**Case Study II**

**Peter Madden – Global Insolvency Practice Course 2023/2024**

**Re: Maximov F1 Team**

Dear Benedict,

Thank you for instructing us to provide advice to you in connection with the potential restructuring of Efwon Investments Inc. (“**Efwon Investments**”) and its subsidiaries, being Efwon Trading B.V. (“**Efwon Trading**”), Efwon Romania and Efwon Singapore (together, the “**Efwon Group**”).

Our advice to you is set out below. We look forward to discuss our advice with you and next steps in due course.

1. Executive summary
	1. The purpose of this memorandum is to set out a strategy in response to the current financial situation facing the Efwon Group**.**
	2. The ultimate objectives of the restructuring strategy set out in this memorandum are to:
		1. protect the investment of Benedict Maximov (“**BM**”) in the Efwon Group and BM’s other investments;
		2. ensure the survival of the Maximov F1 Team; and
		3. facilitate the proposed transaction with KuasaNas,

(the “**Restructuring Strategy Objectives**”).

* 1. In order to achieve the Restructuring Strategy Objectives, our Restructuring Strategy includes two main stages:
		1. Stabilisation of the Efwon Group (“**Stage 1 - Stabilisation**”):
			1. As set out in further detail in paragraph ‎2 (*Current Situation*), the Efwon Group has three main creditor groups, being:
				1. certain lenders in respect of a US$250,000,000 bank syndicate loan to Efwon Investments (the “**Bank Syndicate Lenders**”) (the “**Bank Syndicate Loan**”);
				2. a lender based in Monaco in respect of a US$100,000,000 loan to Efwon Trading (the “**Monaco Lender**”) (the “**Monaco Loan**”); and
				3. the Romanian drivers of the Maximov F1 Teamin respect of a potential tortious claim against Efwon Romania in connection a injuries resulting a crash suffered by the Romanian drivers (the “**Romanian Drivers**”) (the “**Romanian Driver Claim**”).
			2. We understand that the Bank Syndicate Lenders, the Monaco Lenders and the Romanian Drivers have either taken or are considering taking enforcement action against the Efwon Group. Such enforcement action may lead to one or more members of the Efwon Group entering into an immediate uncontrolled liquidation.
			3. Accordingly, in order to stabilise the Efwon Group in light of the current or potential creditor enforcement action, we recommend the following actions be taken immediately:
				1. Efwon Investments to file in the United States under chapter 11 of Title 11 of the United States Code (“**Chapter 11**”) to benefit from the automatic stay of proceedings provided for under Chapter 11 proceedings; and
				2. Efwon Trading and Efwon Romania to file in the Netherland under the Act on Court Confirmation of Extrajudicial Restructuring Plans (“**WHOA**”) and (where required) to petition the Dutch Court for a moratorium against creditor enforcement actions Efwon Trading and/or Efwon Romania while the WHOA proceedings are ongoing.
			4. Please refer to paragraph ‎4 (*Stage 1 – Stabilisation*) of this memorandum for a further detailed explanation of the steps involved as well as a consideration of the potential risks.
		2. Restructuring of the financial indebtedness of the Efwon Group (“**Stage 2 - Restructuring**”):
			1. Once the Efwon Group is stabilised under Stage 1 - Stabilisation, the Efwon Group will commence negotiations with its creditors in respect of a proposal to restructure the indebtedness of the Efwon Group.
			2. Subject to negotiations with the relevant stakeholders, the preliminary terms of the restructuring agreement are as follows:
				1. The business and assets of the Maximov F1 Team will be transferred to a new corporate group which is owned 51% by KuasaNas and 49% by BM (the “**NewCo Group**”) (the “**Maximov F1 Team Transfer**”).
				2. The cash consideration payable by the NewCo Group for the Maximov F1 Team Transfer will comprise of:

an amount[[1]](#footnote-1) payable by KuasaNas for acquisition of a 51% stake in the Maximov F1 Team; and

US$100,000,000 upfront payment by KuasaNas for the first year of sponsorship,

(the “**Cash Consideration**”).

* + - * 1. The Cash Consideration will be applied by the Efwon Group:

firstly, to settle the claims by the Romanian drivers of the Maximov F1 Team in full; and

secondly, for operational and working capital purposes of the Maximov F1 Team.

* + - * 1. In exchange for the Monaco Lender and Bank Syndicate Lenders releasing their claims against the Efwon Group in full, the Monaco Lender and Bank Syndicate Lenders will receive new debt instruments issued by the NewCo Group on a dollar-for-dollar basis with a new guarantee and security package.
			1. See paragraph ‎2.3 of this memorandum for diagram setting out the corporate and capital structure of the NewCo Group following the restructuring.
			2. The proposed restructuring is to be implemented through parallel Chapter 11 and WHOA processes.
			3. Please refer to paragraph ‎5 (*Stage 2 – Restructuring*)of this memorandum for a further detailed explanation of the steps involved as well as a consideration of the potential risks.
		1. Finally, we note a question was asked whether the Efwon Group should have been structured through England rather than the Netherlands. We do not see any particular advantages of structuring through England. The Chapter 11 and WHOA procedures provide effective and efficient processes to restructure the indebtedness of the Efwon Group. However, our response is subject to reviewing the finance documents of the Efwon Group and, in particular, confirming that no English-law debt exists. If English law debt exists, then further consideration of the restructuring process will be required given the ‘Rule in Gibbs’[[2]](#footnote-2) which means, effectively, that the English law debt must be compromised by an English-law process.

