INSOL International GIPC: Case Study II

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August 2023

1. Summary of Facts

1.1. Efwon Delaware and U.S. Bank Loan

In 2010, Benedict Maximov ("Maximov") created Efwon Investments ("Efwon Delaware"), a Delaware company, and capitalized it with $350 million, consisting of (i) a $100 million equity capital investment (from Maximov) and (ii) a $250 million syndicated bank loan with a 10-year maturity (the "U.S. Bank Loan"). The U.S. Bank Loan consists of three separate tranches provided by 9 different lenders (the "U.S. Lenders"): (x) a $100 million senior loan (2 banks), (y) a $60 million mezzanine loan (2 financial creditors), and (z) a $90 million junior loan (5 financial creditors). The U.S. Bank Loan is secured by (a) several homes, valued at approximately $75 million, owned by Maximov around the world, (b) a pledge of revenue from the investment, and (c) a pledge over Maximov's shares in Efwon Delaware. In addition, Efwon Delaware granted a negative pledge for the entire value of the loan.

1.2. Efwon EW and Delaware/EW Loan

Maximov then created a second company under the law of England and Wales, Efwon Trading ("Efwon EW"). Efwon Delaware made a loan to Efwon EW of its entire $350 million (the "Delaware/EW Loan"), secured by future revenue from Efown EW's trading activities.

1.3. Efwon Romania, EW/Romania Loan, and F1 Team

Later that year, Efwon EW created Efwon Romania and loaned Efwon Romania $150 million (the "EW/Romania Loan"), secured by broadcast revenue. Efwon Romania used $50 million of the EW/Romania Loan to acquire an existing F1 team in Romania (the "F1 Team") and the remaining $100 million for working capital. The EW/Romania Loan was increased to $250 million in 2012, although Efwon Romania paid down some of it later that year. Efwon EW used those loan repayments to pay down partially the Delaware/EW Loan. In 2013, Efwon EW loaned Efwon Romania an additional $100 million under the EW/Romania Loan.

1.4. EW Monaco Loan

In 2013, Efwon EW obtained a $100 million loan ("EW Monaco Loan"), secured by its revenues, from a lender based in Monaco (the "Monegasque Lender"), with a view to advancing money to Efwon Romania. The EW Monaco Loan has a high interest rate. We assume Efwon EW advanced that money to Efwon Romania via capital contribution, but we will need confirmation on this point, as it is unclear from the facts provided.

1.5. Efwon HK and HK Kretek Sponsorship

In 2013, Efwon EW created Efwon Hong Kong ("Efwon HK") to deal with potential sponsors. That same year, Efwon HK signed an agreement with Kreten, an Indonesian company, for an exclusive sponsorship ("HK Kretek Sponsorship") starting in 2015 and lasting 5 years. The HK Kretek Sponsorship is worth an estimated $100 million annually.

1.6. Early Performance

The company performed well in 2015-2017, which enabled (i) Efwon Romania to make additional payments to Efwon EW on the EW/Romania Loan and (ii) Efwon EW to make additional payments to Efwon Delaware on the Delaware/EW Loan. A substantial amount of the profits was also reinvested into the company.

1.7. End of KH Kretek Sponsorship and Potential KuasaNas Malaysia Investment

At the end of 2017, Kretek informally told the company that it had doubts about renewing the HK Kretek Sponsorship in 2020, which led Efwon HK to start searching for a replacement sponsor. In early 2018, Efwon HK began discussions with KuasaNas, a Malaysian state company, regarding an investment that could provide the company in excess of $200 million annually. As a condition to such funding, KuasaNas has demanded a majority stake (51%) in the F1 Team and that the F1 Team move to Malaysia. Such a move to Malaysia was supposed to help lead to a deal to use the Sepang GP racetrack for practice and training purposes and engage and train new drivers sufficiently qualified to be able to obtain Super Licenses.

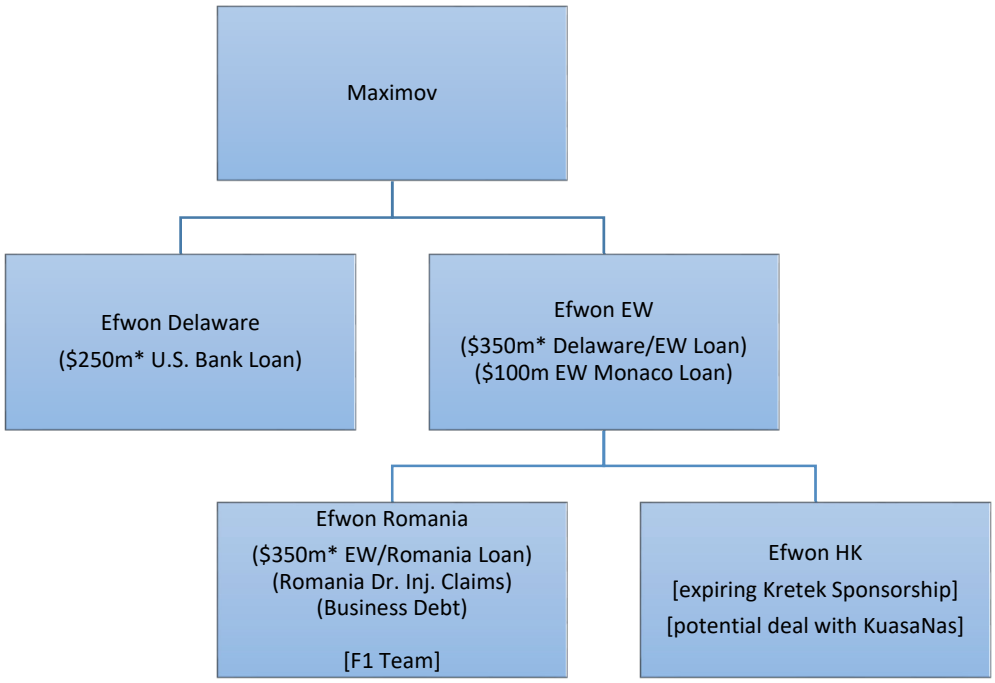
1.8. Romanian Driver Injuries and Efwon Romania Insolvency

While the company was waiting for the Malaysian government to approve the KuasaNas investment, the Romanian drivers (the "Romanian Drivers") were injured in the last race of the 2018 season. They brought claims against Efwon Romania before the Romanian courts (the "Romanian Driver Injury Claims"), asserting defects in safety and management. We have been advised that they will likely be awarded substantial damages if they prevail. The lawyers for the Romanian Drivers filed for the insolvency of Efwon Romania and obtained freezing injunctions over the company's assets and income. As a result, Efwon Romania will default on the payments it owes Efwon EW on the EW/Romania Loan that are due in early 2019. That, in turn, will cause Efwon EW to default on its payments to Efwon Delaware.

