[FIRM LETTERHEAD]

15 April 2024

Mr Benedict Maximov **PRIVATE & CONFIDENTIAL**

[address]

Dear Sir,

**OPTIONS AVAILABLE TO RESTRUCTURE THE COMPANIES BEHIND TEAM MAXIMOV**

1. Thank you for instructing us in this matter.

The Facts

1. Based on your instructions and the documents made available to us, we understand the facts to be as follows:
   1. In early 2014, you incorporated a company under Texan law called Efwon Investments Inc (“F1 Investments”) to which you contributed USD 100 million. F1 Investments borrowed USD250 million (the “US Loan”) from a syndicate of banks (the “US Lenders”) which was secured on:
      1. mortgages over personal properties owned by you which have been recently valued at USD75m;
      2. a pledge over the shares of F1 Investments;
      3. positive and negative pledges.
2. Interest of 4% over LIBOR per annum would be applied on the outstanding principal of the US Loan which raised in 2015 to 6% per annum. The syndicate comprised 2 senior banks owed an aggregate of USD100 million, 2 mezzanine financial creditors owed an aggregate of USD60 million and 5 junior financial creditors owed an aggregate of USD 90 million.
3. The US Loan was fully drawn down and a sum of USD350 million representing the equity and loan capital of F1 Investments was lent by F1 Investments to a Dutch company called Efwon Trading BV[[1]](#footnote-1) (“F1 Trading”). F1 Trading in turned gave security over its future revenue streams to F1 Investments. The prospect of dividends from F1 Trading from such revenue streams appears to be F1 Investments’ only source of income. The shares of F1 Trading, as with the shares of F1 Investments, were likewise pledged to the US Lenders. It appears that there is no interest applicable to this loan.
4. In late 2014, F1 Trading acquired a racing team together with the team’s competition licence issued by FIA and its inventory of race-ready F1 cars. This was done through a newly incorporated wholly-owned subsidiary called Efwon Romania (“F1 Romania”). F1 Trading lent USD150 million to F1 Romania in 2015 which was secured on F1 Romania’s broadcasting revenue as F1 Romania then did not enjoy sponsorship revenue. Further sums of USD100 million each were extended by F1 Trading to F1 Romania in respectively 2016 and 2017. A total of USD350m was therefore lent. No interest appeared to have been applicable on the amount lent.
5. In 2017, in a bid to explore new sponsorship opportunities, Efwon Singapore (“F1 Singapore”) was incorporated under Singapore law as a wholly owned subsidiary of F1 Trading. F1 Singapore secured and obtained sponsorship from Kretek from 2019 to 2023 to the tune of USD100m annually. For 2018, funding of USD 100m (the “Monaco Loan”) was obtained by F1 Trading from a lender in Monaco (the “Monaco Lender”) with high interest rates which was secured on the revenues of F1 Romania and F1 Singapore. Both F1 Romania and F1 Singapore also gave corporate guarantees for that loan.
6. Kretek has indicated that it is not willing to continue as sponsor past 2023. Fortunately, an alternative sponsor, KuasaNas (“KN”), was found which could offer fundng in excess of USD100m annually. Conditions to such funding included KN’s acquisition of 51% of the shareholding of F1 Romania and the team with its drivers and machines moving to Malaysia.
7. In 2023, disaster struck when the F1 Romania drivers (the “Drivers”) were injured in the final race of 2023. The Drivers have brought claims in the Romanian courts (presumably) against F1 Romania, their employer. There is a risk of substantial compensation arising from such claims. The lawyers acting for the Drivers have filed insolvency proceedings against F1 Romania and obtained interim freezing injunctions over F1 Romania’s assets and income (the “Freezing Injunctions”) which would lead to a default on the loan owed by F1 Romania to F1 Trading. This default would cascade into a default by F1 Trading of its repayment obligations to F1 Investments and by extension F1 Investments to the US Lenders. F1 Trading would also default on the Monaco Loan.
8. KN has stipulated as a further condition for its sponsorship that all the insolvency issues affecting the Efwon group of companies (the “F1 Group”) be dealt with promptly. They will only invest if the threat to their investment is removed.
9. Other than the injury sustained to the Drivers in the last race of 2023, Team Maximov has otherwise been doing well, placing 6th in 2022. Its projected income will be assured if it is able to replicate such performance.