1. Current situation
	1. Based on information provided, we understand that the corporate structure chart for the Efwon Group is as follows:



* 1. We further understand from the information provided that the current debt profile of the Efwon Group is as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Debt instrument:** | **Lenders:** | **Borrower:** | **Amount (US$m):** | **Security / Guarantees:** |
| Bank Syndicate Loan | 2 Senior banks | Efwon Investments  | US$100m | Security:* Security over homes (worth US$75m)
* Pledge on the projected revenue to flow back from the resulting investment and participation in the sport
* Pledge over the shares of Efwon Investments
* Pledge over the shares in Efwon Trading
 |
| 2 mezzanine financial creditors | US$60m |
| 5 junior financial creditors | US$90m |
| Monaco Loan | Monaco Lender | Efwon Trading | US$100m | Security:* Pledge on revenue of Efwon Trading
* Pledge on revenue of Efwon Romania
* Pledge on revenue of Efwon Singapore

Guarantees from:* Efwon Romania
* Efwon Singapore
 |
| Driver Claim | Romanian drivers | Efwon Romania | Unknown | None |
| Intragroup 1 Loan | Efwon Investments | Efwon Trading  | US$350m | Security:* Pledge on future revenue from trading activities of Efwon Trading
 |
| Intragroup 2 Loan | Efwon Trading | Efwon Romania | US$350m | Security:* Pledge on the team’s share of the broadcasting revenue from participation
 |

* 1. Corporate and capital structure of the NewCo Group following the restructuring:
1. Liquidation analysis
	1. For the purposes of this memorandum, we have conducted a preliminary assessment of the estimated recoveries for creditors in the event that the Efwon Group falls into immediate liquidation.
	2. The purpose of assessing the estimated recoveries of each creditor is to understand what economic interest each creditor has in the assets of the Efwon Group, and, accordingly, how each creditor should be treated in a restructuring, including in relation to voting as part of any Chapter 11 or WHOA proceedings.
	3. Subject to the further due diligence, our preliminary view of the liquidation value of each entity in the Efwon Group is as follows:
		1. Efwon Romania:
			1. Our view is that Efwon Romania contains all or substantially all of the valuable assets of the Efwon Group.
			2. In particular, the valuable assets of Efwon Romania which could be sold in a liquidation scenario include:
				1. The competition license granted by the *Fédération Internationale de l’Automobile* to the Maximov F1 Team (the “**Maximov F1 Team License**”). In our view, the Maximov F1 Team License is the key and most valuable asset of the Efwon Group, as it permits the Maximov F1 Team to participate in the Formula 1 competition and to generate revenues (including sponsorship and broadcast revenues) associated with participating in the Formula 1 competition.
				2. The Maximov F1 Team’s inventory, including its racing machines (the “**Maximov F1 Team Inventory**”). There may be some value attributable to the Maximov F1 Team Inventory which could be realised in a liquidation sale. However, the value attributable to the Maximov F1 Team Inventory would depend on certain factors including, the state of (dis)repair of the Maximov F1 Team Inventory, whether the Maximov F1 Team Inventory requires significant upgrading and the availability of replacements for the Maximov F1 Team Inventory already in the market.
				3. The Maximov F1 Team’s business and goodwill (the “**Maximov F1 Team Business and Goodwill**”). We attribute little or no value to the Maximov F1 Team Business and Goodwill on the basis that it is likely that the Maximov F1 Team would be rebranded as part of a sale of the business and assets in a liquidation scenario.
				4. The Maximov F1 Team’s broadcast rights (the “**Maximov F1 Team Broadcast Rights**”). We attribute little or no value to the Maximov F1 Team Broadcast Rights on the basis that such the contracts relating to such broadcast rights would most likely be terminated as part of the liquidation of the Efwon Group. However, as mentioned above, any value attributable to future broadcast rights will likely be tied to the ownership of the Maximov F1 Team License.
		2. Efwon Singapore:
			1. Our view is that there are little or no recoverable assets in Efwon Singapore for the reasons set out below.
			2. We understand that the only assets held by Efwon Singapore are:
				1. the existing sponsorship agreement with Kretek (the “**Kretek Sponsorship Agreement**”); and
				2. the potential future sponsorship agreement with KuasaNas (the “**KuasaNas Sponsorship Agreement**”).
			3. We attribute no value to the Kretek Sponsorship Agreement on the basis that it has expired already and we understand that there are no further amounts to be received from Kretek under the Kretek Sponsorship Agreement.
			4. We attribute little or no value to the KuasaNas Sponsorship Agreement on the basis that a binding agreement with KuasaNas has not yet been consummated and will not be consummated in the event that the Efwon Group falls into liquidation (as KuasaNas have made any KuasaNas Sponsorship Agreement conditional on the resolution of the solvency issues facing the Efwon Group (which will not be possible if the Efwon Group falls into liquidation)).
		3. Efwon Trading:
			1. Our view is that only recoverable assets of Efwon Trading relate to its investments in Efwon Romania.
			2. We understand that the only assets owned by Efwon Trading are:
				1. the receivables under the Intragroup 2 Loan; and
				2. its equity investments in Efwon Romania and Efwon Singapore.
			3. There is likely to be some value attributable to the receivables under the Intragroup 2 Loan given the valuable assets held by Efwon Romania.
			4. There is likely to be no value attributable to Efwon Trading’s equity investments in Efwon Romania and Efwon Singapore on the basis that (i) we assume the value of Efwon Romania’s assets is less than the value of Efwon Romania’s debts to creditors and (ii) Efwon Singapore has no recoverable assets for the reasons explained in paragraph ‎3.3(b) above.
		4. Efwon Investments:
			1. Our view is that only recoverable assets of Efwon Investments relate to its investments in Efwon Trading.
			2. We understand that the only assets owned by Efwon Investments are:
				1. the receivables under the Intragroup 1 Loan; and
				2. its equity investments in Efwon Trading.
			3. There is likely to be some value attributable to the receivables under the Intragroup 1 Loan given the likely recoveries by Efwon Trading with respect to its investments in Efwon Romania as outlined in paragraph ‎3.3(c) above.
			4. There is likely to be no value attributable to Efwon Investment’s equity investments in Efwon Trading on the basis that we assume the value of Efwon Trading’s assets is less than the value of Efwon Trading’s debts to creditors.
	4. Our preliminary view of the recoveries of creditors of the Efwon Group is as follows:
		1. Romanian Drivers:
			1. The Romanian Drivers’ Compensation Claim is against Efwon Romania, which, as outlined in paragraph ‎3.3(a) above, is the owner of all or substantially all of the valuable and recoverable assets in the Efwon Group.
			2. The Romanian Drivers’ Compensation Claim is unsecured. Accordingly, the Romanian Drivers’ Compensation Claim will be paid out *pari passu* with other unsecured creditor claims of Efwon Romania.
		2. Monaco Lender:
			1. Although the borrower under the Monaco Loan is Efwon Trading, the Monaco Loan benefits from a guarantee against Efwon Romania as well as pledges over the revenue of Efwon Trading, Efwon Romania and Efwon Singapore.
			2. However, in the event that the Efwon Group enters into liquidation, none of Efwon Trading, Efwon Romania and Efwon Singapore will be generating revenue as the sponsorship and broadcast agreements will most likely be terminated by the respective counterparties. Accordingly, the pledges over the revenue of Efwon Trading, Efwon Romania and Efwon Singapore are likely to have little or no value.
			3. The Monaco Lenders main source of recovery will be by way of the unsecured guarantee against Efwon Romania, which will be repaid from the sale of the valuable and recoverable assets of Efwon Romania (being predominately the Maximov F1 Team License and the Maximov F1 Team Inventory as described in paragraph ‎3.3(a) above).
			4. The Monaco Lender’s recovery from the guarantee by Efwon Romania will be paid out *pari passu* with other unsecured creditor claims of Efwon Romania.
		3. Bank Syndicate Lenders:
			1. The recoveries of the Bank Syndicate Lenders is more complex due to the structurally subordinated nature of their claim and the third party security.
			2. However, our view of the recoveries for the Bank Syndicate Lenders is as follows:
				1. The Bank Syndicate Lenders only have a direct claim against Efwon Investments.
				2. As mentioned above in paragraph ‎3.3(a), we believe Efwon Romania holds all or substantially all of the valuable assets of Efwon Group. Accordingly, any recoveries of Efwon Investments will be through recoveries from the Intragroup 1 Loan against Efwon Trading (which, in turn will obtain recoveries from Efwon Romania through the Intragroup 2 Loan).
				3. Further due diligence on the value of the assets held by Efwon Romania will needed to determine the value of the recoveries flowing through the Intragroup 1 Loan and the Intragroup 2 Loan and eventually to the Bank Syndicate Lenders.
				4. As a result of the security that the Bank Syndicate Lenders hold over the shares in Efwon Investments and the assets of Efwon Investments, our view is that the Bank Syndicate Lenders are the beneficial owners of the Intragroup 1 Loan and partial beneficial owners (with the Monaco Lender) of the Intragroup 2 Loan. This beneficial ownership will be relevant for voting in the relevant restructuring processes as described in more detail in paragraph ‎4.8.
				5. In addition to recoveries from Efwon Investments, the Bank Syndicate Lenders also have security provided to the Bank Syndicate Lenders over a number of homes of BM across the world (the “**Property Pledges**”). The value of these Property Pledges is another potential source of recoveries for the Bank Syndicate Lenders.
2. Stage 1 – Stabilisation
	1. As mentioned above, the purpose of Stage 1 – Stabilisation is to put a halt to creditor enforcement action in order to give the Efwon Group ‘breathing space’ to put together a restructuring plan. The specific steps of Stage 1 – Stabilisation as well as the pros and cons of Stage 1 – Stabilisation are set out below.