1.9. Company Insolvency Issues

The U.S. Lenders are concerned with the situation and are considering proceedings to foreclose on the collateral provided by Maximov. Maximov is considering how to protect himself and Efwon Delaware, including a potential chapter 11 filing. Efwon EW is also at risk of insolvency and will be unable to meet its repayment obligations, including on the EW Monaco Loan. This could lead to or require proceedings in the United Kingdom. KuasaNas has recently stated that, assuming its investment in the company passes government review, it will condition the investment on the company dealing with its insolvency issues promptly.

1.10. Corporate Organizational Chart



* partially repaid

2. Purpose of Memorandum

The purpose of this memorandum is to provide advice to Maximov regarding how to facilitate a deal with KuasaNas, particularly how to address the insolvency issues affecting the companies in the Efwon group. This memorandum addresses:

a) My proposed strategy for dealing with the group
b) Whether one or more insolvency proceedings are required
c) Where those proceedings will take place
d) What impediments exist to those proceedings
e) What advantages/disadvantages may exist in relation to those proceedings
f) The factors that allow me to determine the above
g) Further facts and information needed to answer the question
h) The application of the European Insolvency Regulation and/or UNICTRAL Model Law in achieving this
i) In particular, how the provisions of these texts may assist or impede the proposed strategy
j) The effect of Brexit (which occurred in December 2019) on this strategy

In January 2020, Romania fully implemented the European Directive 2019/1023 on preventive restructuring frameworks. As a result, Romania counts on a full out of court/hybrid procedure to deal with financially-distressed but viable businesses.

3. Initial Assessment and Summary of Conclusion

Efwon Romania owns the F1 Team, which is the principal asset of the Efwon group. Without access to the value of that one asset, including sponsorship opportunities, it is unlikely that any of the other entities in the Efwon enterprise will be able to pay its debts. The U.S. Lenders will then likely seek to foreclose on their collateral, including the collateral provided by Maximov. It is important, therefore, to protect the F1 Team – ensure creditors do not take action against it and that it continues operating as a going concern.

The number of jurisdictions involved in the situation presents a number of options for how to accomplish the restructuring. We must keep in mind that the processes we choose to utilize are just tools for implementing a deal. While those tools may provide us leverage to convince creditors to make concessions, any successful restructuring ultimately requires deals with at least a subset of creditors, particularly if Maximov seeks to retain an interest.

The following is my recommended path:

- Ensure the KuasaNas is the best new investment opportunity available to the company.
- Negotiate with creditors to try to reach an out-of-court deal that obviates the need for any formal restructuring process. The deals with creditors can involve an extension of their debts, perhaps a haircut (debt rreduction), or even a partial debt-for-equity swap, although we do not want to give up too much of the equity interest, as Maximov seeks to retain a large interest in the company.
- Maximov needs to consider whether he is willing to put new money into the company to retain as large an interest as possible and on what terms.
- Even while we negotiate with creditors, we must engage in contingency planning to be ready to file each of the companies immediately before any third party creditors take action.
- Prepare a chapter 11 filing for Efwon Delaware, an English proceeding (likely a Restructuring Plan) for Efwon EW, and a Romanian proceeding for Efwon Romania. We may not need all of them, depending on creditor negotiations, but we do not yet know the fruits of those dicussions. As discussed below, we considered several different options of which jurisdictions might be optimal for an insolvency filing for these entities, including filing them all in the same jurisdiction (such as a U.S. chapter 11 case). However, in this case, we conclude that it is both simpler and likely just as effective to use each company's home jurisdiction. This avoids having to shift certain of the entities' centers of main interest ("COMI") and obviates the need for ancillary proceedings.

4. Detailed Analysis of Options

This recommendation is based on a detailed analysis of the company's options set forth below.

4.1. Seek Better Deal than KuasaNas

We are fortunate to have already located a new investor, KuasaNas. Before agreeing to the KuasaNas deal, however, the company should confirm that (i) no other investor is willing to provide an investment more favorable than KuasaNas and (ii) KuasaNas is unwilling to accept better terms. It is at least possible that other potential investors rejected the investment

opportunity because of Efwon's financial situation and may be interested in an investment in a restructured Efwon. Therefore, in connection with any of the restructuring paths below, the company should determine (though an investment banker or otherwise) whether there is another investor that might be willing to invest on better terms to the company. It would be preferable, for example, that the investment not require a majority stake in the F1 Team.

4.2. Out-of-Court Restructuring

The company should try to reach an out-of-court deal with the creditors without needing to resort to any formal insolvency proceedings. This would be cheaper and more predictable. It is also potentially achievable, as there is a manageable number of creditors here, not dozens or hundreds of lenders or noteholders.

In the first instance, given that they were the drivers (no pun intended) of the insolvency process, the company should try to negotiate a settlement with the Romanian Drivers to resolve the Romanian Driver Claims. Our Romanian counsel has informed us that the Romanian Drivers may obtain substantial damage claims if they prevail in their lawsuits, but there is currently uncertainty for both parties on the outcome of that lawsuit. Even if they do prevail, they face the prospect of a diminished recovery due to EW Romania's financial position. In light of the foregoing, we should try to convince the Romanian Drivers that they will recover more in a negotiated settlement than through a liquidation or insolvency proceeding.

The company has different options for paying the Romanian Drivers in a restructuring, including: (i) a lump sum cash payment, which will likely have to be provided by one of the other Efwon entities if they have any cash, by Maximov, or through a portion of the KuasaNas investment (if any of the funding is being injected immediately), (ii) cash over time paid from revenues from the F1 Team, or (iii) perhaps most interestingly, an equity investment in Efwon Romania. As the second and third options impact the company's operations going forward, they would have to be negotiated in connection with an agreement with KuasaNas. For example, a commercial transaction might involve the creation of new Malaysian entity, potentially called KuaWon, to which the F1 Team would be transferred. It could be owned 51% by KuasaNas (unless a better deal can be reached), with the remaining 49% to be owned partially by Efwon Romania and partially by the Romanian Drivers.

The company will have to prepare a careful financial analysis of any commercial transaction to ensure it is feasible based on a conservative view of the company's performance over the next 3-5 years. For example, the illustrative transaction will only work if the revenues that KuaWon pays to Efwon Romania on its interests in KuaWon via dividends are sufficient to pay the EW/Romania Loan and through that to pay the EW Monacan Loan, the Delaware/EW Loan, and the U.S. Bank Loan, unless some of those loans can be restructured, as described below. Given the risky nature of the Formula 1 business, as the last 10 years have demonstrated, and the recent events relating to Covid-19 have further highlighted, some cushion should be built in for uncertainty.

If the proceeds are insufficient, Mr. Maximov can consider curing any deficiencies by agreeing to make up the difference. Because, however, his personal assets at stake are worth only $75 million, he may be reluctant to put more money in the business unless he sees a substantial

prospect of value beyond all the debts. As such, an agreement would have to be reached with (i) the Monegasque Lenders and (ii) the U.S. Lenders to avoid defaults and to prevent the U.S. Lenders from seizing Mr. Maximov's assets. The Monegasque Lender might be most willing to agree to such a deal as its other options are limited. Specifically its only recourse is to Efwon EW's revenues, which are non-existent except to the extent EW Romania is solvent and makes dividends or payments on the EW/Romania Loan. The Monegasque Lender may agree to modify the EW Monaco Loan to change the repayment terms and/or effectuate a debt-for-equity exchange to take a percentage of the new KuaWon entity.