Our advice

1. It is clearly imperative for the Freezing Injunctions to be discharged. This should be done against the backdrop of a wider restructuring plan since the Drivers’ claims and the Freezing Injunctions imperil the existence of:
   1. F1 Trading since F1 Trading owes the Monaco Loan which secured on the revenue of F1 Romania;
   2. F1 Singapore since F1 Singapore gave a corporate guarantee for the Monaco Loan;
   3. F1 Investments since F1 Investments depends on dividends from F1 Trading as its only source of income to repay the US Loan.
2. F1 Romania further owns the racing cars and the valuable competition licence granted by the FIA. Allowing F1 Romania to be liquidated would mean the loss of these key assets to the F1 Group which would preclude the ability to earn any future revenue.
3. F1 Singapore was the entity which contracted with the former sponsor, Kretek. However it is less significant than F1 Romania since that sponsorship opportunity has come to an end and the potential new sponsor can enter into a sponsorship agreement with a different entity. It is not clear if F1 Singapore holds any assets of value.
4. On the brighter side, but for the unfortunate injury to the Drivers in 2023, Team Maximov was other performing well and appeared to have been able to generate healthy income streams. Further, in KN, it had secured a future sponsor albeit with conditions that would need to be fulfilled before funding would be made available.
5. There are a number of legal options that can be pursued to facilitate the formulation and implementation of the wider restructuring plan. These options all purpose to obtain reprieve from legal and/or enforcement action from the F1 Group’s creditors so that the plan can be worked out and put in place. None of these legal options represent a foolproof solution and may need to be coupled with other solutions to arrive at a satisfactory outcome. The costs associated with different options will also vary greatly.

The Options

1. First, there is the possibility of applying for Chapter 11 protection for F1 Investments. This will confer a stay on legal and enforcement action against F1 Investments. Chapter 11 protection may also be accorded to other companies in the F1 Group provided they meet the eligibility requirements for such filings. Further, the automatic stay applicable to F1 Investments may be extended by § 105(a) of the US Bankruptcy Code to these other companies. Chapter 11 proceedings and the protection thereby given may be recognised in Romania and Singapore through the UNCITRAL Model Law on Cross Border Insolvency (the “Model Law”).
2. Second, it may be possible to open insolvency proceedings in respect of F1 Trading in the Netherlands (the “Netherlands proceedings”). If so, it may be possible to rely on the Recast EU Insolvency Regulation (“EU IR”) to promote cooperation and coordination between the Netherlands proceedings and the insolvency proceedings taking place in Romania in respect of F1 Romania (the “Romanian proceedings”).
3. Third, it may be possible to apply for a moratorium in Singapore in respect of F1 Singapore under section 64 of Singapore’s Insolvency Restructuring and Dissolution Act (“IRDA”). A similar moratorium may be applied for in respect of F1 Trading and F1 Investments by reason of these companies being respectively the holding company and ultimate holding company of F1 Singapore. However the Netherlands is not a Model Law country and there will be an issue as to how a moratorium in respect of F1 Trading is recognised in the Netherlands. The United States is a Model Law country but it is unclear if a moratorium obtained in respect of F1 Investments in Singapore qualifies a “foreign proceeding” to be recognised in the United States.
4. It will not be possible to accurately gauge the costs associated with each of these options although they are likely to be in descending order with each of these options (as set out above).
5. We elaborate on each of the options.

