Memorandum on restructuring considerations in connection with the proposed transaction between Benedict Maximov et al. and KuasaNas.

Prepared at the request of Benedict Maximov
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Objective

The purpose of this memorandum is to provide a comprehensive assessment and recommendations to address the restructuring and transaction needs of Benedict Maximov ("Maximov") et al. ("Efwon Group"). The assessment and recommendations anticipate and consider the withdrawal of the United Kingdom from the European Union ("Brexit") and full implementation of European Directive 2019/1023 by Romania. Additionally, the memorandum addresses gating issues and the need to prioritize the use of available forums and schemes to manage the anticipated liabilities of Maximov and Efwon Group most effectively. The recommendations herein are based on information provided and are intended to maximize the likelihood of a successful KuasaNas Transaction.

Section I. Overview of Efwon Group

The Efwon Group was formed by Benedict Maximov ("Maximov") in 2010 for the purpose of opportunistically acquiring a Formula One team in the aftermath of the 2008 global financial crisis. At the time of initial capitalization, Maximov contributed $100 million of cash and pledged real property with a 2010 appraised value of $75 million. At the same time, he entered into a loan agreement with U.S. Lender Group which provided $250 million of debt. The total initial capitalization was $350 million.

A. Entity Structure

As the organization developed, the following entities were formed:

Efwon Investments: Organized under U.S. Delaware law, Efwon Investments is the ultimate parent of Efwon Group. Efwon Investments has no operations and is capitalized with $250 million of debt and $100 of equity. It is not a guarantor of the $250 million U.S. Lender Group loan, and the sole asset is a loan to Efwon Trading. It's center of main interest ("COMI") is the U.S.

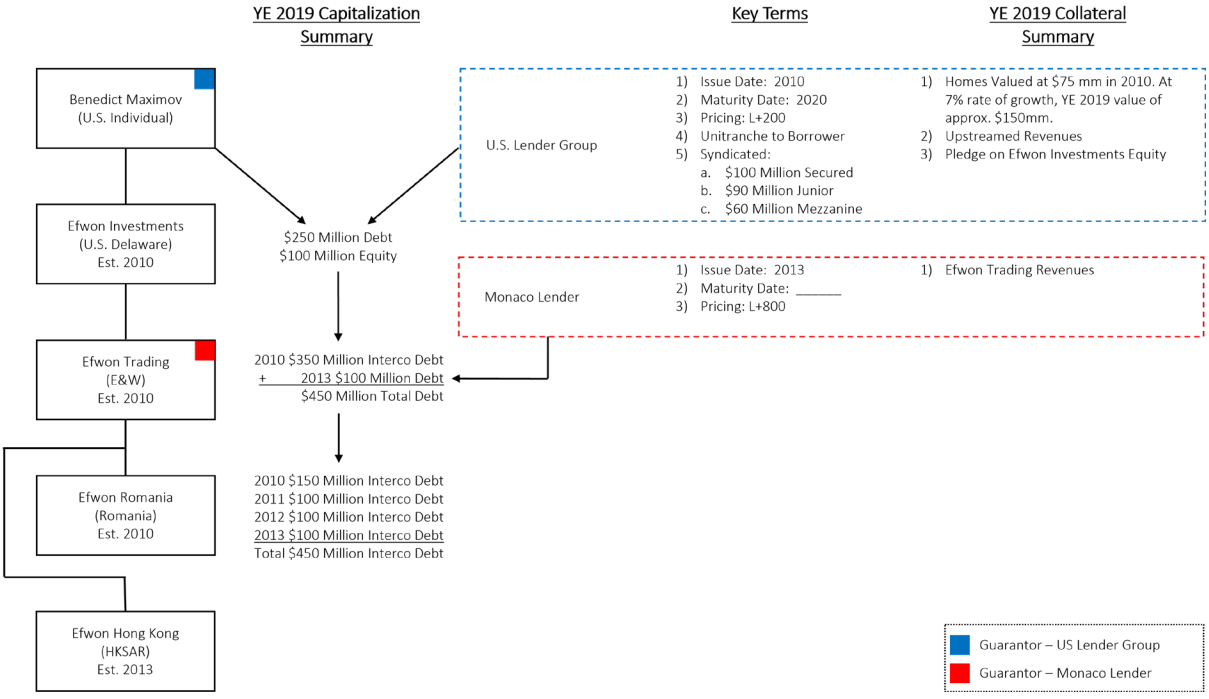
Efwon Trading: Organized under the laws of England and Wales, Efwon Trading was formed for the purpose of greenfield development of a Formula One team. Following a strategic market analysis, Efwon Trading was directed to identify opportunities to acquire an underperforming team in possession of an existing competition license granted by Fédération Internationale de l'Automobile ("FIA"). Ultimately, Efwon Trading acquired a team based in Romania which was funded by a $350 million loan from Efwon Investments. In 2013, Efwon Trading entered into a credit agreement with Monaco Lender

for an additional $100 million. Efwon Trading is organized and operates from England, and it is assumed similarly that its COMI is England.

Efwon Romania: Organized under the laws of Romania, Efwon Romania was formed to hold the ownership of a Romania-based Formula One team which includes the FIA competition license. Efwon Romania was originally capitalized by a $150 million loan from Efwon Trading which funded the $50 million acquisition of the team and $100 million of projected 2011 operating costs. Several subsequent borrowings occurred, and the current Efwon Trading loan balance currently totals $450 million. Efwon Romania is currently defending litigation against several former team drivers and faces an immediate pending involuntary insolvency in a Romanian bankruptcy court. The team travels internationally to compete in Formula One events but its primary operations and COMI are assumed to be Romania.

