender, Raising specter of proceedings in UK • If intended contract with KuasaNas passes the Government review, one of the conditions KuasaNas have now stated will form a pre-condition for the deal going ahead will be that the insolvency issues affecting the companies in the Efwon Group are dealt with promptly

Gaps in the Provided Information

Before I discuss the advice to be given to Mr. Maximov, apart from the information provided in the case study, there are few facts/financial information which is missing, which could help better in preparing the strategy if were available. Such as:

- a). Current valuation of all the entities and assets is not available as it could help in striking a deal with different lenders. For example, the value of the homes which were placed for securing the loans in 2010, now would have gone up after 8-9 years.
- b). Total revenue of all the group companies in all the years and of all the assets held in these companies.
- c). Profit & Loss statements to assess the quantum of the profit/losses if any.
- d). How much debt is paid already and what is the total outstanding debt to be paid of all the entities.
- e). Amount of compensation asked by the Romanian drivers when they were injured in 2018 race.
- f). Future projections for the company in terms of revenue and expenses is also not given.

The Substance of the Advice

- As the adviser to Benedict Maximov, I will advise that he should immediately file for a pre-pack Chapter 11 insolvency proceedings for Efwon Investments. The pre-requisite to file pre-pack proceedings, lenders/creditors consent is required. Although a mention of the American Bankers looking to foreclose on the security provided by debtor is there. Still, it would be in the best interest of all the creditors and debtor to come on the table and try to reach to a solution beneficial to all in the long run. The strategy will be to fast track the restructuring process and enjoy worldwide moratorium for negotiations and restructuring of the debt while still, continuing the business for a more fruitful results for all, creditors, and debtor.
- First a chapter 11 insolvency would be filed and then stay on the Romanian insolvency would be sought. The more effective tool to do so would be to make use of the UNCITRAL Model law and make the US proceedings as Main proceedings and then prayer by the US administrator would be made to Romanian courts to either to close the Romanian proceedings (as there is no financial creditor as such and special permission can be granted to lift the interim order of freezing injunctions over the company's assets and income) or at least make them the secondary proceedings which again will be to end the effect of the interim order.

- Meanwhile bringing all the lenders (USA and Monaco) on the table and negotiating with them to restructure the principal amount, decreasing the interest rate (specially in Monaco) and elongating the term of the loan. Starting dialogue/negotiations with Monaco lenders will gain trust of the Monaco lenders and as they were also contemplating filing for insolvency in UK on Efwon Trading, thus they will be discouraged in initiating any sole action.
- This will give time to Debtor and by then Malaysian sponsorship will come through and as the money promised by the Malaysian sponsor is good, it can cover the cost of running the team and payment to creditors can be made. Although there is a lack of available information like in which entity the stake sale will take place and it cannot be determined that how much 51% stake sale will fetch to settle with the lenders and Romanian drivers.
- There is a possibility of merging Efwon Trading and Efwon Romania, as mostly the business and operations are happening in Romania, and after Brexit, UK is no more part of the EU, so keeping one more entity is of no use. The assets and liabilities can be transferred to Romanian entity. This will result into consolidation of insolvency proceedings as well if situation occurs that Monaco lenders file for insolvency against Efwon Trading.
- Benefits envisaged of **Chapter 11** proceedings are:
 1. The first and foremost benefit of filing the chapter 11 proceedings is worldwide automatic stay of creditor enforcement proceedings.
 2. It allows the debtor to continue operating more or less in the ordinary course of business.
 3. It allows the debtor to prepare a reorganization plan with its key constituencies.
 4. Under chapter 11 plan of reorganization may be approved by the court without the approval of all classes of creditors i. e. cramdown.
 5. Through the plan the debtor can also force the secured creditors to accept altered terms on their debt.
 6. The chapter 11 also empowers the debtor to reject burdensome contracts, sell assets free and clear of liens and pursue claims for recovery of preferential or fraudulent transfer to increase the value of the estate for the creditors.
 7. Advantages coming from chapter 15 with enactment of UNCITRAL Model law which provides for recognition of foreign proceedings and coordination of US and foreign proceedings.
- Apart from filing Chapter 11 proceedings, to achieve the desired results of the proceedings, a proper cross-border insolvency framework would be required. Now a days it is relatively convenient to do so as most of the countries have elements of cross-border insolvency aspect in their insolvency/bankruptcy legislatures to deal with cross-border insolvencies. Otherwise, there are international frameworks which are commonly used by the member states and has reciprocity clauses. And even if there is no reciprocity clause or the country is not part of any international framework, then

also, generally all the courts, after hearing foreign representatives, allow them to be a part of the ongoing proceedings.