*Option 1*

1. Option 1 is an option pursued in the United States. The option envisages an application under Chapter 11 of the US Bankruptcy Code (“Chapter 11”). Chapter 11 confers protection to a distressed company whilst allowing management to remain in control of the company and formulate a restructuring plan.[[2]](#footnote-2) The plan will have to be eventually approved by the US bankruptcy court and if so will be binding on all creditors and shareholders.
2. The protection offered by Chapter 11 comes in the form of an automatic stay which operates as an injunction against all actions affecting the company or its property. All actions by secured and unsecured creditors are stayed including acts to repossess or foreclose property without leave of the Bankruptcy Court or to create and perfect security on the company’s property. The company is only required to pay wages, taxes, expenses and debts incurred after the Chapter 11 filing.
3. The automatic stay provides relief until a plan has been approved by the Bankruptcy Court or the Chapter 11 application is dismissed. The plan can accommodate a variety of options. In this case, the company applying for Chapter 11 will be F1 Investments given that it is incorporated in Texas. The plan will likely a terming out of the repayments of the loans given the syndicate of banks (ie the term of repayment of the loans are extended) whilst the claims made by the Drivers are resolved. The US Bankruptcy Court has approved plans with long repayment periods. Such a plan is viable as:
   1. Team Maximov has provisionally secured a potential new sponsor, KN, which will offer USD 100 million of funding annually. Conditions for the funding include (a) a transfer of 51% of the shareholding of either F1 Trading or F1 Romania to KN and (b) a move by the team with its machines to Malaysia. Both these conditions appear to be within Team Maximov’s ability to fulfil. The proposed funding is, however, also subject to review by the newly elected Malaysian Government.
   2. Team Maximov has done well and placed 6th in the 2022 F1 season. This gives some assurance that it can earn income which can repay the loans extended by the syndicate of banks.
4. The plan may also entail the banks taking an equity stake in F1 Investments in exchange for at least part of their loans. It will also be possible to seek a reduction in the interest rates applicable on the US Loan.
5. If two-thirds of the creditors of F1 Investments agree to the plan, the plan will be deemed to be accepted. In this case, unless the plan provides for different treatment amongst them, there is no reason for any of the bank creditors to vote in a separate class since the claims of each creditor is substantially similar, the creditors all share in the same security[[3]](#footnote-3) and there is no suggestion that the security when realised will be insufficient to meet the debt owed. If the bank creditors vote in the same class, the votes of the senior and junior bank creditors, which constitute 76% of the debt of F1 Investments, will be key to meeting the requisite threshold for approval. Further, each of these groups of creditors[[4]](#footnote-4) will be able to prevent a successful vote on the plan. If the bank creditors vote in separate classes organized according to the seniority of the creditors, this may in some ways prove easier to approve the plan since Chapter 11 offers cross-class cramdown. Thus if the plan is approved by just one impaired class of creditors, there is the possibility of the plan being approved if the court finds that the plan does not “discriminate unfairly” and is “fair and equitable.”[[5]](#footnote-5) This means that similar claims or equity interests must be treated similarly unless there is reason for unequal treatment (such as such unequal treatment being contractually provided for). In a situation where the security is able to meet the claims of only some of the (more senior) creditors, cram down of that class of creditors will only be allowed if they at least receive the value of their security in the collateral. If it is an unsecured class of creditors are to be crammed down, there will be fair and equitable treatment if it can be shown that the interests ranking lower received nothing.
6. Upon approval by the requisite number of creditors, the plan will then be required to be submitted to the Bankruptcy Court for confirmation. The Bankruptcy Court will need to be satisfied that the plan is feasible, has complied with applicable law and has been proposed in good faith. If any of the creditors were to object at this stage, the Bankruptcy Court is required to further determine if the plan is in the “best interest of creditors.” This means assessing if the objecting creditors would receive at least as much as they would in the liquidation of F1 Investments.
7. It may be possible to apply for Chapter 11 protection in respect of F1 Trading and/or F1 Romania if certain requirements are satisfied. 11 § 109(a) sets forth the eligibility requirements for a debtor to commence a case under the US Bankruptcy Code:

“(*a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.*”

1. Neither F1 Trading nor F1 Romania may be said to have a place of business in the United States. However, it is possible to satisfy the requirements of § 109(a) by simply having property in the United States. This can be a bank account or even a retainer paid to a US law firm.  In *Re* Global Ocean Carriers Limited, a shipping company headquartered in Greece filed Chapter 11 applications in Delaware. In that case, the court held that a few thousand dollars in a US bank account and the unearned portions of retainers provided to local US counsel constituted sufficient property to meet the requirements of § 109(a).
2. Despite this generous jursidiction, the Bankruptcy Court has the ability to dismiss the case[[6]](#footnote-6) in circumstances where this was in the best interests of the debtor and the creditors:
   1. In ***Yukos Oil Co.***, the Russian oil company filed for Chapter 11 protection to stop the Russian government from selling its core production unit at an auction. The only factors grounding jurisdiction in the United States were two bank accounts and the residence of its former Chief Financial Officer. The US Bankruptcy Court in Houston held:

“*The debtor is not a United States company, but a Russian company, and its assets are massive relative to the Russian economy, and, since they are primarily oil and gas in the ground, are literally a part of the Russian land. While there is precedent for maintenance of a bankruptcy case in the United States by corporations domiciled outside the United States, none of those precedents cover a corporation which is a central part of the economy of the nation in which the corporation was created.*”

* 1. In ***Baha Mar Ltd***, an applications for Chapter 11 protection by a group of Bahaman companies which owned and developed a $3.5 billion resort in the Bahamas was dismissed.[[7]](#footnote-7) Faced with objections from the major creditors and the Bahaman Attorney General, the US Bankruptcy Court in Delaware felt that the case involved the economic interests of the Bahamas. The Court therefore took the view that the decision should take place there, stating:

“In business transactions, particularly now in today's global economy, the parties, as one goal, seek certainty. Expectations of various factors - - including the expectations surrounding the question of where ultimately disputes will be resolved - - are important, should be respected, and not disrupted unless a greater good is to be accomplished. Under these circumstances, I can perceive no greater good to be accomplished by exercising jurisdiction over these chapter 11 cases..."