Efwon Hong Kong: Organized under the laws of the Hong Kong Special Administration Region ("HKSAR"), Efwon Hong Kong is a thinly capitalized subsidiary of Efwon Trading, formed for the purpose of managing Asian sponsorship opportunities. Efwon Honk Kong operates from Hong Kong and is similarly assumed to have its COMI located in the HKSAR.

B. Capital Structure



US Lender Group: At the time of initial 2010 capitalization of Efwon Investments, Maximov entered a $250 million unitranche credit agreement with U.S. Lender Group. The credit agreement is in the form of a ten-year term loan priced at LIBOR +200. The lender group is composed of nine banks which include 1) two senior lenders with a $100 million position, 2) five junior lenders with a $90 million position, and 3) two mezzanine lenders with a $60 million position.[1] The unitranche nature of the loan comes with competing interests within the syndicate, likely complicating negotiations. The near-term maturity of the loan is a priority issue.

At the time of issue, Maximov pledged luxury residential real property which appraised for $75 million. Additionally, Maximov pledged his equity interest in Efwon Investments along with a pledge against future revenues. It appears the homes have been properly maintained, the security interest in the real property is properly perfected and the properties are free of additional encumbrances.

For the purpose of evaluating restructuring alternatives, it is important to consider the appreciation in value of the underlying collateral. During the ten-year period between 2010 and maturity, a conservative estimate of annual appreciation is 7% and for some properties it could be far greater. If in fact a current appraisal reflects 7% growth, the real property has increased from $75 million to approximately $150 million in value.[2] Additionally, the enhanced revenue opportunity stemming from the proposed KuasaNas transaction provides significantly enhanced value. This is especially true considering there was no available cash flow at the time the loan was originated.

The credit agreement is between US Lender Group and Maximov, as sole guarantor, and is governed by the laws of the United States.

Monaco Lender: During 2013, as needed in preparation for the 2014 season, Efwon Trading entered into a credit agreement with Monaco Lender for the purpose of down-streaming $100 million of working capital to Efwon Romania to fund team operating requirements. Efwon Trading is the sole guarantor, and the agreement is governed by the laws of England & Wales.

While the pricing of the Monaco Lender facility is high, the principal balance of $100 million is manageable and the loan is not subject to near-term maturity. It is likely, however, that consent will be required in connection with the proposed KuasaNas transaction as it involves a sale of a majority stake of the revenue generating subsidiary Efwon Romania. However, with the enhanced value provided by the KuasaNas transaction, a recapitalization or restructure of the Monaco Lender note should be reasonably achievable if required.

[1] The case study appears to infer by sequence that "Junior" debt is subordinate to "Mezzanine" debt. Mezzanine debt is a hybrid of debt and equity and generally the most subordinated form of debt capital. As such, the analysis reflects $60 million of Mezzanine debt as falling subordinate to the $90 million of Junior debt.

[2] $147.5 million = $75 million $(1+.07)^{10}$

Intercompany Debt: As a result of down-streaming capital over the prior ten years, Efwon group has significant intercompany debt at various levels of the organization. Most significantly, Efwon Romania, a non-guarantor entity, has $450 million of intercompany debt. While on a consolidated basis this is of no concern, when considering restructuring alternatives, it is important to evaluate the potential recharacterization of intercompany debt to equity (recharacterization of debt or equitable subordination). This is potentially a problem at Efwon Romania considering the pending involuntary insolvency.

C. Valuation

The Eighth Concorde Agreement: On October 31, 2019, the terms of the Eighth Concorde Agreement were set for signing. The Concorde Agreements establish contract terms between FIA, the Formula One teams and the Formula One Group and dictate the terms by which the teams compete in races, and how the television revenues and prize money are shared. While one team held up the formal acceptance of the Eighth Concorde Agreement, it is widely accepted that the terms of the proposed agreement will ultimately pass.

Relevant to Efwon Group, the Eighth Concorde Agreement, which will be in effect through the 2025 season, includes the following provisions:

1) New teams will be required to pay an up-front fee of $200 million which will be distributed evenly among the existing teams. The intent of the fee is to bar undercapitalized investors from entering Formula One. It is commonly believed that the rule creates a $200 million floor on the value of each of the existing teams.
2) To create a more level-field competitive environment, budget caps will be implemented limiting investment in car performance to $175 million in 2021, $142 million in 2022 and $135 million plus inflation adjustments for 2023, 2024 and 2025. This concept is similar to the wage caps of other professional sports teams. By way of comparison, certain teams have historically invested $400 million or more per year. The budget cap significantly improves the competitive prospects of the Efwon Group team against the larger manufacturer and affiliate teams.
3) Lastly, teams will share in total distributable prize money in a way that subsidizes the smaller independent teams such as Efwon Group. Under the new Concorde, prize money will be split into two equal categories. Each team will receive an equally divided share of half of the total prize money, currently 10% for each of the ten teams. The second category of prize money is based on the standings with the lowest ranked team earning 6%. For example, the lowest ranked team would earn a total of 8% (½ of 10% + ½ of 6%) of total prize money and the highest

ranked team would earn a total of 12% (½ of 10% + ½ of 14%) of total prize money. The Efwon Group team recently completed 6th place in the standings.

First Place / Last Place Team Prize Money Using Prior Three-Year League Totals (*$ milions*)

	2017	2018	2019	Three Year Total
Total Prize Money	$919	$913	$1,004	$2,836
Fist Place Team	$110	$110	$120	$340
Sixth Place Team	*$90*	*$89*	*$98*	*$278*
Last Place Team	$74	$73	$80	$227

As total FIA and Formula One revenues increase over future years the amount of available prize money will also increase.