It will be more difficult to reach an agreement with the U.S. Lenders, as they have recourse to Maximov's personal assets. Here, there might be a disagreement between the banks holding the $100 million senior loan, on the one hand, which might prefer to foreclose on those assets, rather than wait patiently for a larger restructuring deal to be negotiated, and the holders of the mezzanine and junior loans, on the other hand. However, because even the senior loan banks are not fully covered by Maximov's assets alone, they might be willing to consider restructuring the loan. Like the Monegasque Lender, they can agree change the terms of the loan and/or also take an interest in KuaWon. They are currently structurally subordinated to the Monegasque Lender and the Romanian Drivers, so they would probably have to take a lesser or subordinate interest. There is a good chance that as a condition to their agreeing to restructure their loan, the U.S. Lenders would require Maximov to put in additional capital or provide additional guarantees.

Another interesting option is to convince the Monegasque Lender or some of the U.S. Lenders to increase the size of their loans to be able to fund a payout of the Romanian Driver Claims. This would enable Efwon Romania to retain a greater share of the revenues of the business to be able to fund loan payments. Perhaps as an inducement to doing so, the company could offer them a direct claim against Efwon Romania (a partial guarantee).

It is also unclear from the facts provided whether Efwon EW actually advanced the money received from the EW Monaco Loan to Efwon Romania. It likely did so (otherwise it was paying a high interest rate for just sitting on cash), but if not, Efwon EW could use this cash for various purposes, including (i) paying off the Romanian Drivers (through a capital contribution to Efwon Romania), (ii) paying off the EW Monaco Loan, or (iii) potentially even buying a new business that can generate more revenues than the F1 Team (particularly because 51% of the profits of the F1 Team must be transferred to KuasaNas).

Because of the number of contingencies and entities, banks, and loans involved, an out-of-court deal might be challenging. And there is a concern that some creditors may not be patient and may start exercising remedies. As such, the company should immediately commence contingency planning to ensure it can take quick action to protect its assets from any potential creditor enforcement action.

4.3. Chapter 11

4.3.1. Efwon Delaware

Maximov should prepare to commence a chapter 11 case in Delaware for Efwon Delaware. This would immediately cause an automatic stay (under section 362 of the U.S. Bankruptcy Code) of

any actions to collect claims against Efwon Delaware, including by the U.S. Lenders. Importantly, however, this action is unlikely to protect Maximov's personal assets, as the automatic stay only protects property of the estate of the debtor (Efwon Delaware) and not its affiliates. Thus, the U.S. Lenders could continue to take action against Maximov's homes upon the Efwon Delaware chapter 11 filing. Under some circumstances, the automatic stay could be extended to a debtor's affiliates, but this is rare and unlikely to apply here.[1] He could consider a personal bankruptcy filing, but that is beyond the scope of this memorandum. His best option to prevent lender action against his personal assets is to demonstrate to the U.S. Lenders that he is continuing to negotiate in good faith.

In a chapter 11 case, due to the absolute priority rule, Maximov could only keep his interest in the Efwon Delaware if (i) all creditor classes vote to accept to the chapter 11 plan or (ii) at least one class of impaired creditors votes to accept the chapter 11 plan and the classes that reject the plan receive the full value of the claims. Because of the differences in relative priority, each of the three lender groups providing the U.S. Bank Loan would likely be in a different class.

Efwon Delaware's only asset is the EW/Delaware Loan. The value of that asset, and thus the balance sheet solvency of Efwon Delaware, ultimately depend on the value of the F1 Team and whether there is sufficient value in that one asset to pay all creditors that are structurally senior to the American Bank Lenders, including the Romanian Drivers and the Monegasque Lender. If there is insufficient value, along with the $75 million in Maximov's pledged assets, to cover the amounts due to the U.S. Lenders, then the U.S. Lenders may decide not to let Maximov retain an interest in the company unless he puts in additional money.

The chapter 11 filing would provide Maximov some leverage in negotiating a deal with the U.S. Lenders. Efwon Delaware would have a 120 day exclusive period to file a chapter 11 plan; that period is often extended for cause in complex cases. This provides Maximov some time to explore other options, negotiate deals with creditors, and/or see if values change or a better investment opportunity becomes available. This ability for Maximov and Efwon Delaware to delay could lead the U.S. Lenders to agree to give Maximov a "tip" (a recovery to an out-of-the-money creditor) in exchange for agreeing to a quick chapter 11 plan even if the values are insufficient to justify such a recovery. Maximov's ability to use Efwon Delaware's exclusivity period to try to negotiate a recovery is somewhat constrained, however. First, the board of directors of Efwon Delaware will have fiduciary duties to maximize the value of the company for the benefit of all stakeholders – they do not owe duties to Maximov as a shareholder if the company is insolvent. Second, if Maximov or the board acts improperly to benefit Maximov, some of the creditors could move to have a chapter 11 trustee appointed for cause (mismanagement) under section 1104 of the Bankruptcy Code.[2] A chapter 11 trustee would replace Maximov and he would lose all control.

If Maximov was willing to put in more money as part of a chapter 11 plan, he could do so fairly easily if he obtained the acceptance of the plan by all three classes of U.S. Lenders. If one of

[1] *A.H. Robins Co., Inc. v. Piccinin,* 788 F.2d 994, 999 (4th Cir. 1986).

[2] 11 U.S.C. § 1104. Although it is a rare remedy, a chapter 11 trustee may be appointed by the bankruptcy court for "cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management" or if the appointment "appointment is in the interests of creditors, any equity security holders, and other interests of the estate."

those classes rejected, however, the court would apply heavy scrutiny to Maximov's investment. If the rejecting class was not receiving value equal to their allowed claims, then under United States Supreme Court precedent,[3] before accepting Maximov's investment, Efwon Delaware would be required to run a marketing process to determine whether there was an investor willing to put in new money on better terms than Maximov in this "new money plan." If no other such investor could be located, the court might approve Maximov's investment.

If there is sufficient value in the company, or through Maximov's investment, to pay the U.S. Lenders in full over time, Efwon Delaware can use the tools of chapter 11 to "cram up" one or more of the classes of lenders with new secured debt with an extended maturity date (which could be well beyond the current 2020 maturity of the U.S. Bank Loan) and terms that are either market or otherwise satisfy the *Till* formula approach.[4] If the junior tranche of debt is undersecured, the claim may be satisfied in another form of consideration, including equity in Efwon Delaware.