1. It is unclear if such reasoning will be applied to entities in the F1 Trading Group (other than F1 Investments) if they sought Chapter 11 protection on the basis that they have property in the United States. In *Baha Mar Ltd*, the Bankruptcy Court indicated that if creditors had not objected to the Chapter 11 filing, it would have allowed the matter to continue. Whether the US Bankruptcy Court will maintain its jurisdiction over the other F1 entities may well hinge on the strength of the objections mounted by F1 Trading’s creditors (the Monaco Lender), F1 Romania’s creditors (which will include the Monaco Lender and the Drivers) and F1 Singapore’s creditors (the Monaco Lender).
2. Alternatively, given that these entities are key towards the restructuring efforts of F1 Investments (F1 Netherlands and F1 Romania are the source of the revenue to repay the debts of F1 Investments whilst F1 Singapore is the entity that may contract with KN as a potential sponsor[[8]](#footnote-8)), it may be possible to extend the automatic stay to them by reason of 11 USC § 105(a) of the US Bankruptcy Code. This, *inter alia*, provides that the Bankruptcy Court may “*issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.*” The US courts have relied on this provision to extend the automatic stay to non-debtors “*only when the claim against the non-debtor will have an immediate adverse economic consequence for the debtor’s estate*.”[[9]](#footnote-9)
3. The difference between direct Chapter 11 protection and a stay pursuant to 11 USC § 105(a) is that the former will have effect in Romania and Singapore as a “foreign proceeding” through the Model Law which these countries have adopted. It is doubtful that the latter will similarly qualify as a foreign proceeding. Recognition of Chapter 11 proceedings in respect of F1 Romania and F1 Singapore will allow the insolvency practitioner appointed in the Chapter 11 proceedings to apply for relief including:
   1. staying the commencement or continuation of individual actions or individual proceedings concerning the debtor’s property, rights, obligations or liabilities;
   2. staying execution against the debtor’s property;
   3. suspending the right to transfer, encumber or otherwise dispose of any property of the debtor.[[10]](#footnote-10)

This will have the effect of precluding (a) the disposal of the assets of F1 Romania to meet its liabilities to its creditors in Romania and (b) the pursuit of claims against F1 Singapore by the Monaco Lender.

1. Of course, the stay pursuant to 11 USC § 105(a) may be compiled with even if it is not recognised under the Model Law. The creditors of F1 Romania and F1 Singapore may choose not to flout a stay granted by the US Bankruptcy Court especially if they have assets or dealings in the United States.
2. The Netherlands has not adopted the UNCITRAL Model Law and the recognition of the Chapter 11 proceedings in respect of F1 Trading will depend on its domestic laws. If these domestic laws do not allow the recognition of these proceedings, then a separate insolvency process under the laws of the Netherlands may have to be engaged in for F1 Trading.