KuasaNas Sponsorship: Subject to resolving Efwon Group's insolvency concerns, KuasaNas is proposing a $200 million annual sponsorship which includes track facilities and drivers. Additionally, KuasaNas would acquire a 51% stake in the team based on a mutually agreed fair market value.

Projected Efwon Trading Cash Flows *($ millions)*	2020	2021	2022	2023	2024	Total
Operating Activities:						
Sources:						
Sponsorship (49%)	$98.0	$98.0	$98.0	$98.0	$98.0	$490.0
FIA Prize Money (49%)	50.0	55.0	60.0	67.5	75.0	307.5
Total	148.0	153.0	158.0	165.5	173.0	797.5
Uses:						
Race Car Enhancement Cost (49%, at Cap after 2022)	75.0	75.0	71.0	67.5	70.0	358.5
Additional Costs (49%)	25.0	27.5	30.0	35.0	40.0	157.5
Total Uses	100.0	102.5	101.0	102.5	110.0	516.0
Cash Flow from Operating Activities	$48.0	$50.5	$57.0	$63.0	$63.0	$281.5
Investing Activities						
Sale of Controlling Interest of Efwon Romania	150.0					
Total Cash Flow	$198.0	$50.5	$57.0	$63.0	$63.0	$281.5

DCF of Post Tax Cash Flow From Operations @15% R_d	$296
Guideline Precedent Transactions, Minority Int @ 49%	$196 to $294
Value of 49% Interest	$250 to $300; $275 midpoint value value

Pledged Real Property: During the ten-year period following the origination of the U.S. Lender Group loan, the value of the underlying real property likely doubled in value to $150 million. This assumes a 7% annual growth rate applied to the original appraised value of $75 million.

D. Current Issues

KuasaNas Transaction: The proposed KuasaNas transaction is a value maximizing transaction providing drivers and additional resources as well as needed liquidity in exchange for a 51% control interest in the team. A gating requirement to the transaction is resolution of all pending insolvency concerns stemming from the Driver Claimants' Litigation and the immediate maturity of the U.S. Lender Group Debt.

Pending Romanian Involuntary Insolvency: The two Romanian team drivers, who were injured during competition, allege the vehicle incidents resulted from improper safety and maintenance management. Efwon Group insists these claims are frivolous, citing rigorous and documented technical inspection conducted by team mechanics, drivers and racing officials prior to each event. The drivers have commenced litigation in Romania and have separately commenced at involuntary insolvency. This issue will be discussed in greater detail in subsequent sections.

Near-Term Maturity of U.S. Lender Group Debt: $250 million of debt issued by Maximov / Efwon Investments matures in approximately 90 days. Currently no recapitalization alternatives have been identified and there have been no successful discussions with U.S. Lender Group in connection with seeking and an extension of the maturity date.

Section II. Recommendation of Out of Court Restructuring

There is a simple overarching reality when considering the current situation. There are three categories of owners in Formula One which include 1) Manufacturer Owners (Ferrari, Mercedes, Renault, etc), 2) Affiliate teams, such as Red Bull which is fully supplied by Honda and 3) Independents which are generally owned by wealthy individuals and acquire engines and parts from various manufacturers. There are ten total Formula One teams and Efwon is one of only three of the highly sought after independently owned teams. The value of the FIA competition license in 2019 is incredibly high and likely greater than $500 million. Considering the facts set forth above, the KuasaNas transaction should reasonably provide the immediate liquidity and value needed to renegotiate the U.S. Lender Group debt and settle the Driver Claimants litigation. Sequencing of this approach is critical and should be carried out as follows.

Immediate Priority – Pending Romanian Insolvency Proceeding: The most time sensitive issue is resolution of the contingent and unliquidated Driver Claimants' claims at Efwon Romania. Lifting of the freezing injunction and withdrawal or dismissal of the Romanian involuntary insolvency is a matter of

great urgency. As a matter of Romanian insolvency law, there are fewer than ten days remaining to address this issue.

Based on the facts of the Driver Claimants' litigation, it appears significant challenges exist with their ability to commence a valid involuntary insolvency. Insolvency Act No 84/2014, Art. 72, requires petitioning creditors to supply the court with the "amount and basis" for the claim. To date there is no judgment in favor of the Driver Claimants and therefore no liquidated claim or 'amount.'[3] While 84/2014 does not specifically address alleged claims stemming from pending litigation, certain case law prohibits use of claims to initiate an involuntary insolvency where it is determined that 1) the debt has not reached maturity, or 2) the maturity of the debt cannot be determined.[4] We believe this case law supports the argument that a contingent, unliquidated claim is invalid for purposes of commencing an involuntary insolvency proceeding. Furthermore, unless or until such judgment is granted, it is unlikely Efwon Romania meets any applicable insolvency standard.

In our review of the Romanian proceedings, it was determined that the drivers, as petitioning creditors, have not yet funded any bonding requirement in connection with the involuntary insolvency. Prevailing law requires a petitioning creditor to post a bond in an amount equivalent to 10% of its claims against the debtor not to exceed 40,000 lei (approximately $10,000).[5]

It is our recommendation that Efwon Romania immediately appeal to the court with concerns that the petitioning creditors have acted in bad faith and, until a finding around dismissal of the case can be made, require the Driver Claimants to meet the bonding requirement based on their maximum alleged claims in the civil action (which will result in the maximum 40,000 lei per driver). Additionally, considering the magnitude of potential damages and value loss resulting from an involuntary insolvency, we recommend seeking a significantly higher bond on the basis that 40,000 LEI is woefully inadequate to bond against hundreds of millions of dollars of potential resulting loss.