One issue in the case might be the feasibility of any chapter 11 plan under section 1129(a)(11) of the Bankruptcy Code. Efwon Delaware would have to provide evidence of the company's ability to satisfy its obligations. This will depend on the expected profits of the F1 Team, which may depend on the KuasaNas deal being finalized, as well as the company's solution on its other liquidity issues. Without solving its other problems, the company cannot show it is likely to be able to satisfy its plan obligations.

Thus, chapter 11 can provide immediate relief (except for Maximov's individual assets), but is unlikely to be a long term solution without a resolution of the whole enterprise's financial issues, including the Romanian Driver Claims.

Maximov should be aware that chapter 11 does bring some risks for Maximov. The company's transactions with him are likely to be heavily scrutinized and actions could be brought against him for fraudulent transfer or breach of fiduciary duty, especially if he received dividends from the company in the last few years. One protective action for him is to consider, which is quite common in U.S. insolvency situations these days, is appointing an independent director to the board of Efwon Delaware to make decisions on behalf of the company going forward. Doing so requires him to give up some control, but could protect the company's decisions from scrutiny.

4.3.2. Filing Chapter 11 for Other Efwon Entities

Because of the flexibility of chapter 11, Mr. Maximov could consider filing additional Efwon entities in a U.S. chapter 11 filing. Chapter 11 has broad (minimal) eligibility requirements, governed by section 109(a) of the Bankruptcy Code. That section provides that to be a debtor under the Bankruptcy Code, a company must be domiciled in the United States, have "a place of business" in the United States, or simply have "property" in the United States.

In *Global Ocean Carriers,* for example, a group of affiliated shipping companies qualified to be debtors under chapter 11 on the basis of having only funds in bank accounts in the United States.[5] The amount in these accounts was approximately $100,000 – a relatively small amount

[3] *Bank of Amer. Nat'l Trust & Savings Ass'n v. 203 North LaSalle Street P'ship,* 526 U.S. 434 (1999).
[4] *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).
[5] *In re Global Ocean Carriers, Ltd.,* 251 B.R. 31 (Bankr. D. Del. 2000).

for a company with more than $100 million in debt. Nevertheless, the court did not think the small amount was relevant to satisfy the easy technical requirement. For the entities in the company that did not own those bank accounts, the court found that a $400,000 retainer one of the entities paid to the company's U.S. restructuring counsel, and which was in escrow, was sufficient for section 109 purposes, because it was paid on behalf of all the entities and thus all the entities had an interest in those funds.

Therefore, it would be fairly easy for Maximov to file Efwon EW and Efwon Romania in chapter 11. The actual effectiveness of chapter 11, however, may be limited. First, although the automatic stay imposed by a chapter 11 filing purports to be worldwide, applying to a debtor's assets wherever located, its practical effectiveness depends on the debtor being able to enforce the automatic stay either in U.S. bankruptcy court or in a foreign court that is providing assistance to the U.S. bankruptcy court. Second, for the restructuring to be effective, the actual restructuring plan needs to be binding on the necessary creditors.

The primary third party creditor of Efwon EF is the Monegasque Lender. If that lender does not have ties to the United States, then the automatic stay may have no effect on it unless Efwon EW can seek to get the Efwon EW chapter 11 recognized in England and Wales, as discussed below.

Similarly, the primary third party creditors of Efwon Romania are the Romanian Drivers. If they plan to continue their career as F1 drivers, they may decide to travel to the United States, given the increased popularity of F1 racing in the United States and the number of races scheduled there. If they travel to the United States, they will be subject to the U.S. courts and a chapter 11 would likely be effective to bind them. However, if their injuries are such that they will no longer drive or they choose to skip the U.S. races, then a chapter 11 case for Efwon Romania would only be binding on them if Efwon Romania can get the chapter 11 case recognized in Romania. Moreover, if there are sufficient business debts at Efwon Romania such that the company would like to impair the Romanian business creditors, it would need recognition of the chapter 11 case in Romania. The issue of recognition is discussed below in more detail.

Even if Efwon EW and Efwon Romania could satisfy the technical hurdles of having a chapter 11 case be binding on their respective creditors, this alone does not make chapter 11 a viable option for these entities. To obtain confirmation of a chapter 11 plan, a company needs an impaired class of third party creditors. Efwon EW's only creditors are Efwon Delaware (on the Efwon Delaware Loan) and the Monegasque Lender. Given that Efwon Delaware is an affiliate, to confirm a plan for Efwon EW, the Monegasque Lender would have to vote accept the chapter 11 plan. Therefore a deal with that lender is required for chapter 11 to be effective (and if that one lender is willing to do a deal, then chapter 11 is probably not necessary).

Similarly, Efwon Romania's only creditors are Efwon EW (an affiliate), the Romanian Drivers, and miscellaneous business debts. The Romanian Drivers or the business creditors would likely be classified separately. One of those would have to vote to accept the chapter 11 plan. In addition, as noted above, if any of the creditor classes votes against the plan, then the Efwon group may only retain an interest in Efwon Romania (and through that, the F1 Team) if either (i) the rejecting creditor class is paid the full value of its claim in some currency (which could be a note or equity in the reorganized Efwon Romania) or (ii) the Efwon group puts in new money after a marketing test to ensure this is the best investment available for Efwon Romania.

Note that there have been a few U.S. courts that have held that an impaired accepting class is only needed at one entity in a joint plan (called the "per plan" approach).[6] In such a case, the vote in favor of the plan by one class of U.S. Lenders could technically be sufficient to satisfy this criteria even if all other creditors at all other entities (including the Monegasque Lender and the Romanian Drivers) vote to reject the plan. However, this approach is generally disfavored, as most courts require a class to accept the plan at each debtor (the "per debtor") approach. The Delaware bankruptcy courts are likely to follow this per debtor approach.[7]

Although Delaware is a likely venue for the Efwon group chapter 11 cases, given Efwon Delaware's incorporation in Delaware, anticipating this issue, Maximov could seek to file the chapter 11 cases elsewhere, such as in the 9th Circuit, which follows the "per plan" rule. The venue rules in the United States are notoriously relaxed. An entity has proper venue in a jurisdiction if that jurisdiction is the location of its "domicile, residence, principal place of business in the United States, or principal assets in the United States."[8] Thus, for example, Maximov could have Efwon EW or Efwon Romania keep a small amount of property (perhaps a bank account or a law firm retainer) in California, which would make California (in the Ninth Circuit) the entity's principal U.S. assets and create proper chapter 11 value in California for those entities. Efwon Delaware could subsequently file in the same district on the basis that its affiliate has a case pending there.[9] Of course creditors could seek to transfer venue (in addition to seeking to dismiss the chapter 11 cases outright), but the venue would technically be proper should the California court wish to keep it. This is a difficult path, however, and Maximov has a greater chance of success if agreements can be reached with most of the third party creditors.