*Option 2*

1. Option 2 envisages that insolvency proceedings are opened in the Netherlands in respect of F1 Trading.[[11]](#footnote-11) F1 Trading is set up under the laws of the Netherlands. It is assumed that the registered office of F1 Trading is in the Netherlands. Article 3 of the EU IR provides that “*the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary”* and further that the courts of the Member State within the territory of which the debtor’s centre of main interests (“COMI”) is situated shall have jurisdiction to open the main insolvency proceedings. Having said this, the location of the registered office merely creates a rebuttable presumption that the COMI of F1 Trading is the Netherlands. It is possible to displace such a presumption if “*the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State.*”[[12]](#footnote-12)
2. The ability to open the main insolvency proceedings for F1 Trading in the Netherlands has two immediate consequences:
   1. the judgment opening the main insolvency proceedings handed down by the courts in the Netherlands will be recognised in all other Member States from the moment that it becomes effective in Netherlands[[13]](#footnote-13); and
   2. the judgment opening the main insolvency proceedings will, with no further formalities, produce the same effects in any other Member State as under the law of the Netherlands, unless provided otherwise in the EU IR and as long as no secondary insolvency proceedings are opened in that other Member State.[[14]](#footnote-14)
3. An insolvency practitioner appointed by the courts of the Netherlands will be able to exert his authority over F1 Trading and the assets of F1 Trading in any other part of the EU (except Denmark) with the powers which are vested in him by reason the law of the Netherlands.[[15]](#footnote-15) This gives that insolvency practitioner the power to dispose of F1 Trading’s shares in F1 Romania. This is an important aspect of the restructuring since it is requirement of the new sponsor, KN, that it acquires a 51% stake in F1 Romania.
4. In terms of the insolvency proceedings which may be opened in the Netherlands, the *Wet Homologatie Onderhands Akkord* or WHOA has been available since January 2021.[[16]](#footnote-16) This is a flexible debtor-in-possession scheme proceeding which requires only two-thirds approval from the creditors in a class for approval by the court. It is possible to obtain a freeze period or cool-down period of up to 8 months. This is akin to a moratorium which will prevent secured creditors for enforcing their security unless the court gives permission. In the case of F1 Trading, its creditors are F1 Investments and the Monaco Lender with the debt composition in the ratio of 78:22. If these creditors are put in the same class, then even if the Monaco Lender disagrees, F1 Investments will be able to provide the requisite support for the WHOA scheme to be approved. There may however be an argument that as F1 Investments is also a shareholder, it cannot be grouped in the same class as the Monaco Lender. If the creditors are put in separate classes, the Dutch Court may still declare the plan binding in the face of objections from the Monaco Lender. This is a form of cross-class cramdown.
5. An insolvency practitioner appointed in the Netherlands over F1 Trading may also have authority over F1 Romania even though its COMI is not in the Netherlands if it can be shown that its restructuring will be sufficiently linked to the Netherlands. The legal framework for the WHOA is designed to accommodate group companies which may be outside the Netherlands. In this case, however, insolvency proceedings have been already opened in respect of F1 Romania in Romania. The nature of the Romanian proceedings is not clear. For these proceedings to fall under the ambit of the EU IR, they must be “*public collective proceedings, including interim proceedings, based on laws relating to insolvency and in which,* *for the purpose of rescue, adjustment of debt, reorganisation or liquidation:*
6. *a debtor is totally or partially divested of its assets and an insolvency practitioner is appointed;*
7. *the assets and affairs of a debtor are subject to control or supervision by a court; or*
8. *a temporary stay of individual enforcement proceedings is granted by a court or by operation of law, in order to allow for negotiations between the debtor and its creditors, provided that the proceedings in which the stay is granted provide for suitable measures to protect the general body of creditors, and, where no agreement is reached, are preliminary to one of the proceedings referred to in point (a) or (b).”[[17]](#footnote-17)*
9. The proceedings falling under Article 1 of the EU IR are set out in Annex A of the EU IR. It is not clear if the Romanian proceedings are any of the proceedings so specified in Annex A. As the Romanian proceedings were commenced as part of litigation strategy underpinning the Drivers’ claims against F1 Romania, it may also be argued that they are not for the purpose of “*rescue, adjustment of debt, reorganisation or liquidation”* of F1 Romania. Indeed, the Romanian proceedings appear to primarily motivated by the consequential effect of the freezing injunction against the assets and income of F1 Romania.
10. Assuming the Romanian proceedings do not fall within the EU IR, they will have no effect beyond Romania. This may have the consequence that the insolvency practitioner appointed in respect of F1 Romania would have no power to obtain access to the inventory of F1 Romania (which includes the racing machines) and the competition licences assuming these assets are held outside of Romania.