***Efwon Investments***

* 1. Process:
		1. To commence the Chapter 11 proceedings, Efwon Investments will file a petition with the US Court. Our preliminary view, subject to further due diligence, is that Efwon Investments should file in the Courts of Texas given that the Courts of Texas have a strong track record of overseeing and implementing Chapter 11 cases in recent years.[[3]](#footnote-3) Given Efwon Investments is incorporated in Texas, United States, we do not see any jurisdictional issues with respect to Efwon Investments commencing Chapter 11 proceedings.
		2. Upon filing the petition to commence Chapter 11 proceedings, Efwon Investments benefits from the automatic stay against creditor action. The automatic stay will prevent enforcement action being taken by the Bank Syndicate Lenders against Efwon Investments.
		3. Following the commencement of the Chapter 11 proceedings, Efwon Investments will have 120 days to propose and file a plan of reorganisation (a “**Plan of Reorganisation**”). This 120 day period can be extended at the Court’s discretion.
		4. It is during this 120 period (unless extended at the Court’s discretion) that negotiations between Efwon Investments and the Bank Syndicate Lenders will take place with a view to preparing a Plan of Reorganisation. In other words, Stage 2 – Restructuring will take place during this 120 day period.
		5. The Chapter 11 filing by Efwon Investments will be what is commonly known as a ‘freefall’ Chapter 11 proceeding.[[4]](#footnote-4) Unlike a ‘pre-packaged’ or ‘pre-negotiated’ Chapter 11 filing, where the debtor pre-agrees some or all of the terms of a plan of re-organisation prior to the filing for Chapter 11, a ‘freefall’ Chapter 11 involves the debtor company and its creditors negotiating the terms of a plan of re-organisation only after the commencement of the Chapter 11 proceedings.
	2. Approval of the Plan of Reorganisation and class composition:
		1. Once a Plan of Reorganisation has been developed, it will be put to a vote of the creditors.
		2. For the purposes of voting on a Plan of Reorganisation, the creditors of Efwon Investments will be placed into separate classes. Broadly, creditors will be placed in the same class if their claims or interests against Efwon Investments are substantially similar to the claims or interests of other creditors in that class.[[5]](#footnote-5)
		3. With respect to the Bank Syndicate Lenders, we assume (subject to us reviewing the Bank Syndicate Loan agreement) that the senior banks, mezzanine financial creditors and junior financial creditors will each be in a separate class on the basis that their claims or interests against Efwon Investments are differentiated by their seniority or priority under the Bank Syndicate Loan agreement.
		4. In order for a Plan of Reorganisation to be approved by creditors, each impaired[[6]](#footnote-6) class of creditors must ‘approve’ the Plan of Reorganisation (unless the ‘cramdown rules apply – see sub-paragraph below). Creditors within a class will be deemed to have accepted the plan if it is approved by creditors that hold at least two-thirds in amount and more than one-half in number of the allowed claims in that class that vote on the Plan of Reorganisation.
		5. It is possible for the US Court to approve a plan of reorganisation even if that plan of reorganisation is rejected by one or more classes of creditors (known as ‘cramdown’). Cramdown is possible provided[[7]](#footnote-7):
			1. at least one impaired class of creditors approves the plan of reorganisation;
			2. the plan of reorganisation does not discriminate unfairly with respect to each class of creditors which rejected the plan of reorganisation;
			3. the plan of reorganisation is fair and equitable to each class of class of creditors which rejected the plan of reorganisation; and
			4. the other requirements for confirmation have been satisfied.
		6. Following the creditor vote, a plan of reorganisation may be sanctioned (‘confirmed’) by the US Court. The US Court will, in addition to checking that the relevant voting thresholds have been met, ensure all other formalities have been complied with and any objections have been considered.
	3. Advantages of the Chapter 11 process:
		1. Automatic stay: Obtaining the automatic stay against creditor enforcement actions is one of the key benefits of the Chapter 11 process.[[8]](#footnote-8) The automatic stay has worldwide effect and prevents a wide range of creditor enforcement actions, including enforcing security. Given the Bank Syndicate Lenders may be considering commencing enforcement action against Efwon Investments, the automatic stay will be key in protecting BM’s investment in the Efwon Group and ensuring the survival of the Formula 1 team.
		2. Debtor-in-possession: Chapter 11 proceedings are what are known as ‘debtor-in-possession’, meaning that the existing management and shareholders of the debtor remain in control of the restructuring process, as opposed to an external controller (such as a liquidator).[[9]](#footnote-9) By maintaining control of the restructuring process, the management of Efwon Investments are able to propose a Plan of Reorganisation which seeks to protect BM’s investment in the Efwon Group and ensure the survival of the Formula 1 team.
		3. Ability to bind non-consenting creditors: As mentioned above, a Chapter 11 process may permit a Plan of Reorganisation to be approved over the objections of non-consenting lenders provided the requisite creditor approvals are obtained and the statutory formalities are complied with.[[10]](#footnote-10) This is likely to be critical in the Chapter 11 proceedings of Efwon Investments as the ultimate proposed Plan of Reorganisation (as set out in paragraph ‎5 (*Stage 2 – Restructuring*)) will likely require unanimous consent from the Bank Syndicate Lenders. In this respect the Chapter 11 process will prevent minority or ‘hold-out’ creditors from de-railing an otherwise viable Plan of Reorganisation.
		4. DIP financing: Chapter 11 proceedings permit the debtor, subject to certain statutory conditions being satisfied, to incur post-petition financing (or ‘DIP financing’). Our Restructuring Strategy does not currently envisage the incurrence of DIP financing, however, should the need arise for post-petition financing, the well-developed and tested DIP financing market in the United States may provide a source of new funding for the Efwon Group.
	4. Disadvantages of Chapter 11 process:
		1. Cost: Chapter 11 proceedings are generally regarded to be more expensive than other forms of restructuring or insolvency proceedings.[[11]](#footnote-11) However, despite the costs of a Chapter 11 process, we are of the view that the long term benefits of a Chapter 11 process justify this initial cost outlay.
		2. Freefall filing: Freefall Chapter 11 processes are generally more costly than pre-planned or pre-packaged Chapter 11.[[12]](#footnote-12) This is due to the fact that the plan of reorganisation under a pre-planned or pre-packaged Chapter 11 process will largely be agreed prior to filing, meaning that the Court process is generally shorter, reducing litigation and administrative costs. Unfortunately, given the imminent enforcement action by the Bank Syndicate Lenders, it appears unlikely that Efwon Investments can undertake a pre-planned or pre-packaged Chapter 11 process. However, to the extent that the Bank Syndicate Lenders can be engaged early (and prior to their enforcement) then this may assist in reducing the litigation and administrative costs of the Chapter 11 process.
		3. Risk of no-agreement: Commencing Chapter 11 proceedings does not guarantee that an appropriate plan of reorganisation (or any plan of reorganisation) will be agreed with creditors. As mentioned above, the plan of reorganisation must be approved by the relevant thresholds of creditors. In the event that the relevant thresholds of creditors do not approve the plan of reorganisation, then it may lead to the termination of the Chapter 11 proceedings and the commencement of liquidation proceedings.
		4. No stay of enforcement against personal property of BM: The automatic stay will only apply with respect to creditor actions against Efwon Investments. The automatic stay generally cannot be extended to prevent creditor enforcement actions against third parties (such as BM).[[13]](#footnote-13) With respect to the Property Pledges, we intend to release these as part of the Plan of Reorganisation. Prior to confirmation of the Plan of Reorganisation we will seek a standstill from the Bank Syndicate Lenders to prevent enforcement of the Property Pledges.