U.S. Lender Group Amendment Discussions: Engage with U.S. Lender Group with the support of financial advisors. Based on the refreshed view of 1) the mortgaged real property values, 2) the liquidity generated by the 51% sale of the team to KuasaNas and 3) the value of the 49% retained ownership of

[3] According to the facts as presented in the case study, the outcome of the civil litigation is not determined and therefore pending, ('if they succeed,' pg. 4)

[4] The creditor cannot initiate the procedure either for a debt that has not reached maturity, nor for a debt whose maturity has not yet been determined, just as he cannot obtain the opening of the procedure for a claim for which his right to demand enforcement has been prescribed [*sic*]. *Galati Court of Appeal, Commercial, Maritime and River Section, Decision no. 674/11.12.2009, Annotated Insolvency Code (Romania).*

[5] Insolvency Act No 84/2014, Art. 72, Romania

the team and debt service capacity, there are several appealing alternatives available to recapitalize or amend and extend the current debt.

Consider for instance, at the time of the original issuance, Efwon Group had no income prospects and only $75 million of collateral (plus the $100 million of equity investment). Currently there is $!50 million of collateral value in the real property, approximately $150 million of additional liquidity generated from the sale of the controlling interest in the team (conservatively), a remaining interest in the team with a FMV of $275 million and accompanying cash flow to service debt. The unfavorable events are limited to the Romania Driver Claimants' litigation and the $100 million of Monaco Lender Debt at Efwon Trading which is likely structurally senior to U.S. Lender Group (Monaco Lender has an ability to trap funds at Efwon Trading before they can be up-streamed to Efwon Investments).

We recommend opening the discussion with U.S. Lender Group with a proposal including the following terms:

1) Principal Reduction - Immediate payment of $60 million from the proceeds of the sale of the 51% interest with the intent of paying off the mezzanine participants,
2) Pricing - offer an increase in pricing from L+200 to L+400',
3) Security Interest – Grant a first lien on all assets of Efwon Investments and a junior lien to Monaco Lender in all assets at Efwon Trading
4) Maturity – Two years with an agreement to retain an investment banker on the one-year anniversary to identify refinancing alternatives,
5) Efwon Trading Recap – An agreement to retain an investment banker to refinance the Monaco Lender obligation with junior capital and thereafter provide a first lien on Efwon Trading and all subsidiaries.
6) Monaco Lender – Propose consent of $51 million payment of Monaco Lender obligation in anticipation of it being required. Noting the reduction of Monaco Lender debt results in a dollar-for-dollar reduction of its structural subordination.
7) Real Property Collateral - The appreciated residential real property will continue to serve as collateral, providing approximately 75% asset coverage alone.
8) Driver Claimants - Acknowledgement that an undetermined amount of liquidity will be required as part of a necessary settlement with the Driver Claimants.

<u>Monaco Lender Amendment Discussions</u>: Engage with Monaco Lender with the support of financial advisors. While there is no near-term maturity, it is likely the credit agreement will require a principal reduction resulting from the sale of the 51% interest in the team. We recommend approaching Monaco Lender with the following initial terms:

1) Principal Reduction - $55 million principal reduction paid from sale proceeds,
2) Efwon Trading Recap – An agreement to retain an investment banker to refinance the Monaco Lender obligation.
3) U.S. Lender Group – $60 million from sale proceeds will be used to reduce the principal balance of U.S. Lender Group. Discuss willingness to subordinate to U.S. Lender Group at Efwon Trading. While unlikely, an agreement to do so obviates the need to refinance and may be attractive to them under certain conditions.
4) Driver Claimants - Acknowledgement that an undetermined amount of liquidity will be required as part of a necessary settlement with the Driver Claimants. This will not impact the $55 million principal reduction but will likely be paid from sale proceeds.

Romanian Driver Claimants Settlement Discussions: Care must be taken when approaching the Romanian Driver Claimants. On one hand, they must believe that satisfactory liquidity is available to fund a settlement if agreed upon, but at the same time not allowing them to believe they have leverage over the KuasaNas Transaction. The benefit stemming from any settlement within a range of reasonableness warrants a premium if needed to resolve the litigation.

We recommend an agreement directly between Maximov and the Driver Claimants as Maximov is the only credible source of recovery absent knowledge of the KuasaNas transaction. Once a settlement is reached, the settlement will be funded by Maximov who in turn will be reimbursed immediately at closing from sale proceeds. While it's believed these claims can be settled for $5 to $10 million, Maximov should prepare and make bridging liquidity available for up to $25 million to fund any contingencies.

A Restructuring Support Agreement should be executed by U.S. Lender Group, Monaco Lender, KuasaNas and Maximov.

Section III. Contingency I Analysis - U.S. Chapter 11 Alternatives

In case an out of court restructuring proves unsuccessful, it is important to assess formal insolvency proceedings across systems available to Maximov and the various Efwon Group entities.