11. Assuming the Romanian proceedings do fall within the EU IR, there will be a question of whether these are main insolvency proceedings or secondary insolvency proceedings.
12. The registered office of F1 Romania is assumed to be in Romania. If that is so, then there will be a rebuttable presumption that the COMI of F1 Romania is Romania. This presumption may be displaced if it can be shown that “*the company's central administration is located in a Member State other than that of its registered office, and where a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State.*”[[18]](#footnote-18)
13. In this case, F1 Romania’s parent company is F1 Trading. In ***Eurofood IFSC Ltd*** (“*Eurofood*”) it was held by the ECJ that where a company carried on its business in the territory of a Member State where its registered office is situated, the mere fact that its economic choices were controlled by a parent company in another Member State was not enough to rebut the presumption.[[19]](#footnote-19) The principles of *Eurofood* were upheld by the ECJ in ***Interedil Srl (in liquidation) v Fallimento Interedil Srl.****[[20]](#footnote-20)*
14. Thus unless it can be said that there are additional factors, ascertainable by third parties, which shows that F1 Romania’s actual centre of management and supervision and the management of its interests is in the Netherlands, the COMI of F1 Romania will be deemed to be Romania and the Romanian proceedings (assuming they fall within the EU IR) will be the main insolvency proceedings for that company. This will allow an insolvency practitioner appointed in the Romanian proceedings to exert his/her powers in other parts of the EU (except Denmark) in respect of the assets of F1 Romania.
15. The only apparent factors which may pave the way for an argument that F1 Romania’s COMI is the Netherlands are:
    1. F1 Trading lent F1 Romania USD 150 million for the 2015 season;
    2. F1 Trading lent F1 Romania sums of USD 100 million each for respectively the 2016 and 2017 seasons
    3. F1 Trading borrowed the Monaco Loan for funding for the 2018 season.
16. It is unclear if these factors will be sufficient to argue that F1 Romania’s COMI is in the Netherlands. Even if they were and the main insolvency proceedings of F1 Romania are opened in the Netherlands, the Romanian proceedings will remain as secondary proceedings. The main insolvency proceedings opened in the Netherlands will have no effect in Romania so long as these secondary proceedings are extant.[[21]](#footnote-21) The powers of an insolvency practitioner appointed in the Romanian proceedings will however be limited to assets in Romania.
17. Thus, unless it can be said that there are additional factors, ascertainable by third parties, which shows that F1 Romania’s actual centre of management and supervision and the management of its interests is in the Netherlands, the COMI of F1 Romania will be deemed to be Romania and the Romanian proceedings (assuming they fall within the EU IR) will be the main insolvency proceedings for that company. This will allow an insolvency practitioner appointed in the Romanian proceedings to exert his/her powers in other parts of the EU (except Denmark) in respect of the assets of F1 Romania although in any other Member State, he/she will be able to claim through the courts or out of court moveable property was removed from Romania to that other Member State after the opening of the Romanian proceedings.[[22]](#footnote-22)
18. If both the insolvency proceedings in respect of F1 Trading and those in respect of F1 Romania fall under the EU IR, there will be scope for some coordination between both sets of proceedings under Chapter V EU IR. Amongst other things, an insolvency practitioner appointed in insolvency proceedings opened in respect of a member of a group of companies may, to the extent appropriate to facilitate the effective administration of the proceedings:
    1. be heard in any of the proceedings opened in respect of any other member of the same group; and
    2. request a stay of any measure related to the realisation of the assets in the proceedings opened with respect to any other member of the same group, *provided* there is a viable restructuring plan proposed for all or some members of the same group for which insolvency proceedings have been opened which operates to the benefit of the creditors.[[23]](#footnote-23)
19. The insolvency practitioner can also apply for group coordination proceedings[[24]](#footnote-24) with a group coordinator appointed to coordinate between the two sets of insolvency proceedings.[[25]](#footnote-25)
20. The possibility of such coordination and cooperation between the two sets of proceedings would reduce the chances of the assets of F1 Romania (assuming they are in the control of the insolvency practitioner appointed in the Romanian proceedings) being used exclusively to satisfy the creditors of F1 Romania (which will include the Drivers). Under Article 56(1) EU IR, an insolvency practitioner appointed in proceedings concerning a member of the group shall cooperate with any insolvency practitioner appointed in proceedings concerning another member of the same group to the extent that such cooperation
    1. is appropriate to facilitate the effective administration of those proceedings,
    2. is not incompatible with the rules applicable to such proceedings; and
    3. does not entail any conflict of interest.

