# ****Introduction****

1. The Efwon Group, owner of Team Maximov, faces a critical financial crisis. Lawsuits, freezing injunctions, and potential insolvency threaten the entire group's viability and jeopardize Mr. Maximov's investments and ownership stake.
2. This memo outlines a comprehensive restructuring plan designed to save the team, secure the crucial KuasaNas sponsorship deal, and protect Mr. Maximov's investments and ownership stake.
3. The plan involves a group-wide restructuring, immediate engagement with key creditor groups, and the initiation of preventative restructuring proceedings in the Netherlands (WHOA), the United States (Chapter 11) and Singapore (IRDA).

## Key stakeholders

1. The main creditor groups are:
2. **US Lenders:** This is a syndicate of banks that provided a USD 250 million loan to Efwon Investments Inc. The loan is secured by, amongst other things, a number of Mr. Maximov's homes (USD75m), positive and negative pledges which are understood to restrict Efwon Investments Inc’s ability to take on further debt or dispose of assets, pledges over shares of Efwon Investments Inc and in Efwon Trading B.V, and a pledge of future revenue. The interest rate was raised to 6% after the first year due to missed repayments.
3. **Monaco Lender:** This is a separate lender that provided a USD 100 million loan to Efwon Trading B.V ahead of the 2018 season, which is understood to have a high-interest rate due to the short notice and potential risk involved. The loan is secured by the revenues of Efwon Trading and is guaranteed by Efwon Romania and Efwon Singapore.
4. **Romanian Drivers:** These are two drivers who were contracted by the team acquired by Efwon Romania. Due to safety issues and management failures, they are suing Efwon Romania for compensation, which could be substantial.

## ****Key immediate risks****

1. **The Efwon Group is facing several immediate risks, with the most pressing being:**
2. **Efwon Romania’s lawsuits, freezing injunctions and potential insolvency, which may trigger potential domino of defaults:** The driver lawsuits against Efwon Romania and the freezing orders on the company's assets and income will have serious impact on the group’s viability. The freezing order prevents Efwon Romania from making its loan repayments to Efwon Trading, potentially triggering a domino effect of defaults, in particular:
   1. default by Efwon Trading on its obligations to Efwon Investments Inc and the Monaco lender, which exposes Efwon Romania and Efwon Singapore to liability under its corporate guarantee in favour of the Monaco lender;
   2. default by Efwon Investments Inc on its obligations to the US lenders, giving rise to risk of enforcement action by the US lenders, putting Mr Maximov’s direct and indirect ownership stake in the Efwon group in jeopardy;
3. **Loss of Funding and Sponsorship:** With Kretek potentially withdrawing sponsorship and the insolvency issues, the Efwon Group might struggle to secure alternative funding. This could cripple Team Maximov's ability to participate in the upcoming season and jeopardize its long-term viability.
4. **KuasaNas Deal Collapse:** The pre-condition set by KuasaNas for finalizing the deal requires resolving the insolvency issues. The current situation could lead them to walk away from the deal, jeopardizing a crucial source of financial stability and Mr. Maximov's ownership stake in the team.

These immediate risks are interconnected and could have a cascading effect, potentially leading to the collapse of the Efwon Group and Team Maximov.

# Restructuring plan

1. We recommend a restructuring plan that involves the following principal terms:
   1. **NewCo Formation:** A new company be incorporated in Malaysia (“**NewCo**”), to be 51% owned by KuasaNas and 49% by Efwon Singapore. This creates a fresh entity to house Team Maximov's operations, and a vehicle into or through which KuasaNas can inject their investment, safe from the turmoil afflicting Efwon Romania. FIA’s approval will also have to be obtained for Team Maximov’s constructor’s license currently held by Efwon Romania to be transferred to NewCo;
   2. **Novation of Efwon Romania’s intra-group debt:** Existing debt owed by Efwon Romania to Efwon Trading B.V. to be novated to Efwon Singapore. This streamlines the debt structure and ring fences it from the issues and uncertainties afflicting Efwon Romania;
   3. **KuasaNas Upfront Payment:** In consideration for its 51% shareholder in NewCo, KuasaNas to make upfront payment to Efwon Singapore (in addition to its annual capital commitment to fund the F1 team’s racing budget) which, following the novation of Efwon Romania’s intra-group debt to Efwon Singapore, it would use to make partial payment to Efwon Trading B.V., and eventually up streamed / paid to:
      1. US lenders; and
      2. Monaco lender;
   4. **Restructuring of US bank’s and Monaco’s debt:** The remaining debt owed to US lenders and Monaco lender to be restructured, along the following lines:
      1. partial debt forgiveness and/or conversion of debt to equity (in Efwon Trading B.V);
      2. extension of debt repayment; and/or
      3. extinguishment of security (in particular, pledge over future revenue).
   5. **Rationalisation of pledges over future revenue:** Fresh agreement with US and Monaco lender as to how any future revenue should flow and be distributed as between the different lender groups, in place of the existing pledges over future revenue given to US lenders and Monaco lender;
   6. **Ring fencing of Romanian driver claims exposure:** Provided the Romanian drivers’ claim are amicably settled, a portion of the upfront payment may also be used to pay the Romanian drivers. Otherwise, an appropriate portion of KuasaMas’ upfront payment is to be aside as security to satisfy any judgment that may be awarded in the drivers’ favour, in consideration for the lifting of the freezing injunction and termination of the insolvency proceedings. Legal opinion from Romanian counsel may need to be obtain to provide an assessment as to prospect and extent of liability to Romanian drivers.