***Efwon Trading and Efwon Romania***

* 1. Process:
		1. Efwon Trading and Efwon Romania will make a filing with the Dutch Court to commence the public WHOA proceedings. For reasons explained further below, we propose to use a public (as opposed to a private) WHOA proceeding in order to take advantage of the automatic recognition of the public WHOA proceedings throughout the European Union (the “**EU**”) (except for Denmark).[[14]](#footnote-14)
		2. Following filing, a restructuring plan (a “**Composition Plan**”) must be developed and proposed to creditors. The terms of our proposed composition plan are set out in further detail in paragraph ‎5 (*Stage 2 – Restructuring*). This can be done at the time of filing or after. We envisage that Efwon Trading and Efwon Romania will file for WHOA proceeding first while they are still preparing and negotiating the terms of their respective Composition Plans.
		3. Unlike a Chapter 11 proceeding, there is no automatic stay under a WHOA proceeding. However, despite the absence of an automatic stay, a debtor subject to WHOA proceedings may petition the Dutch Court to grant a temporary moratorium against individual enforcement actions by creditors for a period of four months (extendable for a further four months).[[15]](#footnote-15) In this respect, we will ensure that Efwon Trading and Efwon Romania petition the Dutch Court to grant moratoriums against creditor enforcement actions by the Monaco Lender and the Romanian Drivers, respectively.
	2. Jurisdictional issues
		1. Efwon Trading is Dutch-law incorporated entity. Accordingly, we do not see any jurisdictional issues arising with respect to Efwon Trading commencing WHOA proceedings.
		2. Efwon Romania is incorporated under the laws of Romania. Under Dutch law, Efwon Romania may file for WHOA proceedings if it has a ‘sufficient connection’ to the Netherlands. Sufficient connection can be evidenced by certain factors including, the debtor’s assets or group companies are located in the Netherlands, the relevant finance documents are Dutch-law governed and/or the debtor has its centre of main interests (“**COMI**”) in the Netherlands.[[16]](#footnote-16)
		3. With respect to Efwon Romania, we understand that there is an argument that it has a ‘sufficient connection’ to the Netherlands on the basis that it is the subsidiary of a Dutch company (Efwon Trading, which is also a creditor of Efwon Romania by way of the Intragroup 1 Loan). It would also be helpful to know if Intragroup 1 Loan is Dutch-law governed.
		4. There is also an argument that the COMI of Efwon Romania is in the Netherlands on the basis that (from the facts provided to date):
			1. Efwon Trading was set up as the head of the Maximov F1 Team’s European operations and therefore management decisions regarding the Maximov F1 Team are taken here; and
			2. Efwon Romania may be an operational company of the Maximov F1 Team but does not conduct the administration of its interests on a regular basis which would be ascertainable by third parties dealing with Efwon Romania.
		5. We will need to complete further due diligence regarding the COMI of Efwon Romania. In the event that the COMI of Efwon Romania is not in the Netherlands, we would suggest shifting the COMI of Efwon Romania to the Netherlands (a “**COMI Shift**”). This reason for this is to:
			1. further evidence Efwon Romania’s sufficient connection with the Netherlands as a jurisdictional basis to commence WHOA proceedings; and
			2. ensure that the public WHOA proceedings of Efwon Romania will be automatically recognised throughout the EU (except for Denmark) as the ‘main insolvency proceedings’ of Efwon Romania by way of Regulation (EU) 2015/848 of the European Parliament (the “**Recast Insolvency Regulation**”). The benefit of being recognised as the ‘main insolvency proceedings’ in the EU Recast Regulation is that the WHOA proceedings will be automatically recognised throughout the EU (except for Denmark) and it will prevent another jurisdiction (such as Romania) from opening the ‘main insolvency proceedings’ of Efwon Romania.[[17]](#footnote-17)
		6. A COMI Shift is a well-developed process in European restructurings and can be done by taking certain steps[[18]](#footnote-18), including Efwon Romania:
			1. moving its registered office and principal place of business to the Netherlands;
			2. holding all board meetings in the Netherlands;
			3. notifying the relevant Romanian and Dutch tax authorities and company registrar officials regarding its Dutch residency;
			4. notifying its creditors of the change in its COMI; and
			5. communicating with its creditors from the Netherlands, such as by clearly stating Efwon Romania’s new address and principal place of business in all written correspondence with its creditors.
	3. Approval of a plan of reorganisation and class composition:
		1. Similar to a Chapter 11 proceedings, the creditors of Efwon Trading and Efwon Romania must be placed into separate classes if their claims or rights against Efwon Trading or Efwon Romania (as appropriate) are ‘incomparable’ (either prior to the WHOA proceedings or as a result of the WHOA proceedings)[[19]](#footnote-19). In this respect:
			1. Efwon Trading:
				1. Efwon Trading has two creditors, being the Monaco Lender (in respect of the Monaco Loan) and Efwon Investments (in respect of the Intragroup 1 Loan).
				2. The Monaco Loan and the Intragroup 1 Loan are secured by different security packages (as described in the debt profile of the Efwon Group in paragraph ‎2.2 above). Accordingly, our preliminary view is that the Monaco Lender and Efwon Investments will be placed in different creditor classes.
				3. Further, although the Intragroup 1 Loan is legally held by Efwon Investments, our view is that the beneficial owner of the Intragroup 1 Loan is the Bank Syndicate Lenders by way of their (i) pledge on the projected revenue to flow back from the resulting investment and participation in the sport and (ii) pledge over the shares of Efwon Investments. Accordingly, the votes of Efwon Investment should be exercised in accordance with the instructions of the Bank Syndicate Lenders, who are the beneficial owners of the debt under the Intragroup 1 Loan.[[20]](#footnote-20)
			2. Efwon Romania:
				1. Efwon Romania has three creditors, being the Monaco Lender (in respect of the guarantee from Efwon Romania of the Monaco Loan), the Romanian Drivers (in respect of the Romania Driver Claim) and Efwon Trading (in respect of the Intragroup 2 Loan).
				2. Given that the Monaco Loan, the Driver Claim and the Intragroup 2 Loan each benefit from different levels of creditor support (as described in the debt profile of the Efwon Group in paragraph ‎2.2 above), our preliminary view is that the Monaco Lender, the Romanian Drivers and Efwon Trading will be placed in different classes.
