INSOL GIPC Case Study II – Part I (4984 words)

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Home Jurisdiction: BVI (practising from Hong Kong)

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**ADVICE TO BENEDICT MAXIMOV**

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**Introduction**

1. I have been asked to advise Benedict Maximov ("Maximov") on how to facilitate the deal with KuasaNas, particularly with regard to how the insolvency issues affecting the companies in the Efwon group can be dealt with.
2. This Advice is provided as if the current date is the end of 2018.
3. In its most simple form, a "cross-border insolvency" arises when insolvency proceedings are commenced in one jurisdiction against an insolvent debtor that also has assets and/or liabilities in at least one other jurisdiction. This case is more complex, as we are dealing with a group of companies that has business operations in numerous jurisdictions carried out by subsidiaries and other affiliated entities, with a variety of assets and liabilities in different locations and numerous creditors.

**Factual Background**

1. Maximov, a US citizen, decided to invest in Formula 1 racing.
2. In early 2010, Efwon Investments was incorporated in Delaware, USA[[1]](#footnote-1). Maximov invested US$100 million of his own money into Efwon Investments as well as US$250 million, borrowed from a syndicate of banks, under the following terms:
3. the loan was secured partly on properties owned by Maximov across the world;
4. a pledge on the projected revenue to be received from the investment and participation in F1;
5. a pledge over the shares in Efwon Investments;
6. a negative pledge for the entire value of the loan;
7. the loan was to be repaid in 10 years with an interest rate of LIBOR + 2%;
8. the following lending structure applied: (a) 2 senior banks with a total exposure of US$100 million; (b) 2 mezzanine creditors with a total exposure of US$60 million; and (c) 5 junior creditors with a total exposure off US$90 million.
9. Also in 2010, Efwon Trading was incorporated in England & Wales. Efwon Investments loaned the entire US$350 million to Efwon Trading which was secured on Efwon Trading's future revenue.
10. In late 2010, Efwon Romania was incorporated in Romania as a wholly-owned subsidiary of Efwon Trading. Efwon Trading loaned Efwon Romania US$150 million secured on Efwon Romania's share of the F1 broadcasting revenue. Two racing drivers entered into deals with Efwon Romania.
11. In its first year of racing and trading in 2011, Efwon Romania only generated US$30 million (much of which had to be re-invested in the company[[2]](#footnote-2)). However, Maximov directed Efwon Trading to loan a further US$100 million to Efwon Romania as the budget for the 2012 racing season.
12. In the 2012 racing season, Efwon Romania's revenue was US$60 million, of which (a) some was re-invested in Efwon Romania; and (b) some used to repay Efwon Trading (of which Efwon Trading made some repayments to Efwon Investments[[3]](#footnote-3)).
13. In 2012, Maximov directed Efwon Trading to loan a further US$100 million to Efwon Romania as the budget for the 2013 racing season (this exhausted the original US$350 million loan).
14. In 2013, Efwon Hong Kong was incorporated in Hong Kong as a wholly-owned subsidiary of Efwon Trading.
15. In 2013, Efwon Hong Kong signed a 5 year agreement with an Indonesian company, Kretek, under which Kretek would provide exclusive sponsorship to Efwon Romania from 2015 worth an estimated US$100 million annually.
16. To provide funding for the 2014 racing season, Efwon Trading borrowed US$100 million at a high interest rate from a lender in Monaco, secured on its revenues, with a view to advancing the money to Efwon Romania.
17. Revenue was improved throughout the 2015 to 2017 seasons and more money was re-invested in Efwon Romania and further repayments were made by Efwon Romania to Efwon Trading and by Efwon trading to Efwon Investments[[4]](#footnote-4).
18. However, at the end of the 2017 season, Kretek indicated that it may not renew its sponsorship deal in 2020. In early 2018, Efwon Hong Kong entered into negotiations with KuasaNas, a Malaysian state-owned company, with regard to a sponsorship deal worth in excess of US$200 million per annum. KuasaNas indicated that a condition of this funding was that KuasaNas would acquire a 51% stake in Efwon Hong Kong and that the team move to Malaysia.
19. Contracts were ready to be signed in mid-2018 when a new government was elected in Malaysia. Due to allegations of corruption under the previous regime, the new Malaysian government decided to review existing or intended contracts with state-owned companies (such as KuasaNas). Before the review process of the intended contract between KuasaNas and Efwon Hong Kong had been completed, disaster struck in that the two Romanian drivers were injured in the last race of the 2018 season.
20. The drivers have brought personal injury claims before the Romanian courts citing defects in safety and management. If their claims are successful, they will be awarded substantial damages. The lawyers acting for the drivers have filed for the insolvency of Efwon Romania and have obtained, pending a winding up order being made, interim freezing injunctions over Efwon Romania's assets and income. These freezing injunctions will cause Efwon Romania to default on its payments to Efwon Trading which are due in early 2019. Such a default will cause Efwon Trading to default on its payment obligations to Efwon Investments.
21. In light of these developments, the American banks are considering proceedings to foreclose on the security provided by Maximov. As a consequence, Maximov is considering how to protect his position and that of Efwon Investments, perhaps by recourse to Chapter 11 proceedings.
22. Similarly, Efwon Trading is also at risk of insolvency as it will be unable to meet its repayment obligations to both Efwon Investments and to its Monaco lender, raising the possibility of insolvency proceedings in the UK.
23. Furthermore, if the intended contract between KuasaNas and Efwon Hong Kong passes the Malaysian governmental review process, KuasaNas has now stated that a pre-condition of the deal going ahead will be that the insolvency issues affecting the companies in the Efwon group are dealt with promptly.