Admittedly, these caveats to Article 56(1) narrow the scope for coordination and cooperation. However, in the face of intransigent conduct by any one insolvency practitioner, resort can be had to Article 57(1) which provides for coordination and cooperation between the courts seised of the different insolvency proceedings. Even though the same caveats in Article 56(1) EU IR appear in Article 57(1) EU IR, the courts are far less likely to rely on such caveats unless the justification to do so is clear.

1. Given the lack of clarity over the nature of the Romanian proceedings, it is not clear to what extent the EU IR may be invoked to facilitate the formulation of a wider restructuring plan for the F1 Group and in particular to preclude the assets of F1 Romania from being used to satisfy the debts of F1 Romania.

*Option 3*

1. For the sake of completeness, we must point out that it is possible to apply for a moratorium for F1 Singapore under Singapore’s Insolvency Restructuring and Dissolution Act 2018 (“IRDA”). This confers on the applicant the ability to apply for a similar moratorium for F1 Trading and even F1 Investments as respectively F1 Singapore’s holding company and ultimate holding company.[[26]](#footnote-26) The effect of such moratoria may however be limited to Singapore since:
   1. there is, no clear avenue for any of the moratorium in respect of F1 Trading to be recognised in the Netherlands.
   2. although by reason of the Model Law, there can be recognition of the proceedings opened in respect F1 Singapore in the United States, a moratorium obtained in respect of F1 Investments may not qualify as a “foreign proceeding” that can be recognised pursuant to the Model Law.
2. Since neither F1 Investments or F1 Trading appear to have assets in Singapore, the utility of applying for moratoria under IRDA is questionable.
3. The moratorium to be applied for in respect of F1 Singapore is provided for under section 64 IRDA which states that “*where a company proposes, or intends to propose, a compromise or an arrangement between the company and its creditors or any class of those creditors, the Court may, on the application of the company, make [orders]…. for such period as the Court thinks fit*” restraining various proceedings against the company.
4. The restrained proceedings include the winding up of the company, the appointment of a receiver and manager over the company, the “commencement or continuation of any proceedings… against the company”, the “commencement, continuation or levying of any execution, distress or other legal process against any property of the company” and the “taking of any step to enforce any security over any property of the company, or to repossess any goods held by the company under any chattels leasing agreement, hire‑purchase agreement or retention of title agreement.”[[27]](#footnote-27)
5. F1 Singapore is a guarantor of the Monaco Loan and there is a possibility that the Monaco Lender may take legal action against F1 Singapore in the Singapore Court. The Monaco Lender also has security over the revenue of F1 Singapore. Should this be a reference to the funding made available by the sponsor to Team Maximov, the Monaco Lender could attempt to enforce its security rights over such funding in Singapore.
6. The moratorium under IRDA will preclude such action. It applies automatically once an application under section 64 is made (and before the Court even hears and decides on the application). The pre-requisites for such an application are that (a) no order has been made and no resolution has been passed for the winding up of the company and (b) the company makes, or undertakes to the Court to make as soon as practicable an application for the Court to order to be summoned a meeting of the creditors or class of creditors in relation to the compromise or arrangement between the relevant creditors.[[28]](#footnote-28) In practice the moratorium applied for is usually about 3-6 months but may be extended if the Court is satisfied that progress is made in the efforts to restructure the company.
7. A foreign company with a “substantial connection” with Singapore is also entitled to apply for such a moratorium.[[29]](#footnote-29) It is questionable if the other companies in the F1 Group, not being Singapore incorporated, can satisfy the test of “substantial connection”. The Court may rely on the presence of factors such as the following to determine substantial connection:
   1. the company’s COMI is Singapore;
   2. the company is carrying on business in Singapore or has a place of business in Singapore;
   3. the company is a foreign company that is registered under Singapore’s Companies Act;
   4. the company has chosen Singapore law as the law governing a loan or other transaction, or the law governing the resolution of one or more disputes arising out of or in connection with a loan or other transaction;
   5. the company has submitted to the jurisdiction of the Court for the resolution of one or more disputes relating to a loan or other transaction.[[30]](#footnote-30)
8. What is however unique under IRDA is that the application for a moratorium for F1 Singapore allows a similar application to be made for F1 Trading and even F1 Investments by reason of these companies being respectively the holding company and ultimate holding company of F1 Singapore.[[31]](#footnote-31) Such an application however does not extend to F1 Romania since it is neither a subsidiary, holding company or ultimate holding company of F1 Singapore.[[32]](#footnote-32)
9. Whether a moratorium granted in Singapore in respect of F1 Trading will be recognised in the Netherlands is a matter of domestic law. The Netherlands has not adopted the Model Law. It is unclear if Netherlands domestic law will allow recognition of a moratorium granted by the Singapore Court in respect of F1 Trading.
10. The United States has however adopted the Model Law. This presents an avenue to recognise the insolvency proceedings commenced in Singapore in respect of F1 Singapore. The COMI of F1 Singapore is likely Singapore since it is a Singapore-incorporated company. The insolvency proceedings would there be recognised as a “foreign main proceeding”[[33]](#footnote-33) in the United States. Pursuant to Article 20 of the Model Law, such recognition would mean that in the United States:
    1. the commencement or continuation of individual actions or individual proceedings concerning the debtor’s property, rights, obligations or liabilities is stayed;
    2. execution against the debtor’s property is stayed; and
    3. the right to transfer, encumber or otherwise dispose of any property of the debtor is suspended.
11. It is however less clear if the moratorium applicable to F1 Investments can be said to qualify as a foreign proceeding which can be recognised in United States through the Model Law. “*Foreign proceeding*” is defined as a “*collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.*”[[34]](#footnote-34) Whilst the insolvency proceedings commenced in respect of F1 Singapore would fall under this definition, a moratorium applicable to F1 Investments as F1 Singapore’s ultimate holding company may not. Arguably, there are no collective judicial proceedings in respect of F1 Investments for the purpose of its reorganization or liquidation.
12. As such the utility in applying for a moratorium under IRDA is limited to primarily F1 Singapore.

Conclusion

1. The options presented above carry varying degrees of uncertainty, *inter alia*, because of:
   1. the unclear nature of the insolvency proceedings commenced by the Drivers in respect of F1 Romania;
   2. the lack of clarity on whether the Netherlands domestic law will allow the recognition of either Chapter 11 proceedings or Singapore insolvency proceedings in the Netherlands.
2. Were F1 Trading incorporated in the United Kingdom which is a Model Law country unlike the Netherlands, there would be little doubt that Chapter 11 proceedings or Singapore insolvency proceedings would be recognised there. In such a scenario, the Chapter 11 proceedings will clearly be the most attractive option given its applicability in the United Kingdom. Even if this were not so, there are a gamut of restructuring options available in the UK that could apply to F1 Trading. The UK restructuring plan[[35]](#footnote-35) would potentially be a viable option since it requires only the support of 75% in value of the creditors in a class (which has genuine economic interest ie its not “out of the money”). The debt owed by F1 Trading to F1 Investments exceed this threshold. It should be pointed that the UK restructuring plan is an available option for foreign companies provide that can show there is a sufficient connection with the UK.[[36]](#footnote-36) There are, however, some issues that should be taken note of if the restructuring plan is employed. First the plan does not in itself entail a moratorium. A standalone moratorium would have to be applied for.[[37]](#footnote-37) Second, valuation issues could manifest themselves early in the process as arguments arise as to whether a creditor is “out of the money” and therefore ineligible to vote on the restructuring plan.
3. Chapter 11 proceedings, while attractive, are likely be the most expensive option. Insolvency proceedings in the Netherlands and Romania may be a close second. The application for a moratorium in Singapore could be the cheapest option although its utility would be limited for the reasons explained above.
4. We hope this gives you an understanding of the main restructuring options available. We appreciate that this opinion is fairly dense in legal content and will be happy to answer any queries you may have.