# Engagement with key stakeholders

1. We recommend engaging in immediate discussions with all key stakeholders, in particular, US lenders, the Monaco lender, and the Romanian drivers, to facilitate the proposed restructuring plan.
2. **US Lenders:** The US lenders hold significant leverage due to the large loan amount and secured assets. Early engagement allows Efwon group to explore various restructuring options tailored to their interests like debt forgiveness, extended repayment terms, or even debt-to-equity conversion. Highlighting the benefits of a successful restructuring (potential future revenue stream from the revived team) can incentivize them to cooperate.
3. The US lenders will likely be receptive to a restructuring plan considering the IBR report and the lack of alternative options. Key focuses for discussions with the US lender group as follows:
   * 1. Emphasize the imminent threat of insolvency for Efwon Romania due to the driver lawsuits, freezing injunctions, and insolvency proceedings. Highlight the domino effect this could have, which may ultimately result in the collapse of the Efwon group. This would result in the shares in Efwon Invesment Inc and Efwon Trading B.V. being worthless, leaving the US lenders being potentially unable to recover on their loan beyond the value they could extract from enforcement of the security over Mr Maximov’s houses (about USD75m).
     2. Emphasise that US lenders’ position will be significantly better off if there is a successful turnaround of the Efwon group. In this regard, highlight the IBR report’s conclusion that Efwon effectively has only one (1) option on the table, that is to secure the sponsorship deal with KuasaNas, that it is contingent on the Efwon group being able to address the threat of insolvencies, and that the deal with be in jeopardy if the US lender commence enforcement action.
     3. Emphasise that US lenders’ cooperation is key to securing approval for any restructuring plan, and in securing the KuasaNas sponsorship deal.
     4. Emphasise that as part of restructuring plan, steps will be taken to implement the operational improvement and cost efficiency measures stipulated in the IBR;
     5. Negotiation options:
        + 1. Standstill on any enforcement action as against Efwon Investment Inc and against the security, to facilitate restructuring plan;
          2. Propose haircut on the outstanding loan amount and/or debt-to-equity conversion of the outstanding loan amount, in exchange for part of the payment to be paid by KuasaNas upon closing of the deal to be used to paydown a portion of the outstanding loan owed to the US lender, as part of the restructuring plan.
4. **Monaco lender:** Similar to the US Lender, the Monaco lender might be receptive to a restructuring plan considering it does not have any security of significant value, and its prospect of recovery in an insolvency scenario is low. Key focuses for discussions with the Monaco lender:
   * 1. Similar to the US lenders, emphasise that the Monaco lender’s position will be significantly better off if there is a successful turnaround of the Efwon group. In particular, even if it enforces the guarantee against Efwon Romania and Efwon Singapore, prospect of recovery is low, given that the entire Efwon group will likely be put into liquidation absent a successful restructuring plan.
     2. Focus on KuasaNas Deal:If the Monaco lender prioritizes securing their position, emphasize how a successful deal with KuasaNas would improve the Efwon Group's financial health, strengthen their security over Efwon Trading B.V’s revenue, and their ability to repay the loan.
     3. Negotiation options:
        + 1. Standstill on any enforcement action as against Efwon Trading B.V. and against the guarantees provide by Efwon Romania and Efwon Singapore, to facilitate restructuring plan;
          2. Similar to the US lenders, propose options like debt forgiveness, extended repayment timelines, or converting a portion of the debt to equity in a restructured Efwon entity, as part of the restructuring;
5. **Romanian drivers:** The focus for discussions with the Romanian drivers in the Efwon Group situation should be multifaceted and delicately managed:
   * + - 1. **Lifting or variation of the freezing injunctions:** Highlight to the drivers that the freezing injunctions and insolvency proceedings has placed the viability of the entire Efwon group in jeopardy. If the situation is not addressed, say by way of a lifting or variation of the freezing injunctions, the drivers may end up with a paper judgment, even if they succeed in their claim, and they will have to expend more legal fees and time to seek recovery in an insolvency scenario;
         2. **Explore settlement in exchange for their cooperation in restructuring plan:**
6. Negotiate a fair compensation package that addresses their claims for damages, with the payment deferred and contingent upon successful restructuring;
7. Explore options beyond just financial compensation. Perhaps offering public apologies, improved safety protocols within the team, or even testimonials for their racing careers could be valuable to them.
8. The negotiation with the Romanian driver is expected to be complicated. By highlighting the financial risk that their lawsuits and legal actions has brought unto the Efwon group, it may validate their strategy of seeking the freezing injunctions and commencing insolvency proceedings, which may in turn encourage the drivers to take a more aggressive stance in any negotiations.
9. Ultimately, however, and as be explained below, although settlement with the Romanian drivers or obtaining their support to the restructuring plans would be helpful, they are not critical to the success of the plan.