**Summary overview of relevant key facts**

1. The lawyers acting for the Romanian drivers employed by Efwon Romania have filed for the insolvency of Efwon Romania and have obtained, pending a winding up order being made, interim freezing injunctions over Efwon Romania's assets. As things stand, Efwon Romania will be unable to comply with its payment obligations to Efwon Trading due to be made in early 2019.
2. Similarly, Efwon Trading is also at risk of insolvency as it will be unable to meet its repayment obligations to both Efwon Investments and to its Monaco lender, raising the possibility of insolvency proceedings in the UK.
3. Efwon Investments is also at risk of insolvency as it will be unable to meet its repayment obligations to the American banks which are due to be made in early 2020. The American banks are aware of the developments in Romania and the UK and are considering foreclosing on Maximov's assets.
4. In addition to the above, all of the Efwon companies are at risk of insolvency due to the fact that the Malaysian governmental review has yet to be concluded. If the review does not approve the intended contract between KuasaNas and Efwon Hong Kong, there will be no sponsorship deal in place from 2020 onwards with the result that there will be no revenue for the Efwon companies thereafter.
5. Furthermore, even if the review approves the intended contract between KuasaNas and Efwon Hong Kong, KuasaNas has recently stated that a pre-condition of the deal going ahead will be that the insolvency issues affecting the companies in the Efwon group are dealt with promptly.
6. There is no global insolvency law. Most of the relevant substantive laws and rules of insolvency are jurisdiction-specific.
7. Consequently, the manner in which the potential insolvency of each Efwon company in each jurisdiction is to be approached will have to be considered individually.

**Efwon Romania**

1. As referred to above, the lawyers acting for the Romanian drivers employed by Efwon Romania have filed for the insolvency of Efwon Romania and have obtained, pending a winding up order being made, interim freezing injunctions over Efwon Romania's assets. As things stand, Efwon Romania will be unable to comply with its payment obligations to Efwon Trading due to be made in early 2019.
2. It would appear that the reason a winding up order has been applied for against Efwon Romania in the Romanian courts (and interim freezing injunctions made pending the hearing of the winding up petition) is that the Romanian drivers are asserting that Efwon Romania will be unable to satisfy any judgments made in the drivers' favour in their personal injury claims against Efwon Romania.
3. The initial strategy must be to seek to secure the discharge of the freezing injunctions and the dismissal of the winding up application. Efwon Romania would be well-advised to seek advice from Romanian counsel as to the merits and strategies to be deployed to achieve these two aims. Assuming that Efwon Romania was adequately insured, dialogue with the insurers should be entered into to ascertain their position as to whether the insurance policy will respond to the claims (or parts of them) or whether the insurers' position is that the claims fall outside the scope of the policy (and if so, why). If the drivers' claims were settled and/or there was an acceptance by the insurers that the policy will respond to the claims and/or money was paid into court, there is no reason for the winding up petition to proceed and/or for the freezing injunctions to remain in place.
4. The withdrawal or dismissal of the winding up petition and the discharge of the freezing injunctions would necessarily satisfy the pre-condition imposed by KuasaNas that the insolvency issues affecting the group are dealt with promptly.
5. If it is not possible to secure the withdrawal or dismissal of the winding up petition and the discharge of the freezing injunctions, the initial strategy should be to seek to agree a consensual restructuring of Efwon Romania's liabilities with its creditors, i.e., Efwon Trading.
6. The ability of Efwon Trading to renegotiate repayment terms is, in truth, dependent on the preparedness of Maximov's and Efwon Investments' bankers. It may be the case that the American bankers will be prepared to negotiate new terms/lend more money to the Efwon group if there was further information as to the progress of the Malaysian governmental review.
7. Failing any such consensual agreement, the issue of whether Romania is the correct forum for the insolvency proceedings that have been issued by the Romanian drivers.
8. In summary, Efwon Romania is a Romanian incorporated debtor company which has:
9. its COMI in Romania (see the discussion of COMI below);
10. creditors based in the UK; and
11. assets in Romania.
12. On the basis of these facts:
13. Insolvency proceedings can be commenced in Romania. These will be main proceedings under the Recast Insolvency Regulation (Romania being a member state of the EU) because COMI is in Romania;
14. As Romania has enacted legislation based on the Model Law, the existence of any foreign insolvency proceedings gives rise to recognition effects and duties of co-operation by the Romanian courts; and
15. Whether insolvency proceedings can be commenced in the UK is a matter for domestic US law. The UK courts will recognise Romanian proceedings as foreign main proceedings or foreign non-main proceedings (as the case may be).