The Chapter 11 process is widely available to most all entities, regardless of domicile, as long as they have modest assets in the U.S. A treatise on foreign entities seeking protection under Chapter 11 of

the U.S. Bankruptcy code is found in the Hon. Letitia Clark's opinion on venue in the Yukos case[6]. In that opinion she writes:

For a foreign corporation to qualify as a debtor under 11 U.S.C. § 109(a), courts have required that nominal amounts of property be located in the United States. The courts have noted that there is "virtually no formal barrier" to having federal courts adjudicate foreign debtors' bankruptcy proceedings. In re Globo Comunicacoes E Participacoes S.A., 317 B.R. 235, 2004 WL 2624866, (S.D.N.Y. 2004), citing In re Aerovias Nacionales de Colombia S.A. (In re Avianca), 303 B.R. 1 (Bankr.S.D.N.Y. 2003); In re Global Ocean Carriers, Ltd., 251 B.R. 31 (Bankr.D.Del. 2000). Misamore [the debtor's Chief Financial Officer] testified that he for years has maintained a home in Houston, Texas, and has also resided in Moscow, Russia. He testified that he presently remains in the United States because he has been advised that he would be in danger of arrest if he were to return to Russia. The court concludes, based on the testimony of Misamore, that Debtor maintains significant assets in the Southern District of Texas, and that Debtor has standing to be a debtor under Chapter 11 of the Bankruptcy Code. The court finds the testimony of Misamore credible. The court concludes that the instant case was properly commenced. Thus, the court concludes that it has jurisdiction with respect to the instant Chapter 11 case. The court concludes that venue of the instant Chapter 11 case is proper, in light of the presence within the Southern District of Texas of Debtor's principal assets located in the United States.

Each member of the Efwon Group could, in good faith, commence a Chapter 11 proceeding in the U.S. by transferring a modest sum of currency to a U.S. bank account or funding a retainer into a U.S. law firm retainer account. Ideally any monies transferred into the U.S. on behalf of the subsidiaries should be transferred into an account which can be geographically connected to the desired U.S. venue (eg, Southern District of New York, District of Delaware, or Southern District of Texas). In the case of Efwon Romania, where assets are subject to the freezing injunction, cash could be funded by another entity on behalf of Efwon Romania.

A. Limitations Created by Efwon Romania

Ultimately, in a hypothetical Chapter 11 filing by or inclusive of Efwon Romania, it should be expected that the Government of Romania and the Driver Claimants will seek dismissal. Significantly, the Government of Romania will have tax claims against Efwon Romania which are not subject to the jurisdiction of a U.S. court. Yukos provides a comprehensive set of considerations including the Act of

[6] 321 B.R. 396 (Bankr. S.D. Tex. 2005)

State Doctrine.[7] The Act of State Doctrine establishes prohibitions on adjudicating matters of a foreign sovereign state. The Act of State Doctrine would likely be considered by a U.S. bankruptcy court in response to a dismissal motion as a U.S. bankruptcy court would be limited in its ability to rule and enforce orders in connection with taxes assessed by the Government of Romania as well as applying the automatic stay to the freezing injunction ordered by the Romanian courts.

The filing of a Chapter 11 will ultimately become a *forum non conveniens* issue whereby the bankruptcy court will exercise it discretionary powers to decline to exercise its jurisdiction where another court, or forum, may more conveniently hear a case.[8] Two factors are consider including the Balancing Test and the Adequate Alternative Test. In a hypothetical Efwon Romania filing, collection of evidence and enforceability are more conveniently managed under the powers of a Romanian court than by a U.S. Court. Secondly, the Romanian bankruptcy court is an adequate alternative to the U.S. court.[9]

In consideration of the above, a consolidated Chapter 11 case file in the U.S. is not viable.

B. Protective Chapter 11 Cases for Maximov and/or Efwon Investments.

It is unclear and a matter of continuing review if Maximov or Efwon Investments are borrowers under the terms of the U.S. Lender Group credit agreement. Maximov is a U.S. citizen and Efwon Investments is domiciled in Delaware. Each has unquestionable access to the U.S. Chapter 11 system.

It is very common for U.S. Chapter 11 cases involving debtors with foreign subsidiaries to only subject the U.S. entities to in-court processes, with the foreign subsidiaries treated as non-debtor affiliates.[10] There are certain scenarios wherein filing of Efwon Investments of personally of Maximov may be considered.

Scenario 1 – Resolution of Driver Claimant's Litigation / No Resolution of U.S. Lender Group Maturity Issue: In this scenario a tremendous amount of value exists in the foreign subsidiaries, but that value is compromised by an inability to resolve the loan maturity issue. If Efwon Investments is determined to be the borrower under the credit agreement, a Chapter 11 process could be used to stay any equity foreclosure and provide a controlled forum for resolving the issue and preserving the value of the

[7] In re Banco National de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964), citing Underhill v. Hernandez, 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897)
[8] https://www.law.cornell.edu/wex/forum_non_conveniens
[9] See also 11 U.S. Code § 305 - Abstention
[10] Note my advisory practice is largely focused on energy chapter 11s with extensive global footprints. Filing of foreign subsidiaries is infrequent.

Formula One team. If it is ultimately determined that the value available to satisfy the U.S. Lender Group claim is greater than $250 million, they would not be deemed impaired and could be 'crammed up' as part of a restructuring plan. Given the lapse of the maturity, Efwon Investments would likely fall back on the Indubitable equivalency provisions of 1129(b)(2)(A).[11] If in fact there is value from the Formula One License, a viable purchaser of the license, significant future cash flow and $150 million of pledged real property, satisfying the indubitable equivalency requirement of 1129(b)(2)(A) should be achievable.

Alternatively, Maximov may benefit from an individual Chapter 11 filing as a protective measure against the banks' remedies involving the real property. In evaluating this alternative, more information is needed to understand Maximov's overall financial position, including details of all significant assets and liabilities. Without a greater understanding of his other loans and available assets the benefits of any individual Chapter 11 case are difficult to evaluate.

C. Efwon Trading – Chapter 11 Considerations

Applying the same limitations discussed above regarding Efwon Romania, Efwon Trading may also find limited utility in a U.S. Chapter 11. Efwon Trading is an English domiciled company subject to the laws of England and Wales. Efwon Trading could easily meet the requirements of 11 U.S.C. § 109(a) by establishing and funding an account with a U.S. bank. As seen in the Yukos U.S. Chapter 11 matter and previously discussed, however, a U.S. court could ultimately exercise its discretion to abstain based on the location of witnesses, evidence, etc., and availability of an appropriate alternative court.