4.3.3. Challenges to Chapter 11 Filing of Non-U.S. Efwon Entities

Creditors of Efwon EW (particularly the Monegasque Lender) or Efwon Romania (particularly the Romanian Drivers) could challenge the chapter 11 filing under numerous grounds. One is section 305 of the Bankruptcy Code, under which a U.S. bankruptcy court may dismiss or suspend a chapter case if doing so is in the best interests of creditors and the company.[10] Another option is foreign nonconveniens.[11] A third is dismissal for cause ("bad faith") under section 1112 of the Bankruptcy Code.[12] Although U.S. courts often have a broad view of their ability to use chapter 11 with foreign companies to effectuate global restructurings, that view is not unlimited. Thus, filing these entities in chapter 11 comes with risk.

4.3.4. Prepackaged chapter 11 case

If the company can reach a deal with some creditors, but not others, one option to consider is a prepackaged chapter 11 were votes are solicited ahead of the filing. This is often a cheaper

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[6] *In re Transwest Resort Props.,* 2018 U.S. App. LEXIS 1947 (9th Cir. 2018).
[7] *In re Tribune Co.*, 464 B.R. 126 (Bankr. D. Del. 2011).
[8] 28 U.S.C. § 1408(1).
[9] 28 U.S.C. § 1408(2).
[10] *In re Northshore Mainland Services, Inc.,* 537 B.R. 192, 208 (Bankr. D. Del. 2015) (dismissing chapter 11 filed by Bahamian company under section 305 after determining a Bahamian proceeding was preferable).
[11] *In re National Bank of Anguilla (Private Banking Trust) Ltd.,* 580 B.R. 64 (Bankr. S.D.N.Y. 2018) (staying litigation filed in chapter 11 by debtor, which was already in liquidation proceedings in Anguilla and had much better ties to Anguilla, despite chapter 11 potentially providing a better recovery to creditors).
[12] 11 U.S.C. § 1112.

alternative to a full chapter 11 case. This may be a particularly good option if most of the U.S. Lenders agree to a restructuring, but there are one or two holdouts.

4.4. Recognition Proceedings

As discussed, the ability of the Efwon companies with non-U.S. creditors to use chapter 11 effectively depends on their ability to enforce the chapter 11 against their creditors. This, in turn, depends on whether they can get the chapter 11 recognized in other jurisdictions.

4.4.1. England & Wales

4.4.1.1. Recognition in England & Wales

Great Britain (which includes England & Wales) adopted the UNICTRAL Model Law on Cross-Border Insolvency (1997) (the "Model Law") in 2006 in the form of Cross-Border Insolvency Regulations 2006 (the "UKCBIR").[13]

It would likely be difficult to obtain full enforcement of a chapter 11 plan for Efwon EW or Efwon Romania in England under the UKCBIR.[14] It is not even clear that either of those entities has an "establishment" in the United States that would enable it to get status as a foreign non-main proceeding, although perhaps an establishment is possible if Maximov has books and records in the United States. However, it is unlikely that those entities have their COMI in the United States. Certainly, the United States is not where they currently have their "registered office," the presumption for COMI under UK law. They would have to consider shifting COMI to the UK. This might be easier for Efwon EW, which is a pure holding company, then Efwon Romania, which has significant assets in Romania.[15]

4.4.1.2. Gibbs Rule

Even if those entities could successfully undertake the challenging task of obtaining recognition of chapter 11 cases, through shifting COMI or otherwise, that may not be sufficient. One issue the company must consider is the impact of the "Gibbs Rule," which could apply if any of the debt in the structure is governed by English law. The Gibbs Rule, which was formulated in an old case,[16] generally provides that a debt document governed by English law cannot be affected or discharged in a foreign (non-English) proceeding. Rather, the insolvency proceeding for English-governed debt must take place in England. Although the Gibbs Rule is heavily criticized, English courts continue to uphold it.[17] Prior to Brexit, the Gibbs Rule may not have applied to a proceeding in an EU member state, such as Romania,[18] but post-Brexit, it applies to all non-English proceedings.

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[13] https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status
[14] https://www.legislation.gov.uk/uksi/2006/1030/pdfs/uksi_20061030_en.pdf
[15] The following 2023 article has a good discussion of the current law to COMI shifting in Europe: https://www.milbank.com/a/web/gRsUhPw3gfEAAzUihSmSu6/4V85xT/milbank-insights_-comi-shifts-in-europe-new-developments.pdf
[16] *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux* (1890) LR 25 QBD 399.
[17] *See, e.g., Bakhshiyeva v Sberbank of Russia* [2018] EWCA Civ 2802.
[18] https://www.jonesday.com/en/insights/2019/02/english-court-of-appeal-upholds-the-gibbs-rule

The facts we were provided do not tell us the governing law on the various debt instruments of the Efwon group. It seems unlikely that the U.S. Bank Loan is governed by English law, but it is at least possible that one or more of the Delaware/EW Loan, the EW Monaco Loan, or the EW/Romania Loan is governed by English law, as Efwon EW is a party to those debt documents. We presume it would be relatively easy for the company to change the governing law on the intercompany loans (the Delaware/EW Loan or the EW/Romania Loan). It is also generally easier to get 100% lender consent on any restructuring for those loans. We would have to consider whether the fiduciary duties of the board of the directors of one of those companies or the fact of the existing Romanian insolvency proceeding would prevent a change of the governing law such that English law continues to govern.

If English law governs any such debt and both the governing law cannot be changed and an agreement with both sides of the loan is not reached, the Gibbs Rule might require that either Efwon EW or Efwon Romania be filed into an English insolvency proceeding to enable the company to restructure the debt. Otherwise, the creditor at issue (in particular the Monegasque Lender) can continue to enforce its debt in England, i.e. against Efwon EW, regardless of any chapter 11 case, Romanian insolvency proceeding, or other foreign insolvency proceeding.

4.4.2. Romania

Romania adopted the Model Law in 2002.[19] Thus, it is likely the company could obtain recognition in Romania of main chapter 11 proceedings for Efwon Delaware and English law governed proceedings for Efwon EW.

Recognition in the Romanian courts for any non-Romanian proceeding for Efwon Romania would, however, be more difficult. The COMI of Efwon Romania is presumed to be in Romania. A Romanian court may be particularly unlikely to recognize a non-Romanian proceeding because due to the primary creditor of Efwon Romania being Romanian individuals (the Romanian Drivers). More information is needed regarding the identity of the creditors for the business debts of Efwon Romania, but many of those are likely to be Romanian creditors as well. Unless we can shift COMI of Efwon Romania, which is risky, we will likely need either to reach an out-of-court deal with the Romanian Drivers or use a Romanian insolvency proceeding to address Efwon Romania's debts.

Another area for further exploration with Romanian counsel is whether it is even possible to file chapter 11 proceedings for Efwon Romania while the Romanian insolvency proceeding commenced by the Romanian Drivers is outstanding.

4.5. English & Wales

There are several processes available under English law that the company should consider. The new moratorium introduced in the Corporate Insolvency and Governance Act 2020 now applies

[19] https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status. See also "The Romanian Insolvency Publication and Registration Requirements under Article 21 and Article 22 of the European Insolvency Regulation" article on INSOL website by Ioan Chiper, Lawyer, Miculiti Chiper Shollenbarger (M.C.S.A.) Angelo S.C.P.A.

to all the processes discussed below. This is important to the company's contingency planning to prevent creditor actions that could harm the company.