# Opposing romanian insolvency proceedings & Preventative restructuring proceedings in netherlands, United states and SIngapore

1. We recommend opposing the insolvency proceedings commenced in Romania, and immediately initiating debtor-in-possession restructuring proceedings strategically across 3 jurisdictions, namely Netherlands, United States, and in Singapore, and to obtain temporary stays and moratoriums, in order to create a more favorable environment for negotiations with the key creditors.
2. The temporary stays and moratoriums prevent a chaotic scramble for assets and allow for focused discussions with creditors. This breathing space is crucial for crafting a restructuring plan that addresses the concerns of all stakeholders and secures the future of Team Maximov.
3. It also ensures that the existing management remain in situ, which may be critical to advance the negotiations with KuasaNas and to facilitate continued participation in F1 races.

## Opposing Romanian insolvency proceedings

1. As matter of priority, we recommend that Efwon Romania seeks Romanian counsel advice to ascertain whether there are grounds to oppose the Romanian insolvency proceedings.
2. Grounds for opposition may include disputing jurisdiction and disputing grounds for insolvency.
3. **Disputing jurisdiction / Centre of Main Interests (COMI):** Efwon Romania could argue that its COMI is not actually Romania and thus challenge the Romanian court's jurisdiction to open the insolvency proceedings as the main insolvency proceedings based on Article 3 EIR. Determining Efwon Romania’s COMI will not be straightforward, but it is arguably located in the Netherlands:
   1. The presumed starting point is that Efwon Romania’s COMI is Romania, being the place of its registered office: Article 3(1) EIR.
   2. This presumption may be displaced by facts that points to another jurisdiction as the place where Efwon Romania conducts the administration of its interests on a regular basis, and which is ascertainable by third parties: Article 3(1) EIR. Special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests (Preamble 28 EIR).
   3. The following facts points to Netherlands as the COMI:
      1. **Location of Management:** While the instructions do not explicitly state the location of key decision-making, it suggests some control from the US (Mr Maximov) and potentially the Netherlands (Efwon Trading).
      2. **Reliant on Efwong Trading B.V. for financing:** Efwon Romania is *entirely dependent* on Efwon Trading B.V for funding and continued viability. Since, 2017, it has also been funded via sponsorship from Kretek via a deal that was entered into with Efwon Singapore, an entity that was wholly owned by Efwon B.V. This suggests that significant control is exercised from Efwon Trading B.V in the Netherlands.
      3. **Global operations:** As a F1 racing team, Team Maximov participates in F1 races all around the world. At present, there are no race in Romania on the F1 calendar. The fact that the team is owned by Efwon Romania, a Romanian entity, is merely due to historical incidence. It was the only team with the requisite F1 racing license that was available to be acquired by the Efwon group back in 2014.
      4. **Creditor’s perspective:** As stated, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests (Preamble 28 EIR). From the creditors’ perspective, it seems reasonably clear that the central control of the team’s management and administration sits with the ownership and financiers, all of whom are located Special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests (Preamble 28 EIR). outside Romania.
4. **Dispute the Grounds for Insolvency:** Efwon Romania could contest the petitioner's (drivers) claim of insolvency. Alternatively, it can also seek restructuring as an alternative to winding up, to the extent it is available under Romanian law. This will require Efwon Romania to demonstrate a realistic prospect of financial recovery via a restructuring, particularly with the upcoming KuasaNas sponsorship. This may also require providing evidence of financial projections and the potential future revenue stream.