Efwon Trading would likely only benefit from an in-court process in a scenario where an event of default is triggered with Monaco Lender resulting from a collapse of settlement efforts at Efwon Romania. Without it's COMI based in the United States, it's unlikely the Chapter 11 case, including the automatic stay, would be recognized in England or Romania. Enforceability of any relief provided by Chapter 11 would be difficult. Problems arise from the beginning of the proceeding with issues enforcing the automatic stay, through the end of the proceeding with a likely inability to confirm and effectuate a plan. While an in-court process may benefit Efwon Trading in some scenarios, a U.S. bankruptcy court is not the recommended forum.

[11] *In re Sparks*, 171 B.R. 860, 866 (Bankr. N.D. Ill. 1994) (a plan provides the indubitable equivalent of a claim to the creditor where it "(1) provides the creditor with the present value of its claim, and (2) insures the safety of its principle")

Section IV. Contingency II Analysis - England Alternatives

The U.S. Chapter 11 is a one size fits all bankruptcy system, whereas England[12] has several available alternatives. The laws addressing Insolvency in England, like the laws of the United States, unlikely provide an effective system for comprehensively addressing all issues facing Maximov and Efwon Group. As set forth below and in following sections, it could have utility for addressing issues at Efwon Romania and Efwon Trading, which potentially obviates the need for an in-court process for Maximov and Efwon Investments.

A. English Restructuring Alternatives

England offers three alternatives worthy of discussion which include the Company Voluntary Arrangement, Scheme of Arrangement and the Restructuring Plan.

Company Voluntary Arrangement ("CVA")[13]: The CVA is a minimally invasive restructuring mechanism allowing the officers and directors to maintain control of the business in situations where the intent is to stabilize the company through a compromise of unsecured claims. This is accomplished by proposing an arrangement to unsecured creditors that demonstrates a favorable outcome produced by the arrangement when compared to liquidation. If more than 75% of creditors by value and 50% by number approve the arrangement, all unsecured creditors are bound by its terms.

CVAs stem from an early evolution of the modern restructuring options available in England. They lack the critically important functionality required with modern capital structures to provide a debtor with the binding ability to compromise the claims of secured creditors. CVAs are ideal for retailers compromising large numbers of landlord rent obligations, but otherwise have limited utility for large companies with complex capital structures.[14] Additionally, CVAs lack any statutory moratorium which is often critical for a financially distressed business. The CVA is not a viable alternative for Efwon Trading as 1) it fails to provide a mechanism to address the secured claims of Monaco Lender and, in the context of Efwon Romania, it provides no moratorium or stay against the freezing injunction and Driver Claimant litigation.

[12] England and Wales share a common legal system and law governing bankruptcy and insolvency. For efficiency, this section will reference England with the understanding Efwon Trading is subject to the laws of England and Wales.

[13] Insolvency Act 1986

[14] An exception, CVAs can be very useful in global restructurings when used in concert with parallel in court restructurings; Abenoa for instance used a CVA parallel to a US Chapter 11, US Chapter 15 and a Spanish Homologacion.

Scheme of Arrangement[15]: A more commonly sought after tool for corporate resurrection is the Scheme of Arrangement. A Scheme of arrangement involves minimal interaction of the courts. It stems not from the Insolvency Act, but instead the Companies Act, and is available to both solvent and insolvent debtors like the U.S. Chapter 11. Broadly speaking, schemes are the most widely known and understood tool for effectuating global restructurings. The Scheme of Arrangement is also an effective tool for structuring international transactions where the target company is a subject to English law.[16]

The Scheme of Arrangement does however lack two important features that often limit its use in situations of litigation or actively hostile creditors. First, the Scheme of Arrangement lacks a moratorium or stay protecting the debtor from collection efforts undertaken by creditors. Because it lacks a moratorium the Scheme of Arrangement is sometimes the second of a two-part process following Administration. This allows for the debtor to prepare the scheme while benefiting from the moratorium provisions of administration. Secondly, the Scheme of Arrangement lacks cross-class cram-down provisions which are often critical to the successful restructuring of a debtor with hostile creditors. A debtor can, however, cram down individual creditors within an accepting class if more than 75% of claims by value within the class vote in favor.

Restructuring Plan (RP)[17]: The Restructuring Plan is a modified Scheme of Arrangement which was designed to cure the limitations of Part 26 by addressing the cross-class cram-down issues. The RP excludes out-of-the-money creditors from the voting process thus stripping away any disruption caused by shareholders or other hostile deeply subordinated creditors. The requirements for reorganizing under an RP are more restrictive than a Part 26 Scheme of Arrangement.

To qualify for a RP, a company must meet both of the following two criteria: 1) the company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern, and 2) the arrangement is one between the company and any classes of creditors or shareholders, with the purpose of mitigating the aforementioned financial difficulties affecting 'its ability to carry on business as a going concern.'

[15] Companies Act 2006, Part 26

[16] By way of example, NASDAQ listed OpenText acquired the shares of MicroFocus (LSE listed) in a $6.0 billion transaction by means of a scheme of arrangement and not subject to the tender offer rules or proxy solicitation rules under the U.S. Exchange Act (Aug 2022); Micro Focus Int plc - Rule 2.9 Announcement

[17] Companies Act 2006, Part 26A; enacted in June 2020 but included for completeness considering proximity to case study. Concepts provided in this legislation were known and anticipated at the time of the case, with enactment accelerated in response to the global economic impacts of COVID-19.