4.5.1. English Scheme of Arrangement

One possibility for the Efwon entities is an English scheme of arrangement (an "English Scheme"). An English Scheme is a flexible tool provided for under Part 26 of the Companies Act of 2006. It permits a company to enter into a compromise or "arrangement" with creditors and/or shareholders, regardless of whether it is insolvent or in financial distress. The company proposing the English Scheme seeks a court order to convene creditors and shareholder meetings to vote on the proposed scheme, and notice and an explanation of the scheme are sent to creditors and shareholders. Creditors and shareholders are divided into classes based on having similar legal rights. For a class to approve the English Scheme, creditors holding at least 50% in number and 75% of value of the claims of those voting must vote in favor the scheme. The English court must then sanction the scheme.

4.5.1.1. Efwon EW

An English Scheme is technically an option for Efwon EW, although it is unclear why it would be needed. The only third party creditor is the Monegasque Lender. That creditor will either agree to the proposed restructuring (in which case a formal proceeding is not required) or will not agree to the proposed restructuring (in which case an English Scheme will be insufficient to effectuate a restructuring in light of the voting requirements).

4.5.1.2. Other Efwon Entities

To approve an English Scheme for a company not domiciled in England or Wales (which could be Efwon Delaware or Efwon Romania), the English courts would need to find that there is a "sufficient connection" between the foreign company and England.[20] The most obvious ways to do this are to change the governing law of the debt documents to English law or to shift COMI to England. For Efwon Delaware, we would likely need the majority of the U.S. Lenders to consent to change the governing law on the U.S. Bank Loan (the documents should be reviewed to confirm the requisite consents needed). If not, we could try shifting COMI.

For Efwon Romania, it would be easy to change the governing law on the EW/Romania Loan. A change of COMI to England is not technically required at this time. In the past, (in light of the ED Regulation on Insolvency Proceedings 1346/2000 (the "EC Insolvency Regulation")),[21] it would have been impossible to use an English proceeding for Efwon Romania without shifting COMI, as such a proceeding would have to take place in Romania, but post-Brexit, England is not bound by EC Insolvency Regulation.

The English court will also need to determine that the scheme is enforceable in the company's foreign jurisdiction or in foreign countries where the company has assets. The company would likely have to present evidence in this regard.

[20] See INSOL Guide II, pg. 97

[21] Para 111(1A)(b) of Schedule B1 IA and Article 3 of the EC Insolvency Regulation (as cited in INSOL International, Cross Border Insolvency II, A Guide to Recognition and Enforcement ("INSOL Guide II"), pg. 96). .

It is unclear whether one can impact the Romanian Driver Claims through an English Scheme. The governing law cannot be changed on those claims. The company could consider changing the law of incorporation of Efwon Romania to England and Wales or effecting a COMI shift. To shift COMI of Efwon Romania, typically one would move the group's head office, principal operating address, books and records, administrative activities, and tax residency to England, hold board meetings in England, and appoint directors residing in England. It might also be helpful to move assets to England. In this case, because of the Romanian insolvency proceeding initiated by the Romanian Drivers, it is not possible to move assets. It might be possible to effectuate the other COMI-shifting moves. However, there may not be sufficient time to do so and this might be a risky strategy in light of the uncertain outcome.

4.5.2. England & Wales – Restructuring Plan

The Corporate Insolvency and Governance Act, which became effective on June 25, 2020, introduced the concept of a "Restructuring Plan" under Part 26A of the Companies Act 2006. Some of have referred to this as a super scheme or a "chapter 11 light" model. Although the Restructuring Plan is a relatively new procedure, there is precedent for this proceed to be successful. Within just a few months of the law becoming effective, the first Restructuring Plan was sanctioned by the High Court – on September 2, 2020 for Virgin Atlantic Airways (VAA).

Like an English Scheme, a Restructuring Plan is a court-supervised restructuring process that provides flexibility to implement a variety of restructuring outcomes. Unlike an English Scheme, a Restructuring Plan requires some degree of financial distress, although the Efwon companies will likely satisfy this.

One advantage of a Restructuring Plan over a Scheme is that a Restructuring Plan can be imposed on a dissenting class of creditors ("cross-class cram-down") if that class would be no worse off than in the "relevant alternative" (i.e., the alternative the court considers may be most likely if it did not sanction the Restructuring Plan). In addition, there is no numerosity requirement in a cramdown for a Restructuring Plan, while such requirement does exist for an English Scheme.

We would have to research further whether a company can use the votes of its affiliated creditors to achieve the cross-class cramdown (e.g., Efwon Delaware in the case of Efwon EW or Efwon EW in the case of Efwon Romania). If it can, then this might be a good path for the company to achieve a restructuring over the objection of its external creditors. If it cannot, this path might still be helpful for Efwon Romania if, for example, the company can get the business creditors to agree to a restructuring, but not the Romanian Drivers.

A Restructuring Plan also allows a company to eliminate its equity holders, although this is not a result that Maximov is seeking here. On the positive side, there is no absolute priority rule, so Maximov could potentially retain an interest even if creditors are not paid in full.

A Restructuring Plan may be used not only for English companies, but also for companies with a connection to England or with English law governed credit agreements or contracts. All that is required is a "sufficient connection" to England; a change in COMI is not required.

The same issues discussed above relating to utilizing the English Scheme for the Efwon entities other than Efwon EW and enforcing it against those entities' creditors similarly exist for the Restructuring Plan.

4.5.3. England & Wales – CVA

Another option is a Company Voluntary Arrangement ("CVA"). Unlike an English Scheme or a Restructuring Plan, this is an insolvency procedure under the Insolvency Act 1986. It is also different from an English Scheme and Restructuring Plan in that it does not involve a court. A CVA may, therefore, be a cheaper option if a deal with creditors can be reached.

A CVA is a process pursuant to which a company can reach an arrangement with its creditors under the supervision of an insolvency practitioner. Unlike a Scheme or a Restructuring Plan, it does not involve a court. It is a flexible procedure with few requirements or restrictions on what the creditor arrangement must or can entail. A disadvantage of a CVA is that it cannot impact the rights of secured creditors

To take advantage of a CVA, a company must (i) be registered in England, Wales, or Scotland, (ii) be incorporated in another European Economic Area (EEA) state, or (iii) have its COMI in an EEA state (other than Denmark).

For Efwon, a CVA is clearly available for Efwon EW. Efwon Delaware would not be eligible unless it changed its registration or COMI. Efwon Romania would be eligible, but the enforceability of the CVA in Romania is questionable for the reasons discussed above

4.5.4. England & Wales -- Administration

Another available procedure is an administration in England and Wales under the Insolvency Act 1986. However, because an administrator would replace current management, and Maximov would thus lose control, this is not recommended.