## WHOA restructuring of Efwon Trading B.V. and Efwon Romania in the Netherlands

1. If Efwon Romania successfully resists the Romanian insolvency proceedings, whether on the ground of jurisdiction or grounds for insolvency, we recommend that Efwon Trading B.V. and Efwon Romania commences WHOA restructuring proceedings in the Dutch courts, and simultaneously request a stay of any bankruptcy or enforcement action against the entities (including a stay of any action that may be brought against Efwon Singapore as guarantor of the loan provided by the Monaco lender to Efwon Trading B.V), to facilitate the restructuring of the entities.
2. Under the Dutch WHOA regime, separate restructuring plans must be submitted for Efwon Trading B.V. and Efwon Romania respectively, within a period thereafter.
3. The key advantage of a restructuring application under the WHOA regime is that any stay order and approved restructuring plan will have automatic recognition within the European Union, provided that it is demonstrated that both entities’ centre of main interests (“**COMI**”) was in the Netherlands, at the time the WHOA restructuring proceedings is commenced: Article 19 European Insolvency Regulation (“**EIR**”). This includes Romania, where any stay order or approved restructuring plan will bind the Romanian drivers.
4. Efwon Trading B.V.’s COMI is likely to be the Netherlands. As a Dutch entity, Netherlands is presumed to be Efwon Trading B.V.’s COMI: Article 3(1) EIR. There being no other facts pointing to another jurisdiction, this presumption will stand.
5. As to Efwon Romania’s COMI, this has been addressed above.
6. The temporary stay of action will give the Efwon group breathing space to engage in the discussions with the US lender, Monaco lender, and the Romanian drivers and to submit the restructuring plan for their consideration and approval.
7. Provided the support of the US lender and Monaco lender are secured, any opposition by the Romanian drivers to the WHOA restructuring application will unlikely prevent the restructuring plan from being approved by the Dutch court:
   1. It is likely that the Romanian drivers will be placed in the same class as the Monaco lender, i.e., contingent creditors, in that they will be owed money by Efwon Romania if they succeed in the lawsuit, in the same way as the Monaco lender will be owned money by Efwon Romania if there is default on the USD100m loan by Efwon Tradinv B.V. It is not clear from the case study what is the amount that is sought by Romanian drivers against Efwon Romania in the lawsuit, but it is reasonably safe to assume that the Monaco lender (owed about USD100m plus interest) will constitute at least 67% of the debt owed to the contingent creditor class.
   2. Even if the Romanian drivers are placed in a separate class from the Monaco lender, WHOA regime permits cross-class cramdown, which is likely to be met on the facts of this case especially given that there is nothing to indicate that the Romanian driver will be worse off under the restructuring plan than they would in the insolvency scenario. To the contrary, the restructuring plan envisages that a portion of the upfront payment to be made by KuasaMas would be set aside as security for the drivers’ claim, in exchange for the lifting of the freezing injunction and termination of the insolvency proceedings.

## Chapter 11 & 15 proceedings in the United States

1. We also recommend that Efwon Investments Inc commences Chapter 11 proceedings in the United States Bankruptcy Court. Chapter 11 proceedings trigger an automatic stay on most collection efforts by creditors like the US lenders. This pause allows Efwon Investments Inc time to negotiate a restructuring plan without the immediate threat of asset seizure or lawsuits. This is similarly to give Efwon group breathing space to engage in discussions with the US lenders in particular, on the proposed restructuring of Efwon Investment Inc’s debt.
2. Efwon Investments will then have up to 4 months to present a restructuring plan (unless extended by Court order) to propose a restructuring plan. The goal is to obtain US lenders’ support for the restructuring plan ahead of confirmation by the US Bankruptcy Court by mid 2024.
3. Upon the approval of the WHOA restructuring plans, we also recommend that Efwon Trading B.V. seeks recognition of the WHOA restructuring plan in the United States via Chapter 15 proceedings. This is because some aspect of Efwon Trading B.V.’s restructuring plan’s implementation will likely depend on the US lenders and Efwon Investments Inc being bound by the restructuring plan, such as the proposed fresh agreement relating to the flow and distribution of future revenue as between the US and Monaco lenders, and the debt-to-equity conversion (into shares in Efwon Trading B.V.) proposed to be offered to the US lenders and Monaco lender. Efwon Trading B.V. is likely able to satisfy the Chapter 15 jurisdiction requirement by depositing a nominal retainer sum (for e.g., S$10,000) with a US counsel (See *In re Barnet*, 737 F.3d 238, 248 (2d Cir. 2013).