An additional wrinkle exists with the RP as it relates for foreign recognition. Thie High Court (in Re. GateGroup Guarantee Ltd)[18] determined the RP to be an insolvency proceeding unlike the traditional Part 26 Scheme of Arrangement. As an insolvency proceeding, there are limitations complicating recognition of the RP in a foreign jurisdiction. As discussed in later sections, Brexit will further complicate foreign recognition of RPs.

Scheme Sanctioning Requirements - Forum Non Conveniens Revisited: The issue of abstention was raised above in connection with 11 U.S. Code § 305 and the likely abstention and dismissal of Efwon Romania. There are similar issues in England whereby courts may refrain from sanctioning a scheme of arrangement if a foreign debtor has no 'Sufficient Connection' to England or if determined the scheme of arrangement will have no 'Substantial Effect' because of lack of enforceability in a foreign state.

1) Sufficient Connection is a critical hurdle to clear for foreign debtors seeking to use a scheme of arrangement, however it is widely used by foreign debtors and the thresholds are well established.[19] Often times, such as in the Rodenstock GmbH matter, choice of English law and exclusive jurisdiction in a credit agreement is sufficient to establish sufficient connection.[20] Generally speaking, "sufficient connection" is established by a company having assets located in England, having its COMI (or qualifying to have its COMI) in England or, lastly, having loan documents governed under English law.
2) Substantial Effect: To sanction a scheme of arrangement, the court will require satisfactory assurance that the arrangement will be enforced in relevant foreign jurisdictions. This is often a litigated point, such as in the DTEK matter, but with 95% creditor support the court was satisfied that the arrangement would in fact have a substantial effect. When evaluating factors required to sanction a scheme, a court will find that a scheme without enforceability is a scheme without purpose. In such an instance, a court will likely determine the scheme should not be sanctioned.

B. Utility of Schemes for Efwon Group

The analysis of the CVA, Scheme and RP are essential to evaluating the utility of English restructuring tools to address the Efwon Group's insolvency issues and if they can be addressed such that KuasaNas

[18] 2021 EWHC 304 (Ch)
[19] Rodenstock GmbH [2011] EWHC 1104 (Ch), In the matter of Tele Columbus GmbH [2010] and Re La Seda De Barcelona SA [2010] EWHC 1364 (Ch)
[20] Ibid.

will agree to transact. Because of several issues, most notably the presence of secured debt, the CVA is not a viable solution.

The scheme, including the RP, would be available to Efwon Trading, but that alone could not solve the problem of group insolvency. Even if Efwon Investments could overcome the burdens of Sufficient Connection, it is unlikely U.S. Lender Group would submit to the jurisdiction of an English bankruptcy court. Additionally, without support from U.S. Lender Group, the burden of Substantial Effect could not be achieved. Also, U.S. Lender Group as a single class of an Efwon Investments Scheme (and largely the only creditor) would make it impossible to sanction a scheme over their objection. However, if a scheme provided a unique ability to contain liability at Efwon Romania during the pending litigation, and if a common forum facilitated negotiations between U.S Lender Group, Monaco Lender and the Driver Claimants (and potentially KuasaNas), U.S. Lender Group may be compelled to consent and support a scheme.

The ultimate problem becomes the same as that which existed in Section III above. The gating issue an any resolution of insolvency must address the litigation issues, including the freezing injunction, at Efwon Romania. All the value of Efwon group resides in Efwon Romania and all of the assets sought by KuasaNas are housed by that same entity. The establishment of COMI in England, if even possible, will not overcome the burden of Substantial Effect. Even with a two-part scheme beginning with Administration, the moratorium would unlikely stay the litigation at Efwon Romania. The KuasaNas transaction would fall through long before the litigation could be resolved. Furthermore, without the consent of the Driver Litigants to unfreeze the assets, the 2020 season would be lost resulting in massive losses across the Group. The schemes and administration lack teeth needed to resolve the freezing injunction. As such, they are not effective for providing the quick resolution of the Driver Claimant litigation and lack the speed required to resurrect the KuasaNas transaction. The use of a scheme likely only makes sense as part of a global multi-forum restructuring and only then if required to place a moratorium (alongside an administration) to resolve any currently unknown issues with Monaco Lender. In this instance, because a court will not sanction a scheme without Monaco Lenders consent, an administration would be required for moratorium purposes while efforts are made to reach agreement. Again, this becomes a speed issue and likely not optimal for resurrecting the KuasaNas transaction.

SectionI V – Impacts of Brexit

It is anticipated that the U.K. will formally withdraw from the European Union on January 31, 2020. A as result of Brexit, the U.K. will no longer enjoy the benefits of the EU Insolvency Regulation 2015 (EIR) including that of automatic recognition. Relevant to Efwon Romania, the EIR provided aa conduit between Romania and the U.K. that will be lost when Brexit goes effective next month. Looking prospectively, it is significant that the U.K. has implemented UNCITRAL Model Law ("Model Law") via the Cross-Border Insolvency Regulations 2006 (SI 2006/1030)(CIBR). For formal U.K. insolvencies including Administration, CVAs, and following the GateGroup ruling, RPs, U.K. proceedings will have benefits like those available under EIR with other countries which have adopted Model Law. While Efwon Romania lost its connection with the U.K. provided by the EIR, because Romania adopted Model Law in 2002 a similar connection remains. Model Law is not a fulsome substitute for the benefits provided by the EIR, for instance automatic recognition now requires an application with the foreign court, but Model Law does provide a clunky but functional alternative. If a U.K. fashioned formal insolvency (administration, CVA or RP post GateGroup) or a Romanian Insolvency is to occur post-Brexit, recognition issues and oversight will remain relatively unchanged.