4.5.5. England & Wales – Comparing the Options

The decision as to whether it is better to use an English Scheme, a Restructuring Plan, or a CVA will depend on what progress we are able to make in our negotiations with creditors.

4.5.6. Precedent Transactions using English Proceedings

A few years ago, syncreon Group Holdings B.V. (the "Syncreon) became the first company to use an English Scheme to restructure debt issued by a company based in the United States.[22] The English Scheme was necessary in that case, because several of the company's subsidiaries were organized in jurisdictions where U.S.-based options, such as chapter 11, were not viable.

To enable it to use the English Scheme, prior to its launch, Syncreon amended the governing law on both its bank debt and bond debt from New York law to English law, after obtaining consent from the applicable lenders and noteholders. In sanctioning the English Scheme, the English High Court found that this change provided a sufficient connection to England. The court also

[22] https://eurorestructuring.weil.com/cross-border/syncreons-financial-restructuring-implemented-by-landmark-english-schemes-of-arrangement-with-parallel-chapter-15-and-ccaa-recognition/

found it relevant that a high percentage of both classes of creditors (more than 95%) consented to the English Court's jurisdiction.

Syncreon was able to obtain chapter 15 recognition and Canadian recognition (under the CCAA) of its English Scheme.

4.6. Romania Insolvency Proceedings

4.6.1. Efwon Romania

Another option for Efwon Romania is to consider taking advantage of Romania's new restructuring framework, adopted in 2020 (the "Romanian Framework"). This framework fully implements the Directive (EU) 2019/1023 of the European Parliament and of the Counsel of 20 June 2019 on preventative restructuring frameworks, discharge of debt and disqualifications, and measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency) (the "Directive"). One of the purposes of the Directive was to ensure that "viable enterprises . . . that are in financial difficulties have access to effective national preventative restructuring frameworks which enable them to continue operating."[23]

While we would need to engage Romanian counsel to provide more crystalized guidance on the new Romanian Framework, we would expect that full adoption by Romania of the Directive means that the Romanian Framework would provide Efwon Romania a flexible restructuring regime that would enable the company to work out the debts of its creditors (through a debt-equity exchange or otherwise), effectuate necessary operational changes, or sell assets.[24]

The Directive encourages states to utilize a model similar to the chapter 11 debtor in possession framework, which means that the current management of Efwon Romania would remain in control of its business, rather than have an insolvency administrator or trustee take over the business.[25] Another benefit is that Efwon Romania would likely be entitled to a temporary stay of creditor enforcement actions, including the actions commenced by the Romanian Drivers, for up to four months, with a possibility for an extension.[26] This should provide us time to negotiate with the Romanian Drivers, as well as other creditors of Efwon Romania, and hopefully the other enterprise creditors (such as the Monegasque Lender) toward a restructuring plan.

Other benefits include the invalidation of *ipso facto* clauses in contracts,[27] which may be particularly beneficial to Efwon Romania given its significant operating business. It also requires creditors to continue to perform under existing arrangements and prohibits creditors from terminating contracts due to the company's insolvency.[28]

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[23] Recital (1) of Directive, as reported in the Official Journal of the European Union, 26.6.2019, L 172/18; EUR-Lex – 32019L1023 – EN – EUR-Lex.
[24] *Id.* at recital (2) and recital (29).
[25] *Id.* at recital (30).
[26] *Id.* at recital (32) and recital (35). Note, however, that there might be exceptions where the stay might be refused. *Id.* at recitals (32) - (34).
[27] *Id.* at recital (40).
[28] *Id.* at (41).

Another benefit is that it appears that the Directive would suspend the existing insolvency proceeding commenced by the Romanian Drivers,[29] although we would need further guidance from Romanian counsel on that point.

Because Efwon Romania owns an operating asset, the F1 Team, it is likely that in addition to the EW/Romania Loan and the Romanian Driver Claims, Efwon has other business debts, including debts owed to trade creditors and employees. Further guidance is needed from Romanian counsel as to the specific laws in Romania with regards to classifying creditors, creditors voting, and approval of the plan, as the Directive provides Member States flexibility in these specific rules.[30] We need to understand, for example, whether the fact that the EW/Romania Loan was provided by an affiliate has an impact on Efwon EW's ability to vote in the Romanian restructuring or how the EW/Romania loan would get treated in the restructuring. It appears that because the EW/Romania Loan is secured, it would have to be classified separately from the other creditors or the loan would be bifurcated into the secured piece and the unsecured piece and those two be classified separately.[31]

Because the Romanian Driver Claims are unliquidated, it is important to understand from Romanian counsel the options for how the plan could treat such claims and how those creditors would vote,[32] as the valuation of their claims could have a significant impact on whether their approval is needed for the plan. For example, if the plan provides that unliquidated claims vote in a low amount, it may be possible to achieve approval of the plan without the support of the Romanian Drivers, although the law likely requires the plan to provide for a fair treatment of those creditors.[33] If we are unable to reach an economic deal with the Romanian Drivers, we should consider whether it makes sense to classify the Romanian Drivers in the same class as other creditors to drown out their votes or place them in a separate class and cram down that class by getting the votes of the other class or classes.[34]

One benefit of the Directive for Maximov is that it permits the deviation from the absolute priority rule to allow the equity holders of the debtor (in this case, Efwon EW and ultimately Maximov) to retain an interest even though creditors are not being paid in full.[35] We need further guidance from Romanian counsel on options for treating employees, as European laws generally provide workers greater protections than U.S. laws and the Directive contains a great deal of information about the treatment of employees in restructuring plans.[36]

In general, this process would provide time to work out a deal with as many creditors as possible. Because it is premised on the value of the business being worth more as a going concern than in liquidation, the presumption is that the various creditors would work with us to restructure their payment terms and/or effectuate a debt for equity exchange. This could involve an investment from KuasaNas, along the lines discussed above. Another option is to see whether an outright

[29] *Id.* at recital (38).
[30] *Id.* at recital (43).
[31] *Id.* at recital (44).
[32] *Id.* at recital (46).
[33] *Id.* at recital (47) and recital (48).
[34] "Cross-class cram-down" is contemplated by the Directive. *Id.* at recital (53) and recital (54).
[35] *Id.* at recital (56).
[36] *Id.* at recitals (60)-(62).

sale of the F1 Team, to KuasaNas or otherwise, could maximize value. We understand, however, that owning a Formula One team has sentimental value to Mr. Maximov and may not be the preferred option.

Prior to the Romanian Framework being adopted, the prospect of a Romanian insolvency proceeding would not have been appealing. But this new law provides a path to use the Romanian process to achieve the company's goals without having to undertake COMI shifts or take risks of filing in other jurisdictions.

4.6.2. Romanian Proceedings for Other Efwon Entities

If a Romanian insolvency proceeding is the best option for Efwon Romania, we should consider whether it is advantageous to include the other entities, such as Efwon Delaware and Efwon EW, into the Romanian Framework proceeding.