**Efwon Investments**

1. Maximov's initial strategy should be to seek to agree a consensual restructured deal with Efwon Investments' lenders. We understand that the syndicated loan of US$250 million is due to be repaid in early 2020. It is unclear to us precisely how much of the loan has been repaid and how much remains outstanding and clarification of this would be welcome.
2. It appears from the instructions we have received to-date that the relationship between Maximov and the lenders is healthy to the extent that they have been kept abreast of the Efwon group's financial situation and Maximov has complied with the lenders' requests historically, e.g., the switch from private sponsorship to a more diversified sponsorship portfolio at the suggestion of the lenders.
3. In light of the current uncertainty surrounding sponsorship for the 2020 season onwards and the current travails of Efwon Romania, Maximov should consider seeking to negotiate a restructuring of the terms of syndicated loan, including an extended repayment date or deferment of the loan.
4. In support of his negotiations with the lenders, Maximov can pray in aid that the Efwon business is a viable one and if the current hurdles can be overcome and the contract with KuasaNas secured, the future revenue of the Efwon group will be stronger than it has ever been before.

1. Failing agreement with Efwon Investments' lenders, Maximov would be right to consider Chapter 11 of the US Bankruptcy Code as a means of protecting his position and the position of Efwon Investments.
2. As a company incorporated in Delaware, Efwon Investments can take advantage of the restructuring powers and remedies available in a Chapter 11 proceeding.
3. The principal goal of Chapter 11 is to reorganise the business of a company in financial distress to allow the company to emerge from Chapter 11 as a going concern. During a Chapter 11 process, the debtor company's management, including its board of directors, continue to control the company's business and assets, albeit under the oversight of inter alia the US Trustee, the bankruptcy court and the creditors' committee.
4. Chapter 11 is commenced by the debtor filing a petition with the court. The filing of the petition triggers the formal start of Chapter 11 and from that point the debtor automatically has the benefit of a wide-ranging moratorium or automatic stay that prevents almost all legal action against it.
5. The automatic stay, theoretically, has worldwide effect and, inter alia, prevents creditors from taking any action to enforce their security or to repossess the debtor's property. The debtor has a period of 120 days from the date of the Chapter 11 bankruptcy order during which it has the exclusive right to propose and file a plan of reorganisation. The debtor may then seek creditors' binding agreements to the plan (known as "soliciting acceptances") for a total of 180 days from the date of the Chapter 11 order. These periods may be extended by the court up to a maximum of 18 months for the filing of the plan and 20 months for the solicitation of acceptances.
6. It is likely that the plan will provide for one or more of the following:
7. an infusion of new equity from existing holders or from third-party investors;
8. new cash funding from third-party lenders;
9. new debt issued to creditors to replace, or partly pay their existing debt;
10. A debt for equity swap;
11. A sale of the non-core aspects of the debtor's business; and/or
12. A sale of all or substantially all of the debtor's assets and a distribution of the proceeds to creditors.
13. A Chapter 11 proceeding concludes with the bankruptcy court's confirmation of the plan. A plan can be confirmed if at least two-thirds in principal amount and one-half in number of the allowed claims (being claims that the court has approved for payment under the plan of reorganisation) of each class of impaired creditors and shareholders, respectively, have accepted the plan.
14. The court may confirm a plan even if the voting thresholds above have not been achieved in any impaired class if the plan does not "discriminate unfairly" and is "fair and equitable" with respect to the dissenting class. In other words, the court can, in appropriate circumstances, force creditors to accept a plan (this is known as a "cram down").
15. A distinguishing feature of a Chapter 11 proceeding, as opposed to insolvency procedures in other jurisdictions such as the UK, is the ability of the debtor to incur fresh debt to fund itself through the bankruptcy process, subject to the approval of the court (known as "debtor in possession finance" or "DIP finance". In the US, it is possible for the provider of DIP finance to take priority security over assets that have already been secured to other lenders. Inevitably the decision to provide DIP finance is a tactical one. For example, an existing lender may wish to avoid another lender obtaining priority over its existing loan and therefore volunteer to lend during the bankruptcy process or a new lender may provide funds as part of a proactive attempt to become involved as a priority creditor in the restructuring.
16. Maximov may wish to consider a pre-packaged Chapter 11 process. This is where the debtor reaches agreement with its creditors on the terms of a Chapter 11 plan and obtains creditors' votes that bind them to agree to the plan before the commencement of Chapter 11 proceedings. As with a conventional Chapter 11 proceeding, once the plan has been confirmed by the court, all creditors affected by the plan will be bound to it.
17. There are two principal advantages of a pre-packaged Chapter 11 proceeding over a conventional Chapter 11 proceeding:
18. by entering into a Chapter 11 proceeding only after creditors have accepted the plan, the company's management minimised the risk of losing control of the Chapter 11 proceeding to a creditors' committee or a potential purchaser; and
19. a pre-packaged Chapter 11 proceeding will often be shorter than a conventional Chapter 11 proceeding, reducing the administrative expenses of the process and scope and cost of any necessary DIP finance.
20. Self-evidently, the automatic stay would give a 120-day breathing space to Efwon Investments during which its lenders would be prevented from taking any action to enforce their security or to repossess the company's property.