				3. Similar to the position for Efwon Trading, although the Intragroup 2 Loan is legally held by Efwon Trading, our view is that the beneficial owner of the Intragroup 2 Loan is the Bank Syndicate Lenders and the Monaco Lenders by way of their security packages granted by Efwon Trading. Accordingly, the votes of Efwon Trading should be exercised in accordance with the instructions of the Bank Syndicate Lenders and the Monaco Lender, who are the beneficial owners of the debt under the Intragroup 2 Loan[[21]](#footnote-21) The specific voting split between the Bank Syndicate Lenders and the Monaco Lender will be determined in accordance with the likely recoveries of the Bank Syndicate Lenders and the Monaco Lender from Efwon Romania in a liquidation scenario.
		2. With respect to voting on the Composition Plan, a class of creditors will be deemed to have approved the Composition Plan if creditors representing at least two-thirds by value in that class vote in favour of the Composition Plan.[[22]](#footnote-22)
		3. Following the voting and provided at least one class of creditors has voted in favour of the Composition Plan, Efwon Trading and Efwon Romania (respectively) can apply to the Dutch Court to sanction their respective Composition Plans.
		4. Similar to the Chapter 11 proceedings, WHOA proceedings allow for cramdown of dissenting creditor classes provided that at least one ‘in the money’[[23]](#footnote-23) class has approved the Composition Plan.
		5. Provided the statutory grounds for sanction have been satisfied (for example, the voting process is not defective and the approval has not been reached by fraud), the Dutch Court can sanction the Composition Plan and make it legally binding between (i) Efwon Trading and its creditors and (ii) Efwon Romania and its creditors.
	4. Advantages of the WHOA process:
		1. Timing: WHOA proceedings can theoretically be completed in a relatively short period.[[24]](#footnote-24) A Composition Plan can be proposed to creditors at the time of filing and, while there must be a reasonable time between the Composition Plan being presented to creditors and the vote by creditors, this time period can be as short as eight days.
		2. Cost: WHOA proceedings are generally regarded as less expensive than Chapter 11 proceedings, partly as a result of the potentially shorter timeframes.[[25]](#footnote-25) We see this as a key advantage of restructuring Efwon Trading and Efwon Romania through a WHOA process.
		3. Automatic recognition in EU: A public (as opposed to a private) WHOA proceeding will be automatically recognised throughout the EU (except for Denmark) by way of the Recast Insolvency Regulation, provided the COMI of the relevant debtor is in the Netherlands.
		4. Debtor-in-possession: Similar to the Chapter 11 proceedings, a Dutch WHOA is ‘debtor-in-possession’ meaning that the management of Efwon Trading and Efwon Romania are each able to propose a Composition Plan which seeks to protect BM’s investment in the Efwon Group and ensure the survival of the Formula 1 team.
		5. Ability to bind non-consenting creditors: As described in paragraph ‎4.8 above, the WHOA proceedings allow minority creditors (or dissenting classes) to be crammed down through the voting process, reducing the risk of hold-outs.
	5. Disadvantages of the WHOA process:
		1. No automatic stay: As mentioned, there is no automatic stay under WHOA proceedings. Nonetheless, we would ensure that Efwon Trading and Efwon Romania petition the Dutch Court to grant a moratorium against creditor enforcement actions by the Monaco Lender and the Romanian Drivers. The grant of this moratorium by the Dutch Court is subject to certain conditions being satisfied, including that the interests of creditors not being adversely affected and that the granting of a moratorium is necessary to ensure that that Efwon Trading and Efwon Romania can continue their business during the WHOA proceedings. Accordingly, unlike the Chapter 11 process, it is not guaranteed that the Dutch Court will grant a moratorium to Efwon Trading and Efwon Romania or that it will not impose conditions on the granting of such moratorium.
		2. Potential jurisdiction issues in relation to Efwon Romania: As mentioned above, we will need to conduct further due diligence regarding Efwon Romania’s COMI position. However, even if Efwon Romania is found to have its COMI outside of the Netherlands, we would conduct a COMI Shift to ensure that Efwon Romania’s COMI would be moved to the Netherlands.
1. Stage 2 - Restructuring
	1. Following the commencement of the Chapter 11 proceedings and the WHOA proceedings, Efwon Investments will produce its Plan of Reorganisation and Efwon Trading and Efwon Romania will produce their Composition Plans.
	2. The overall objective of both the Plan of Reorganisation and the Composition Plans is:
		1. to move the business and assets of the Maximov F1 Team to the NewCo Group which is owned 51% by KuasaNas and 49% by BM (the “**Maximov F1 Team Transfer**”);
		2. to repay the Romanian Driver Claim in full; and
		3. for the Bank Syndicate Lenders and the Monaco Lender to release their claims against the Efwon Group and BM in full in exchange for new debt instruments issued by the NewCo Group (the “**New Debt Instruments**”).
	3. Accordingly, the high level terms of Efwon Investment’s Plan of Reorganisation are as follows:
		1. the Bank Syndicate Lenders to release all claims under the Bank Syndicate Loan (including all security granted by the Efwon Group and the Property Pledge granted by BM) in exchange for the New Debt Instruments;
		2. the terms of the New Debt Instruments to include:
			1. the same economics as the Bank Syndicate Lenders with respect to the principal amounts owing and the interest rate;
			2. an extended maturity date to allow the NewCo Group to stabilise operationally and financially;
			3. guarantee and security package over the key assets of the NewCo Group; and
			4. an intercreditor agreement with the Monaco Lender to regulate the rights of the Bank Syndicate Lenders and the Monaco Lender against the NewCo Group, including in relation to enforcement;
		3. a full release of any potential claims that the Bank Syndicate Lenders might have against BM, the Efwon Group and the directors of the Efwon Group;
		4. consent for the Efwon Group to effect the Maximov F1 Team Transfer;
		5. conditions precedent to the effectiveness of the Plan of Reorganisation, including:
			1. the Composition Plans becoming fully legally binding at the same time as the Plan of Reorganisation;
			2. the sponsorship agreement with KuasaNas being approved by the Malaysian Government;
			3. the incorporation of the NewCo Group and its capitalisation by KuasaNas;
			4. the payment of the Cash Consideration by the NewCo Group for the Maximov F1 Team Transfer; and
			5. other customary conditions precedent.
	4. The high level terms of Efwon Trading and Efwon Romania’s Composition Plan are as follows:
		1. the Monaco Lender to release all claims under the Monaco Loan (including all security granted by the Efwon Group) in exchange for the New Debt Instruments;
		2. the terms of the New Debt Instruments to include:
