INSOL INTERNATIONAL GLOBAL INSOLVENCY PRACTICE COURSE 2023/2024

CASE STUDY II

ANNA LIN

15 April 2024

I. Introduction

We have been asked to advise Mr. Benedict Maximov ("Mr. Maximov") and his company, Efwon Investments Inc. ("Efwon Investments"), a company incorporated under the laws of Texas, regarding a potential restructuring of the Efwon Group. The Efwon Group comprises Efwon Investments and its subsidiaries, namely Efwon Trading B.V. ("Efwon Trading"), a company established under the laws of the Netherlands, Efwon Romania, a wholly owned subsidiary of Efwon Trading, and Efwon Singapore, a company incorporated under the laws of Singapore.

We understand that the objective of the Efwon Group's restructuring and the advice provided herein is to facilitate a transaction with KuasaNas ("KuasaNas"), a Malaysian State Company that supplies alternative energy fuels. This transaction will allow KuasaNas to acquire a 51% interest in the Maximov F1 team and facilitate the team's relocation to Malaysia. The restructuring also aims to safeguard the Maximov F1 team while ensuring the best possible protection of Mr. Maximov's position.

We understand that, based on the IBR report prepared by one of the largest consultancy firms, Efwon Group is required to enhance its operations and secure the deal with KuasaNas. Without the deal with KuasaNas, Efwon Group would struggle to service its debt and generate positive cash flow. Finding another investor within a realistic timeframe is currently deemed impractical.

Furthermore, we understand that KuasaNas is willing to make an upfront and direct payment of the part of the total consideration for the deal at the closing.

We have been informed that the Efwon Group has at least the following creditors and potential creditors:

(a) The US Syndicate Bank creditors: The US syndicate bank creditors ("US Syndicate Bank Creditors") comprise a syndicate of banks that extended a USD250 million loan to Efwon Investments from 2014 to 2024, with an interest rate increase to 6% occurring around 2015. In the absence of the underlying transactional documents, the loan's repayment timeline and the total outstanding amount of this syndicated loan are unclear. To secure the loan, part of Mr. Maximov's real estate properties located across different jurisdictions, valued at approximately USD75 million, and shares of Efwon Investments have been pledged. The loan documents include both positive and negative pledges. The loan structure involves two (2) senior banks with a combined exposure of USD100 million, two (2) mezzanine financial creditors with a combined exposure of USD60 million, and five (5) junior financial creditors with a combined exposure of USD90 million.

(b) High Interest Rate Monaco-based creditor: A creditor based in Monaco ("High Interest Rate Monaco-based Creditor") provided a loan of USD 100 million with a high interest rate. This loan was secured by the revenues of Efwon Trading, Efwon Romania, and Efwon Singapore. Additionally, each of these entities acted as a guarantor for the loan.

(c) Injured Drivers as Contingent Creditors: As contingent creditors, the injured drivers from the last race of 2023 in Romania have filed claims before the Romanian courts. If successful, substantial compensation is likely to be awarded. In addition, the injured drivers have initiated insolvency proceedings against Efwon Romania and obtained a freezing injunction over its assets and income. As a result, Efwon Romania may default on its payments to Efwon

Trading, which were due in early 2024. Consequently, this default may cause Efwon Trading to default on its obligations to Efwon Investments.

The list of creditors mentioned above is organised based on historical information regarding their date of establishment and potential claim amounts. However, in terms of the restructuring order, subject to our review of the underlying transactional documents and personal injury and injunction application documents, and information regarding the current negotiations status with the creditors and contingent creditors, as well as a complete creditors' profile of the Efwon Group, we hold the opinion that the priority order should be reversed. In other words, our recommended order of priority suggests that the Efwon Group should address the claims made by the injured drivers first, followed by the High-Interest Rate Monaco-based Creditor, and finally, the US Bank Syndicate Creditors.

Please note that this advice is strictly confidential and subject to legal professional privilege. This advice shall not be shared with any other parties or quoted or referenced in any correspondence or documents without our prior written consent. No legal privilege shall be waived in relation to any legal advice we provide you.