**Efwon Trading**

1. As discussed, Efwon Trading is also at risk of insolvency as it will be unable to meet its repayment obligations to both Efwon Investments and to its Monaco lender, raising the possibility of insolvency proceedings in the UK.
2. As with Efwon Investments, the initial strategy should be to seek to agree a consensual restructuring of its liabilities with its creditors, i.e., Efwon Investments and its Monaco lender.
3. Failing any such consensual agreement, Efwon Trading should consider filing insolvency proceedings. The first issue to be addressed is to establish where such insolvency proceedings should be commenced.
4. Regulation (EU) 2015/848 on insolvency proceedings (the "Recast Insolvency Regulation") applies to most collective proceedings of debtors who have their centre of main interests in a member state of the EU (excluding Denmark) or the UK where the insolvency proceedings were opened on or after 26 June 2017.
5. The UNCITRAL Model Law on Cross-Border Insolvency (the "Model Law") has been adopted into law by jurisdictions including Great Britain (as the Cross-Border Insolvency Regulations 2006 (SI 2006/1030) (CBIR 2006) and the US (as Chapter 15 of the US Bankruptcy Code).
6. Cross-border insolvency laws such as the Recast Insolvency Regulation and legislation based on the Model Law do not harmonise the laws of different countries. Instead they aim to simplify the process of insolvency for a debtor with interests in more than one jurisdiction. As a result, local law advice will still be necessary in each jurisdiction in which issues arise.
7. Central to the working of the Recast Insolvency Regulation and the Model Law is the concept of the centre of main interest ("COMI") of a debtor. COMI is not defined in the Model Law. The Model Law does however contain a rebuttable presumption that a corporate debtor's COMI is the location of the company's registered office.
8. An important decision of the English courts as to COMI is the first instance decision of Lewison J in *Re Stanford International Bank Ltd* [2009] EWHC 1441 (Ch). Standard International Bank ("**SIB**") was incorporated in Antigua and regulated by the Antiguan authorities. Its registered office was in Antigua. Its contracts were governed by Antiguan law and were subject to the jurisdiction of the Antiguan courts. The majority of its staff were based in Antigua.
9. SIB was part of a group companies based in the US. The key strategic decisions in relation to SIB were taken in the US by US citizens. More than half of the financial advisers involved in the sale of SIB's products were based in the US.
10. After an SEC investigation implicating SIB in the fraud, the SEC obtained an order from the District Court in Northern Texas appointing a receiver to SIB and its wider group (the "**Receiver**"). The actions of the SEC prompted an investigation in Antigua, which resulted in the Antiguan authorities appointing a liquidator to SIB (the "**Liquidator**").
11. Amongst the assets of SIB was a bank account in London. The Receiver and the Liquidator both sought recognition of their respective appointments in the English and Welsh High Court under the CBIR and asked the court to determine whether the US receivership or the Antiguan liquidation of SIB were "main proceedings" for the purpose of the CBIR.
12. The Receiver argued that the COMI of SIB was in the US, as it was from there that strategic control over SIB was exercised. The Liquidator argued that there was no evidence to displace the presumption that SIB's COMI was with its registered office in Antigua and that, in fact, the evidence that there was supported the view that the COMI of SIB was in Antigua.
13. In addition, the Liquidator argued that the Receiver was incapable of being recognised under the CBIR, as it was not a "collective proceeding" in that the purpose of the US receivership was to protect the interests of the investors in SIB, rather than the reorganisation or liquidation of SIB on behalf of SIB's creditors as a whole.
14. Lewison J. held that the COMI of SIB was in Antigua. The Receiver had not shown sufficient evidence to rebut the presumption that SIB's COMI was at its registered office. in fact, the balance of the evidence supported the view that SIB's COMI was in Antigua. As a consequence, Lewison J. held that the Liquidator was entitled to recognition as a foreign representative of a foreign main proceeding.[[5]](#footnote-5)
15. The court considered the proper test to apply when identifying the COMI of a company. It held that, in order to rebut the presumption that a company's COMI was at its registered office, there must be objective factors that indicate the company's head office function was carried out elsewhere. Those facts must be ascertainable to third parties. What is ascertainable to third parties is what is in the public domain and what a typical third party would learn from its dealings with company.[[6]](#footnote-6)