- Now for the purpose of our advice to Mr. Maximov, I will examine two major international insolvency frameworks namely UNCITRAL Model Law and European Insolvency Regulation (EIR). Where USA has adopted the UNCITRAL Model Law almost as it is and Chapter 15 deals with the cross-border insolvencies, all European countries are part of EIR. And before Brexit even UK was part of EIR. Another country which we are concerned of is Hong Kong, which has also adopted the UNCITRAL Model Law.
- Use of **UNCITRAL Model Law Vs European Insolvency Regulation:**

The UNCITRAL Model Law was enacted as an instrument to provide effective mechanisms for dealing with cases of cross-border insolvency. It provides for following 7 solutions to facilitate stressed corporate debtor with multiple entities operating or having creditors and assets in more than one state/jurisdiction:

1. **Access / Co-ordination / Relief:** This enables the administrator of a foreign insolvency proceeding with access to the courts of the enacting state, thereby permitting the foreign representative to seek temporary “breathing space” and allowing the courts in the enacting state to determine co-ordination and relief can be accorded to best deal with the insolvency.
2. **Recognition:** Determining when a foreign insolvency proceeding should be given “recognition” and what the consequences of recognition would be.
3. **Transparency:** Providing a transparent regime for the right of foreign creditors to commence, or participate in, an insolvency proceeding in the enacting state.
4. **Co-operation:** Permitting courts in the enacting state to co-operate more effectively with foreign courts and foreign representatives involved in an insolvency proceeding.
5. **Authorize assistance abroad:** Authorizing courts in the enacting state and persons administering insolvency proceedings in the enacting state to seek assistance abroad.
6. **Jurisdiction and co-ordination in concurrent insolvency proceedings:** Providing for court jurisdiction and establishing rules for co-ordination where an insolvency proceeding in an enacting state is taking place concurrently with an insolvency proceeding in a foreign state.
7. **Co-ordination of relief:** Establishing rules for co-ordination of relief granted in the enacting state to assist two or more insolvency proceedings that may take place in foreign states regarding the same debtor.

The **European Insolvency Regulation** is the binding instrument dealing with cross-border insolvencies in the European Union. The EIR is committed to fostering an efficient and consistent framework for dealing with cross-border insolvency cases, promoting economic stability, and facilitating the rescue of viable businesses facing financial difficulties. The regulations and directives provide a legal framework for cooperation, coordination, and the recognition of insolvency proceedings across EU member states.

Although it provides for a regulatory framework for resolving insolvencies in the EU region, national/domestic legislations retain considerable powers to decide on the content of insolvency proceedings. The actionable issues remain the same as UNCITRAL Model Law, i.e., deciding about the main proceedings, recognition of foreign proceedings, co-operation amongst courts and insolvency practitioners, aiding with foreign professionals etc.

Both frameworks work on the almost same principles but the major difference between the two is the geographical scope. Where UNCITRAL Model Law is adopted by more than 70 countries worldwide, European Insolvency Regulation is only applicable to European Union countries. In our case corporate debtor has main company in USA and multiple subsidiaries are in UK, Romania, and Hong Kong. So going by the jurisdictions of all the entities, UNCITRAL Model Law works better to deal with the insolvency of Efwon group. In any case there is no conflicting provisions in the two regimes, they both aim to achieve co-ordination and co-operation among countries and try to fetch best possible resolution for all creditors and debtor.

- A proper “**cross border insolvency protocol**” with the help of the US courts will be made to chalk out the plan including all the entities, creditors, and assets. Based on the sponsorship revenue from the Malaysian state company, which can be further discounted to net present value, either existing lenders can refinance or from other lenders, loan can be availed to be repaid to the existing lenders. By doing so, Mr. Maximov would also like to get the security released which he had given at the time of availing the first loan in the Efwon Investments as now he has good valuation of the company for which he has been offered USD 200 Million for a 51% stake.
- One more option of “**substantive consolidation**” can also be explored. As much as I understand, the only operation in the group companies is of participating in the F1 races. Initially, when Mr. Maximov wanted to enter the industry, for the purpose of fast-tracking and immediate start of the business, Romanian company was acquired. Now from the text it is clear that F1 races are held around the world and owners of the teams are also everywhere. So, why not merge all the entities, this will give much more trust to Malaysian company and layering of fund flow and creditors will evade. The valuation of the Efwon group thus can be availed and this will help Mr. Maximov to further negotiate with Malaysian company as well and/any future investors/sponsors. The new merged entity could be based in USA with a wholly owned subsidiary in Malaysia, as in any case there is a pre-condition that the team will move to Malaysia, for utilizing the Sepang GP racetrack for practices and training purposes and new drivers qualified to obtain Super Licenses could be engaged.
- **Possible impediments:** There are few obstacles I foresee in the proposed strategy.
 1. American bankers who are already jumpy might be tough nuts to crack. Although even if chapter 11 proceedings are started, in worst case scenario, they can still realize the security and as I told earlier that it would now be almost double the value so they might have good realization value.