Yours faithfully

**Eddee Ng**

**Tan Kok Quan Partnership**

1. It is not explicitly stated but F1 Trading appears to be a wholly owned subsidiary of F1 Investments – see references to “companies in the Efwon Group” at p 5 of Case Study II. [↑](#footnote-ref-1)
2. Creditors may file a restructuring plan once the debtor’s exclusive period for filing a plan has expired or has been terminated by the Bankruptcy Court – 11 USC § 1121. [↑](#footnote-ref-2)
3. 11 USC §§ 1122(a), 1123(a)(4) [↑](#footnote-ref-3)
4. The senior creditors control 40% of the debt and the junior creditors control 36% of the debt. [↑](#footnote-ref-4)
5. 11 USC 1129(b) [↑](#footnote-ref-5)
6. 11 USC § 305(a) [↑](#footnote-ref-6)
7. The Chapter 11 application for one of the subsidiaries, Northshore Mainland Services, was allowed to continue. [↑](#footnote-ref-7)
8. An IBR which was commissioned at the behest of the US bank creditors shows that the F1 Group will not be able to service its debt and be cash-positive without the sponsorship deal with KN. [↑](#footnote-ref-8)
9. See for eg *AH Robins v Piccinin* (1986) 788 F 2d 994 at 999; *Queenie Limited v Nygard International* (2003) 321 3 Fd 282 at 287 [↑](#footnote-ref-9)
10. Article 21 of the Model Law [↑](#footnote-ref-10)
11. This is a public extrajudicial restructuring process and not one which is undisclosed. [↑](#footnote-ref-11)
12. Preamble paragraph (30) of the EU IR [↑](#footnote-ref-12)
13. Article 19(1) of the EU IR [↑](#footnote-ref-13)
14. Article 20(1) of the EU IR [↑](#footnote-ref-14)
15. Article 21(1) of the EU IR [↑](#footnote-ref-15)
16. The Act on the Conformation of Extrajudicial Restructuring Plans [↑](#footnote-ref-16)
17. Article 1 of the EU IR [↑](#footnote-ref-17)
18. Preamble paragraph (30) of the EU IR [↑](#footnote-ref-18)
19. [2006] EUECJ C-341/04 [↑](#footnote-ref-19)
20. [2011] EUECJ C-396/09 [↑](#footnote-ref-20)
21. Article 20(1) EU IR. [↑](#footnote-ref-21)
22. Article 21(2) EU IR [↑](#footnote-ref-22)
23. Article 60(1) EU IR [↑](#footnote-ref-23)
24. Article 60(1)(c) EU IR [↑](#footnote-ref-24)
25. See Article 71 EU IR for the eligibility of the coordinator and Article 72 EU IR for the tasks and rights of the coordinator. [↑](#footnote-ref-25)
26. This is a novel provision that has no equivalent in Chapter 11 despite IRDA being modelled on the same. [↑](#footnote-ref-26)
27. Section 64 (1) (a) to (e) IRDA [↑](#footnote-ref-27)
28. Section 64(2) IRDA [↑](#footnote-ref-28)
29. See ***Re PT MNC Investama TBK* [2020] SGHC 149**. [↑](#footnote-ref-29)
30. Section 246(3) of IRDA. [↑](#footnote-ref-30)
31. Section 65 (1) IRDA. Although Section 65 (1) is worded such that the application for a moratorium by the subsidiary, holding company or ultimate holding company of the subject company (“related company”) may be made only when the moratorium is ordered for the subject company, in practice the applications are made together with the moratorium order for the related company being made only after the moratorium order for the subject company is made. [↑](#footnote-ref-31)
32. For the definition of “subsidiary”, “holding company”, “ultimate holding company” see sections 5 and 5A of the Companies Act 1967. [↑](#footnote-ref-32)
33. Article 2(b) of the Model Law [↑](#footnote-ref-33)
34. Article 2(a) of the Model Law [↑](#footnote-ref-34)
35. Part 26A of the (UK) Companies Act 2006 [↑](#footnote-ref-35)
36. See for e.g. *In the Matter of Rodenstock GmbH* [↑](#footnote-ref-36)
37. Part A1 UK Insolvency Act 1986 [↑](#footnote-ref-37)