## Recognition of Efwon Trading B.V.’s WHOA restructuring proceedings pursuant to UNCITRAL Model law in Singapore

1. To address the risk of the Monaco lender enforcing the guarantee as against Efwon Singapore, we recommend that Efwon Trading B.V. seeks recognition of the WHO proceedings (including any temporary stay ordered) in Singapore, pursuant to the UNCITRAL Model Law on Cross-Border Insolvency (“**Model Law**”).
2. Pursuant to Articles 17 and 21 of the Model Law, recognition may be sought by a “*Foreign Representative*” on the basis that the WHOA proceedings are foreign main proceedings, in that they are proceedings taking place in the Efwon Trading B.V’s COMI. Given that WHOA proceedings are a debtor-in-possession proceedings, the relevant “*Foreign Representative”* may be a representative of Efwon Trading B.V. appointed by its board of directors with authority to represent Efwon Trading B.V. for purposes of seeking recognition of the WHOA proceedings in Singapore: see UNCITRAL Digest on Caselaw under the MLCBI for Article 2, paragraph 38.
3. Recognition of the WHOA proceedings under IRDA can grant Efwon Singapore effective moratorium protection, similar to the stay in the Netherlands. This protects them from immediate enforcement actions by the Monaco lender who holds a guarantee on Efwon Trading B.V.'s loan. This moratorium will similarly provide the Efwon group with additional time to engage with the Monaco lender and discuss restructuring options within the framework of the WHOA plan.

# potential outcome for each key stakeholder in the Efwon Group restructuring plan

1. **Efwon Group:**
   1. **Potential Outcome:** Avoiding insolvency, securing the KuasaNas sponsorship, and a chance for financial recovery. This allows the Efwon Group to continue operating Team Maximov.
2. **Mr. Maximov:**
   1. **Potential Outcome:** Preserves ownership stake in the team through Efwon Singapore's involvement in NewCo.
3. **Creditors:**
   1. **US Lenders:**
      * **Potential Outcome:** Partial debt repayment through KuasaNas upfront payment and potential restructuring options (debt forgiveness, debt-to-equity conversion, extended repayment).
      * **Acceptance:** Possible, especially if they see the KuasaNas deal and restructuring as better than losing everything in insolvency.
      * **Forced Acceptance:** No. They can still oppose the restructuring plans and seek to pursue enforcement actions, but the restructuring aims to incentivize cooperation.
   2. **Monaco Lender:**
      * **Potential Outcome:** Similar to US lenders, potential for partial repayment and restructuring options. They also benefit from the team's continued operation and future revenue streams.
      * **Acceptance:** Possible, especially if they believe the restructuring provides a better recovery chance than insolvency.
      * **Forced Acceptance:** No. They can still oppose the restructuring plans and seek to pursue enforcement actions, but the restructuring aims to incentivize cooperation.
   3. **Romanian Drivers:**
      * **Potential Outcome:** Settlement with prospect of full compensation contingent on restructuring success. Additionally, potential for apologies, improved safety protocols, or career testimonials.
      * **Acceptance:** Uncertain, bit risky for them not to agree to the restructuring plans as it may leave them with a paper judgment.
      * **Forced Acceptance:** Possible, via cramdown provision available under the WHO regime.
   4. **NewCo:**
      * **Potential Outcome:** Fresh start with the KuasaNas sponsorship and a restructured Efwon Group, improving financial stability.
      * **Acceptance:** N/A (New entity created with stakeholders' cooperation)
   5. **KuasaNas:**
      * **Potential Outcome:** Secure a partnership with a revitalized Team Maximov, potentially enhancing their brand exposure and marketing goals.
      * **Acceptance:** They will wait for the finalized restructuring plan and its approval before committing.
      * **Forced Acceptance:** No. They can withdraw sponsorship if they find the situation too risky.
4. These are potential outcomes based on the proposed restructuring plan. Negotiations will determine the final terms for each stakeholder.

# Conclusion

1. In conclusion, the proposed restructuring plan offers a viable solution to the financial crisis threatening the Efwon Group and Team Maximov. By implementing a group-wide restructuring, engaging with key creditors, and initiating preventative restructuring proceedings, the plan addresses the immediate risks and lays the groundwork for a sustainable future. The proposed approach leverages the WHOA framework in the Netherlands to create a favourable environment for negotiations while providing breathing room through temporary stays of action. Recognition of the WHOA proceedings in the United States and Singapore strengthens the plan's effectiveness and protects Efwon entities in those jurisdictions.

Yours faithfully,

Yam Wern-Jhien