Both the United States and England have adopted the Model Law. As described above, because the COMI of Efwon Delaware and Efwon EW is likely to be the United States and England, respectively, it is uncertain whether a restructuring plan approved in Romania can be enforced on the creditors in those countries. Consideration can be given to shifting COMI. On the other hand, the enterprise's money-producing asset is based in Romania, so the U.S. and English courts might not view Romanian proceedings for all the corporate entities as problematic.

As a relatively small country that likely has not seen many cross-border insolvencies, and with the Romanian Framework being a relatively new law, we believe it is too risky to have the entire enterprise restructure under the Romanian Framework. However, it seems to be a promising option for Efwon Romanian.

4.7. Impact of Brexit

Since Brexit went into effect (January 1 2021), the UK is no longer to subject to common EU regulations governing issues like cross-border insolvency, such as those set forth in the recast EU Insolvency Regulation 2015 (the "EIR"), which went into effect on June 26, 2017. Instead, cross-border issues between the UK and the EU member states will be treated the same as cross-border issues between any other non-EU country and the particular EU country at issue. Thus, recognition of EU proceedings in the UK will continue to be judged under the UKCBIR. Recognition of UK proceedings and judgments in EU countries will be subject to the particular laws enacted in the individual EU member states.

It does not appear Brexit will have much of an impact on the Efwon restructuring. There is only one EU country involved in this situation—Romania. If the UK were still an EU member, then recognition of proceedings as between the UK and Romania would be subject to the EIR. The EIR determines the proper jurisdiction for a company's insolvency proceedings and what country's laws should be applied in those proceedings. It also provides for mandatory recognition of such proceedings in all EU member states. Generally speaking, under the EIR, main proceedings have to be commenced in the EU country where the debtor has its COMI. This is presumed to be the country where the company's registered office is located (but this presumption does not apply "if the location has changed within a certain period prior to the start of insolvency proceedings"). The effects of those main proceedings are recognized across the

EU. Secondary proceedings can be opened in any EU country where the debtor has an establishment, but the effects of those secondary proceedings are limited to the assets located in that country. The EIR also contains rules on the coordination of main and secondary insolvency proceedings.

Because the EIR is no longer applicable to the UK, it is no longer the case that Efwon Romania would have to file in Romania where its COMI is. It can file in England based on other connections to England, as described above.

4.8. Dutch Scheme

Another area to explore is the newly enacted, and seemingly popular Dutch scheme (Dutch Act on Court Confirmation of Extrajudicial Restructuring Plans). The Dutch scheme may provide some advantages over other countries' laws. However, as Efwon has no known presence in the Netherlands, it would have to take extra steps to use the Dutch scheme. This may not be worth the effort, as the Dutch scheme is similar enough to the English scheme. Recognition of the Dutch scheme in other countries may also be challenging for the reasons discussed above.

4.9. Monaco

While the company, to our knowledge, does not have any assets in Monaco, it will want to ensure that any restructuring proceeding impacting the EW Monaco Loan debt is enforceable against the Monegasque Lender to ensure that lender does not take action against the company during or following any restructuring. As a practical matter, if the Monegasque Lender has ties to other countries, it may not be difficult to ensure its compliance with any insolvency proceeding. Furthermore, it appears that the only entity against which the Monegasque Lender has recourse is Efwon EW and the only assets of Efwon EW are its equity interest in Efwon Romania and the EW/Romanian law. As such, as long as the restructuring is enforceable under Romanian law, it is unlikely that the Monegasque Lender could exercise remedies against company assets if it is unhappy with the restructuring.

If, however, the Monegasque Lender is uncooperative, it could impede the prospects of a successful reorganization. Because the F1 Team enters competitions all over the world, its assets could be anywhere at any time, including in Monaco during the Monaco Grand Prix. Although unlikely, the Monegasque Lender could seek to seize such assets if it does not believe it is bound by the company's restructuring. One reason this is unlikely is because those assets do not belong to the obligor under the EW Monaco Loan. The facts we have been provided strongly suggest that Efwon Romania did not provide a guarantee of the EW Monaco Loan. However, if the facts turn out to be that the Monegasque Lender does have recourse against Efwon Romania's assets, the concerns expressed in this section apply with even greater force.

Monaco is not a member state of the EU and has not adopted the Model Law.[37] Little is available publicly on how one enforces judgments in Monaco. Thus, we will need to consult with Monegasque counsel to determine how any proceeding seeking to impact the Monegasque Lender can be enforceable against such lender.

[37] https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status.

For various reasons, we highly recommend trying to reach a deal with the Monegasque Lender. For one, as noted, it might be harder to enforce a restructuring on that lender. Second, the EW Monaco Loan has a high interest rate. At the same time, the company has at least some leverage over the Monegasque Lender. For example, the Monegasque Lender is structurally subordinate to the key asset of the company (the F1 Team). Thus, it should be concerned that a restructuring may be effectuated that will restructure Efwon Romania by giving equity to its creditors, along with KuasaNas and cuts off Efwon EW's equity interests in Efwon Romania. Although Efwon EW would probably get some recovery on account of the EW/Romania Loan, such recovery may not be sufficient to provide a full recovery to the Monegasque Lender. Moreover, the facts are unclear as to whether the Monegasque Lender's security interest over Efwon EW's "revenues" would extend to repayments on the EW/Romania Loan. In other words, it is unclear whether the creditors of Efwon EW (Efwon Delaware and the EW Monaco Loan lenders) will share pari passu in Efwon EW's recoveries from an Efwon Romania restructuring or whether the Monegasque Lender will have priority. The worse the company can paint the prospects of recovery for the Monegasque Lender, the better deal it may be able to extract from that lender in a consensual restructuring – whether a waiver of payments for a certain period of time, better economic terms (e.g. lower interest rate), a haircut, or even a partial debt for equity exchange.

Perhaps in connection with the KuasaNas deal, KuasaNas will agree to advance funds to the company to pay off the EW Monaco Loan (in full if necessary or a partial repayment in connection with a restructured deal).

4.10. Efwon HK

In addition, we should examine the Kretek Sponsorship agreement to see if any clauses in that agreement (such as early termination rights) would be triggered by any of the actions we contemplate in connection with the restructuring. We are not currently considering any insolvency proceedings for Efwon HK, as its only asset is the Kretek Sponsorship, which is expiring shortly.[38] But if there is time left on the Kretek Sponsorship and it is valuable, we would need to explore whether we need to take action with that entity if other restructuring actions could impair the value of that asset.

5. Coordination: Protocol

Because the likely strategy involves multiple jurisdictions, we can consider implementing a protocol similar to the Maxwell case so the courts can communicate and coordinate. The chapter 11 plan and English outcome will each likely be dependent on the Romanian restructuring being successful and knowing the final capital structure of Efwon Romania, as funds from the F1 Team, including sponsorship funds, are the only source of paying off the debts of Efwon EW and Efwon Delaware.

[38] We assume this advice is being provided prior to the agreement's termination.