			1. the same economics as the Monaco Loan with respect to the principal amounts owing and the interest rate;
			2. an extended maturity date to allow the NewCo Group to stabilise operationally and financially;
			3. guarantee and security package over the key assets of the NewCo Group; and
			4. an intercreditor agreement with the Bank Syndicate Lenders to regulate the rights of the Monaco Lender and the Bank Syndicate Lenders against the NewCo Group, including in relation to enforcement;
		3. the Romanian Drivers to release all claims under or in respect of the Romanian Driver Claim in return for satisfaction in full of the Romanian Driver Claim;
		4. a full release of any potential claims that the Monaco Lender or the Romanian Drivers might have against BM, the Efwon Group and the directors of the Efwon Group;
		5. consent for the Efwon Group to effect the Maximov F1 Team Transfer; and
		6. conditions precedent to the effectiveness of the Composition Plan, including:
			1. the Plan of Reorganisation becoming fully legally binding at the same time as the Composition Plans;
			2. the sponsorship agreement with KuasaNas being approved by the Malaysian Government;
			3. the incorporation of the NewCo Group and its capitalisation by KuasaNas;
			4. the payment of the Cash Consideration by the NewCo Group for the Maximov F1 Team Transfer; and
			5. other customary conditions precedent.
2. Outcomes for stakeholders
	1. We set out in this section the outcomes for the various stakeholders, assuming the Plan of Reorganisation and the Composition Plans become fully and finally binding.
	2. BM:
		1. As the shareholder of a 49% stake in the NewCo Group, BM will retain a significant equity position in the Maximov F1 Team. Furthermore, the Property Pledge granted by BM will be released, which will protect BM’s personal wealth.
		2. The Maximov F1 Team will also be operationally and financially stabilised, reducing the risk of future creditor enforcement action. This will allow BM to protect his position (and reputation) as an owner of the Maximov F1 Team.
	3. KuasaNas
		1. KuasaNas will achieve its objective of receiving a 51% stake in the Maximov F1 Team. Further, the pre-condition set by KuasaNas (that the insolvency issues affecting the companies in the Efwon group are dealt with promptly) will be satisfied as KuasaNas will be acquiring a stake in the newly-incorporated and solvent NewCo Group.
		2. Accordingly, we do not envisage objections from KuasaNas to the restructuring process.
	4. Bank Syndicate Lenders:
		1. Our view is that the Bank Syndicate Lenders will be in a much stronger position post-restructuring, which should encourage the Bank Syndicate Lenders to be supportive and cooperative with respect to the overall restructuring process.
		2. Currently the Bank Syndicate Lenders are deeply structurally subordinated within the Efwon Group and may receive low to medium recoveries in the event of an immediate liquidation of the Efwon Group.
		3. However, as part of the restructuring, the Bank Syndicate Lenders will receive the New Debt Instruments in exchange for the existing Bank Syndicate Loan. The New Debt Instruments are not structurally subordinated and, furthermore, the NewCo Group should be much better placed financially and operationally to service the New Debt Instruments.
	5. Monaco Lender:
		1. We are also of the view that the Monaco Lender will be in a much stronger position post-restructuring, which should also encourage the Monaco Lender to be supportive and cooperative with respect to the overall restructuring process.
		2. While the Monaco Lender is not structurally subordinated to the same extent as the Bank Syndicate Lenders, its position as a creditor within the Efwon Group is weak. As described in the paragraph ‎3.4(b), the Monaco Lender’s key route to recovery is through its guarantee claim against Efwon Romania. However, that claim is shared *pari passu* with the claims of the Romanian Drivers (through the Romanian Driver Claim) and Efwon Trading (through Intragroup 2 Loan). Furthermore, as described in paragraph ‎3.4(b), the security package of the Monaco Lender is defective and is unlikely to result in substantial recoveries. Accordingly, the Monaco Lender may receive low to medium recoveries in the event of an immediate liquidation of the Efwon Group.
		3. However, as part of the restructuring, the Monaco Lender will receive the New Debt Instruments which benefit from a stronger security and guarantee package and, furthermore, the NewCo Group should be much better placed financially and operationally to service the New Debt Instruments.
	6. Romanian Drivers
		1. The Composition Plans envisages that the Romanian Drivers will be paid out in full with respect to Romanian Driver Claim. Accordingly, it is unlikely that the Romanian Drivers will object to the terms of the proposed restructuring.
		2. We consider it necessary or desirable for the Romanian Drivers to be paid out in full with respect to Romanian Driver Claim for the following reasons:
			1. The Bank Syndicate Lenders and the Monaco Lenders are exchanging their existing debt for the New Debt Instruments on a dollar-for-dollar basis. Accordingly, neither the Bank Syndicate Lenders nor the Monaco Lenders are taking a haircut on their respective debts. As such, the same treatment should apply for the Romanian Drivers.
			2. We consider it desirable to fully and finally settle the Romanian Driver Claim with the Romanian Drivers in the short term rather than have the Romanian Driver Claim ‘overshadowing’ the emergence of the Maximov F1 Team from its restructuring process.
			3. There may be adverse implications from a public relations perspective if BM and the Efwon Group are seen to be compromising the claims of injured employees through a restructuring process.
			4. There is a risk that the Romanian Courts will refuse to recognise a Dutch WHOA process that seeks to compromise the medical compensation claims of the Romanian Drivers. Pursuant to Article 33 (*Public Policy*) of the Recast Insolvency Regulation, a member state of the EU may refuse to recognise insolvency proceedings opened in another member state or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that member state's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual. Accordingly, if it was decided to compromise the debts of the Romanian Drivers through the Dutch WHOA process, we would need to engage Romanian counsel to understand the risks of the Romanian Driver’s asserting Article 33 (*Public Policy*) of the Recast Insolvency Regulation to prevent the recognition of the Dutch WHOA process with respect to the Romanian Drivers Claim.
		3. However, notwithstanding our considerations above, we will need to conduct further due diligence to understand both the quantum and the likelihood of success of the Romanian Driver Claim before making a final decision regarding whether to pay out the Romanian Driver Claim as part of the restructuring process.