16. It was found that whilst clients of SIB might have initial contact with SIB's financial advisers in the US, the materials provided to those investors strongly tied SIB to Antigua. The court noted that when news of the SEC investigation broke, many investors travelled to SIB's premises in Antigua to demand their money back.
17. The court approved the approach to determining COMI as set out in In *Re Eurofood IFCS Ltd* [2006] Ch 508[[7]](#footnote-7) and held that any authority on COMI that pre-dated the *Eurofood* decision was bad law.
18. The court also held that the Receiver of SIB was not capable of recognition under the CBIR. The purpose of the receivership was to protect the investors in SIB from the risk of misappropriation of assets whilst the SEC investigation took place. The receiver had no power to distribute assets to creditors of SIB, nor any duties to the creditors of SIB as a whole. This meant that the receivership was not a "collective process", a pre-requisite of recognition under the CBIR.[[8]](#footnote-8)
19. On appeal from Lewison J's judgment[[9]](#footnote-9), the Court of Appeal upheld the first instance findings that the US receivership was not a foreign proceeding for the purposes of the CBIR, but that the Antiguan liquidation was such a foreign proceeding. The Court of Appeal further emphasised that a company's COMI had to be identified by reference to factors which are both "objective and ascertainable". Therefore, the so-called "head-office function" test applied only to the extent that the relevant factors were so ascertainable.
20. The limited instructions we have received to-date do not contain any objective facts to rebut the presumption that Efwon Trading's COMI is at its registered office in Great Britain. There are no objective facts that indicate the company's head office function is carried out elsewhere.
21. Under the Recast Insolvency Regulation, the location of the debtor's COMI in any EU member state (except Denmark) determines, for all EU member states (except Denmark):
22. where the principal insolvency proceedings (referred to in the Recast Insolvency Regulation as "main" proceedings) can or should be commenced and so recognised;
23. which jurisdiction's insolvency laws will apply generally to the conduct of the insolvency (in the absence of local proceedings in any particular member state, where allowed); and
24. what insolvency proceedings in other jurisdictions may be allowed or precluded and with what effect.
25. In any jurisdiction that has enacted legislation based on the Model Law, such as England & Wales, the existence of any foreign insolvency proceedings gives rise to recognition effects and duties of co-operation by local courts.
26. However, unlike the Recast Insolvency Regulation:
27. the Model Law does not specify or preclude the commencement of proceedings in any jurisdiction; and
28. the Model Law does not provide for the insolvency to be generally regulated by the laws of the jurisdiction where the debtor has its COMI.
29. The significance of the location of COMI under the Model Law is that the commencement of insolvency proceedings in any jurisdiction where the debtor has its COMI will lead to those proceedings being recognised as foreign main proceedings in any other jurisdiction that has adopted the Model Law and before whose courts the issue falls to be considered. The recognition of foreign proceedings as foreign main proceedings brings with it certain automatic consequences in the country where such recognition is recorded. For example, under the CBIR 2006, the recognition in Great Britain of a foreign main proceeding will result in any insolvency proceedings in Great Britain being limited to assets within the jurisdiction[[10]](#footnote-10).
30. States which adopt the Model Law are not required to do so in whole or in terms identical to the Model Law and it is therefore necessary to check the exact terms implemented, usually with the assistance of local counsel, when considering the effects of legislation based on the Model Law in any particular jurisdiction.
31. In summary therefore, Efwon trading is an English incorporated debtor company which has:
32. its COMI in England & Wales;
33. creditors based in the US and Monaco; and
34. assets in England and Romania.
35. On the basis of these facts:
36. Insolvency proceedings can be commenced in England & Wales. These will be main proceedings under the Recast Insolvency Regulation because COMI is in England & Wales;
37. Whether insolvency proceedings can be commenced in Romania is a matter for domestic Romanian law. As Romania has enacted legislation based on the Model Law, the existence of any foreign insolvency proceedings gives rise to recognition effects and duties of co-operation by the Romanian courts; and
38. Whether insolvency proceedings can be commenced in the US is a matter for domestic US law. The US courts will recognise English proceedings under Chapter 15 of the US Bankruptcy Code (which implements the Model Law in the US) as foreign main proceedings or foreign non-main proceedings (as the case may be).