2. Second obstacle would come from Monaco bankers. But as per my understanding USA and Monaco share a very good diplomatic relations and they have many treaties signed for economic and political co-operation, this could also be dealt with, with dialogues and negotiations.
3. The biggest obstacle I foresee will come from Romanian lawyers as they would like to plead the humanitarian ground of safety and security of the drivers. We will have to research on the accidents happening on racetracks and the history of compensation provided earlier. So, this can also be subsided with relevant facts, and I am sure a reasonable amount can be agreed upon. Also, as Romania is looking for implementing European Directive 2019/1023 on preventive restructuring framework, it is possible to withdraw the insolvency proceedings and do an out of court settlement with Romanian drivers.

Conclusion

Insolvencies are inevitable, no matter what is being done, internal or external factors affect working and projections of an organization. There are certain things which can be controlled and there are certain things which are out of control of organizations. Car racing in any case is an expensive sport and not easy for any new entrant. And always manufacturer teams, as they are in the business from the very start of the sport, very tough to overtake. So, after all the efforts Efwon team could only reach to 6th spot as top 5 spots were taken by the manufacturer teams. Still undeterred Mr. Maximov had tried all the possible ways to keep the group companies afloat and is trying to make them profitable. With Malaysian sponsorship coming in, he will be able to turnaround the company. And as per the facts given in the case study and after filing of Chapter 11 proceedings, restructuring of the debt and consolidation/merger of group companies, everybody will be at a win-win situation.

For a better understanding following is the point wise analysis as per asked in the case study:

(a) **Your proposed strategy for dealing with the group:** I have proposed to file a Chapter 11 pre-pack insolvency proceedings in the relevant Courts of Delaware by Mr. Maximov to start in Efwon Investments.

(b) **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 per the facts there is already one insolvency proceeding is going on in Romania. After filing of Chapter 11 proceedings in USA, Romania courts would be approached to either make the proceedings secondary or efforts will be made to out of court settlement with the Romanian drivers.

© **Where these proceedings will take place:** The main proceedings will take place in USA. And secondary proceedings will be of Romania, if out of court settlement could

not be worked out. And will try that UK proceedings as intended by Monaco lenders should be curtailed at any cost.

(d) **What impediments may exist to proceedings taking place:** As discussed under the heading “**Possible impediments**”, resistance from the bankers of USA and Monaco is possible. Romanian drivers may also be little difficult to agree upon for the settlement.

(e) **What advantages/disadvantages may exist in relation to proceedings being organised in the way you propose:** I can only see the advantages as I am proposing the strategy. Which are of consolidation of group entities, tackling the issues of insolvencies and giving a clean company to Mr. Maximov and Malaysian state company.

(f) **The factors that will allow you to determine the above:** Developed insolvency regimes in the countries, better understanding, and precedents available to handle cross-border insolvencies, international insolvency frameworks and cross-border insolvency protocols are the factors which will allow to resolve the financial stress of the Efwon group.

(g) **Any further facts or information that may be needed to answer the question:** At the beginning of the advice above, I have stated that, how, if was available, more financial information could help for a better understanding of the quantum of the problem and debt size and, hence providing a better advice.

(h) **Where you envisage the application of the European Insolvency Regulation and/or UNCITRAL Model Law in achieving this:** In detail I have explained about the two international insolvency frameworks and how for our purpose we will rely more on UNCITRAL Model Law, though both the frameworks will be used to achieve the desired results.

(i) **In particular, how the provisions of these texts may assist or impede the strategy you propose to implement:** As I have explained above in detail that both these frameworks are created for cooperation and coordination to deal with cross-border insolvencies and these both texts honor the concept of main proceedings and secondary proceeding/s. Basically these texts are designed to achieve the same goal. Although every case is different and comes with its own strengths and weaknesses. Still in my opinion with great care to facts, keeping all the stakeholders abreast with the information and proceedings and with all the good intentions, all the impediments can be converted into opportunities.

(j) **In December 2019, Brexit finally happened. Advise as to the possible effect, if any, of Brexit on your solution:** Brexit has introduced changes to cross-border insolvencies between the UK and the European Union. The UK is no longer part of the EU’s insolvency framework, making it important to negotiate new agreements for handling insolvencies that involve both regions. This might result in increased complexity and potential delays in cross-border proceedings.

Although, one that I am not proposing any proceedings in the UK as the creditors of UK are based in Monaco and Monaco is not part of any international insolvency framework. It has not adopted the UNCITRAL Model Law and as per my research Monaco is also not part of the EU. So, anyway a detailed cross-border insolvency protocol covering all the countries, creditors and stakeholders would need to be worked out. So, as such I do not see any possible effect of Brexit on my advice.

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