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We are available to discuss this memorandum with you at your convenience. We look forward to hearing from you.

Yours sincerely,

Peter

1. The specific amount to be payable remains subject to ongoing due diligence and finalisation of the liquidation analysis. [↑](#footnote-ref-1)
2. *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux* (1890) LR 25 QBD 399). [↑](#footnote-ref-2)
3. Wall Street Journal “Texas Leads in Commercial Bankruptcy Filings in First Half of 2023” (June, 2023). [↑](#footnote-ref-3)
4. INSOL International, “A Comparative Look at Pre-Packs in Selected Jurisdictions” (2023) Special Report, 83. [↑](#footnote-ref-4)
5. Practical Law Bankruptcy & Restructuring and Practical Law Finance “Bankruptcy: Overview of the Chapter 11 Process”. [↑](#footnote-ref-5)
6. Impaired refers to a creditor’s legal, equitable or contractual rights being altered by a Plan of Reorganisation. [↑](#footnote-ref-6)
7. Practical Law Bankruptcy & Restructuring and Practical Law Finance “Bankruptcy: Overview of the Chapter 11 Process”. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. INSOL International, “A Comparative Look at Pre-Packs in Selected Jurisdictions” (2023) Special Report, 83. [↑](#footnote-ref-12)
13. INSOL International, “Treatment of Secured Claims in Insolvency and Pre-Insolvency Proceedings” (2007) Special Report, 171. [↑](#footnote-ref-13)
14. Vriesendorp, Reinout, van Kesteren, Wies, Vilarin-Seivane, Elena and Hinse, Sebastian, “Automatic recognition of the Dutch undisclosed WHOA procedure in the European Union”, Nederlands Internationaal Privaatrecht (NIPR), 2021 Afl. 1, 7. [↑](#footnote-ref-14)
15. de Gruijter, Gief, Jacobs, Joris Dunki of Loyens & Loeff “WHOA - the Dutch scheme of arrangement” Quoted, Edition 138, 2021, 9. [↑](#footnote-ref-15)
16. Ibid, 8. [↑](#footnote-ref-16)
17. Ibid. [↑](#footnote-ref-17)
18. See for example *In the matter of Gategroup Guarantee Limited* [2021] EWHC 775 (CH) at [44]. [↑](#footnote-ref-18)
19. de Gruijter, Gief, Jacobs, Joris Dunki of Loyens & Loeff N.V. “WHOA - the Dutch scheme of arrangement” Quoted, Edition 138, 2021, 6. [↑](#footnote-ref-19)
20. Vroom, Vincent and Kerstens, Loek of Loyens & Loeff N.V. “The Dutch Scheme of Arrangement” GRR The Art of the Ad Hoc – Edition 2, 2020. [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. Ibid. [↑](#footnote-ref-22)
23. ‘In the money’ means that a creditor class would be expected to receive at least partial repayment in a liquidation of Efwon Trading or Efwon Romania (as applicable). [↑](#footnote-ref-23)
24. de Gruijter, Gief, Jacobs, Joris Dunki of Loyens & Loeff N.V. “WHOA - the Dutch scheme of arrangement” Quoted, Edition 138, 2021, 8. [↑](#footnote-ref-24)
25. Ibid, 10. [↑](#footnote-ref-25)