**The effect of Brexit?**

1. In December 2019, Brexit finally happened. The UK left the EU on 31 January 2020. During the transition period (which ended on 31 December 2020) the UK was treated for most purposes as if it were still an EU member state, and most EU law, including the Recast Insolvency Regulation, continued to apply to the UK.
2. From the end of the transition period (31 December 2020), the UK Recast Insolvency Regulation continues to apply, in the UK, to:
3. Main insolvency proceedings opened under it before the end of the transition period; and
4. Secondary proceedings in respect of the same debtor opened after the end of the transition period where the main proceedings were opened before the end of the transition period.
5. Therefore, due to the facts that:
6. the date at the time of writing is the end of 2018;
7. the transition period ends in two years' time; and
8. the sponsorship deal will either have been entered into before then or not,

Brexit will have no effect on this Advice.

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*In the matter of Agrokor DD* [2017] EWHC 2791 (Ch)

*Leite v Amicorp (UK) Ltd* [2020] EWHC 3560 (Ch)

1. What is the shareholding structure of Efwon Investments? [↑](#footnote-ref-1)
2. How much of the US$30 million was re-invested in Efwon Romania? [↑](#footnote-ref-2)
3. How much of the US$60 million was re-invested in Efwon Romania? How much of the US$60 million was repaid to Efwon Trading? What repayments were made to Efwon Investments by Efwon Trading? [↑](#footnote-ref-3)
4. How much was re-invested in Efwon Romania? What repayments were made to Efwon Trading? What repayments were made to Efwon Investments by Efwon Trading? [↑](#footnote-ref-4)
5. Paragraphs 97-99 [↑](#footnote-ref-5)
6. Paragraph 70 [↑](#footnote-ref-6)
7. Eurofood was an Irish company which was a subsidiary of Parmalat, an Italian company. Eurofood's registered office was in Dublin. Its principal objective was the provision of financing facilities for companies in the Parmalat group. Its day-to-day administration was managed by Bank of America. Insolvency proceedings were opened in both Italy and Ireland, and the courts of both decided that they had jurisdiction. The Italian administrator appealed to the Irish Supreme Court which referred a number of questions to the ECJ including the question of how to determine a company's COMI. [↑](#footnote-ref-7)
8. Paragraphs 84, 85. [↑](#footnote-ref-8)
9. See [2010] EWCA 137 (CA) [↑](#footnote-ref-9)
10. Article 28 in Schedule 1 to the CBIR 2006. [↑](#footnote-ref-10)