Additionally, with the passing of Brexit will also come the passing of benefits provided by the Brussels Recast Regulation and the Lugano Convention until any future accession.[21] For schemes, including a formal Scheme of Arrangement and the RP (pre GateGroup), there is no recognition benefit provided by Model Law and, therefore, the passing of the Brussels Recast Regulation and the Lugano Convention are significant. However, as Model Law provides a 'clunky' but functional alternative, so too does the Hague Convention for schemes. It is anticipated that immediately post-Brexit the U.K. will successfully accede to the Hague Convention.

Additionally, with the upcoming adoption by Romania of the EU Directive on Restructuring and Insolvency 2019/1023 (the "Directive"), it is worth addressing the impact of Brexit cross-border recognition of schemes under various preventative frameworks. The Directive makes mandatory that EU member states provide a framework, generally synonymous with a scheme, to help avoid insolvencies across Europe by allowing for an alternative like the U.K. Scheme of Arrangement. This directive is significant as many member countries currently lack available legislative protections providing the ability to restructure. Instead, absent such law, financially challenged businesses are often left with wind-down / liquidation as an only option.

[21] Accession to the Lugano Convention requires consent of all EU member states excluding Denmark. The U.K. request for Accession to the Lugano Convention is ultimately denied.

Romania, unlike many EU member countries, developed a set of laws as part of its Insolvency Act No 85/2014 discussed in Section II. Chapter III of 85/2014, "The Preventative Agreement," provides a compliant framework and therefore requires little legislative action in response to the Directive. Additionally, while, the U.K. will no longer be subject to the mandates of the Directive as a result of Brexit (noting the Directive falls under the EIR addressed above), the U.K. already provides troubled companies with the preventative Scheme of Arrangement. Ultimately, Brexit will have no impact on any contingent Romanian / U.K. cross-border scheme under the Directive for two reasons: 1) both Romania and the U.K. have pre-existing preventative frameworks / schemes, and 2) the loss of assured recognition resulting from Brexit's impact of the EIR for the U.K. is mitigated by the Hague Convention.

Because the issues at Efwon Romania are immediate and of great consequence, and for the reasons explained in Section II, the impact of Brexit on an Efwon Group restructuring and the KuasaNas transaction are inconsequential. Furthermore, if for some reason it is ultimately determined that a formal insolvency is required, Romania, the U.K. and the United States have each adopted Model Law and foreign recognition issues should be relatively unchanged. Alternatively, if a Scheme is required the Hague Convention will serve as a meaningful substitute to the Lugano Convention once formal accession of the U.K. is complete.

In summary, Brexit will have no substantive impact on the proposed immediate out-of-court restructuring or any contingent plans which may involve schemes or formal in-court restructuring.

SectionI VI – Recommendations and Alternative

The panacea for resolving the issues facing Maximov and the Efwon Group is the KuasaNas Transaction. The KuasaNas transaction provides the best outcome for all creditors, yet to consummate the transaction the insolvency issues must first, or contemporaneously, be resolved. Model Law and/or the Hague Convention provide recognition vehicles among all the Efwon Group companies, but recognition is not the gating issue.

The first question one must consider is how to most quickly address the Driver Claimant litigation in Romania in a manner having a high probability of success. To date we are unaware of any additional litigation or claims facing Efwon Romania. Resolution of the Driver Claimant issues, including the freezing injunction and pending involuntary insolvency, unlocks tremendous value for creditors across the enterprise. Because there is only one creditor when considering the drivers collectively, the time

and cost of an insolvency or Preventative Agreement[22] under the Directive is not warranted until after an attempt to resolve the issue out of court (see recommendations in Section II). For reasons discussed throughout this memorandum relating to Romanian courts or the Driver Claimants submitting to U.S. or U.K jurisdiction, either through model law or the Hague Convention, any scheme or insolvency that Efwon Group may require should commence under Romanian law in Romania. With the value stemming from the pending KuasaNas transaction, in a hypothetical where the Driver Claimants' claims are liquidated, a moratorium under the Romanian Preventative Agreement would be a preferred path.[23] It avoids the sanctioning requirements of a U.K. scheme which would be difficult to satisfy and it eliminations any concerns around Romanian recognition, which is no longer automatic as it was under the Lugano Convention.

With respect to the U.S. Lender Group debt, if because of internal disagreement they are unable to consent to an amendment, a U.S. Chapter 11 is the only practical forum for restructuring that debt. It is possible that parallel restructurings may require a Chapter 15 for recognition of a Romanian Case alongside a Chapter 11 for restructuring of the U.S. Lender Group Debt, similar to the aforementioned Abenoa case. The complicating factor, practically speaking, is convincing KuasaNas to participate in multiple international processes as may be needed to confirm or sanction a plan or scheme.

In summary, we recommend immediate out of court discussions with all constituents with a focus on immediate resolution of the Driver Claimant's claims, freezing injunction and pending involuntary insolvency in Romania. As the KuasaNas transaction unlocks up to $500 million in value, resolution of these claims should be achievable. If more time is required, we recommend a toggle to a Romanian Preventative agreement under Chapter Three of the Romanian code. It circumvents recognition issues and most likely stays the freezing injunction and involuntary insolvency. Lastly, while unlikely, if required a Chapter 11 filing to restructure the U.S. Lender Group debt. With the benefits of Model Law, the Hague Convention and other forms of private international law, recognition across Romania, the U.K. and the U.S. should be achievable if later determined necessary.

These recommendations are based on information provided by client Benedict Maximov and public records. The recommendations included herein are subject to change as new information is provided.

[22] Chapter III of 85/2014, Romania

[23] Ibid., Art. 25 provides for 'provisional suspension of forced prosecutions' which it the Romanian equivalent of a Moratorium.