Additionally, this advice is subject to the below qualifications and assumptions: As the legal advisor to the Efwon Group's restructuring team, we do not provide advice from a commercial and business perspective, nor do we offer Romanian onshore legal advice. Furthermore, as we have not been provided with any of the underlying documents, this preliminary advice is based on the information we have received to date. We would be pleased to customise our advice once we have received the relevant loan agreements and injunction application documents for the legal proceedings in Romania. Furthermore, we

request to be informed about the current status of negotiations with the creditors of the Efwon Group. This information will enable us to further customise our advice.

We have assumed the accuracy and completeness of all factual representations provided to us. We have not been asked to investigate or verify the information, including all factual information, contained in the documents or the information otherwise provided to us. We have assumed the genuineness and authenticity of all representations given to us.

This advice is necessarily qualified by reference to the assumptions set out above, and also in the following respects: (a) this advice is being given on the basis of limited information/documentation and without the benefit of discovery. Aside from the representations provided to us to date, we have not been given any information or documents regarding the solvency or financial position of the Efwon Group or any updates from the Romanian courts; (b) of the various representations and documents referred to above, and/or those which we have referred to in this advice, certain documents are, or may be, governed by or concern foreign law, such as Romanian laws. We are not in a position to advise on foreign law, or the true meaning and effect of any contracts or extra-contractual obligations governed by foreign law, but we assume (for present purposes) that there is no relevant provision of foreign law that may affect our advice; and (c) we note that various legal provisions set out in the US Bankruptcy Code, English Companies Act and European Insolvency Regulation (EIR Recast) have generated considerable legal debate and creative legal argument in recent years (in circumstances where the proper interpretation and application of the law is particularly sensitive to the judicial assessment of the underlying facts, and the common law is susceptible to development in any particular case).

II. Executive Summary

The use of a restructuring tool under the current circumstances holds significant importance, as it has the potential to revise and extend the terms of loans and security agreements between the Efwon Group and its creditors. A comprehensive financial, legal and business restructuring will be crucial in addressing the present situation.

Given KuasaNas's willingness to make an upfront payment at the closing, it may be worthwhile to explore the possibility of swiftly settling with the injured drivers in order to prevent prolonged litigation proceedings in Romania. As explained below, such proceedings could potentially lead to short-term defaults by Efwon Trading and Efwon Investments as well as the groups' reputation damage.

After the financial restructuring and settlement with the injured drivers, it would be imperative to consider the legal and financial restructuring of the borrowings with the US Syndicate Bank Creditors and the High-Interest Rate Monaco-based Creditor. Exploring potential deals with them would help address the financial distress faced by the Efwon Group.

At the end of this advice, we propose several business restructuring considerations for collaborative evaluation with your business advisory team.

III. Restructuring Principles and Analysis

A. Strategy for Dealing with the Efwon Group and its various stakeholders

The on-going civil litigation initiated by the injured drivers in Romanian courts poses a significant initial challenge in the restructuring process. While the local Romanian legal counsel and medical experts will primarily guide the specific handling of these personal injury claims, it is crucial to carefully consider their potential impact on the reputation of the Efwon Group and Maximov F1 team, as well as investor confidence. Therefore, we are of the opinion that it is imperative to approach the commercial restructuring of the drivers' claims from the outset with careful consideration of factors that balance the legal and commercial interests.

First, the Efwon Group and its restructuring team must carefully evaluate the potential commercial ramifications of each course of action. Factors such as the potential settlement amounts, litigation costs, and the impact on the company's public image should be weighed against the legal merits of each case. It is imperative to take swift action to instill confidence in potential and future investors by demonstrating a comprehensive and proactive approach to managing the civil litigations. It is also necessary to mitigate reputational risk and ensure financial stability.

Prompt and Amicable Resolution: Considering KuasaNas's willingness to offer upfront payment at the closing, there is potential to negotiate an early settlement with the injured drivers, leading to the withdrawal of their claims in the Romanian Court. This proactive approach could effectively mitigate any potential reputational damage to the Efwon Group and Maximov F1 team. Therefore, exploring avenues for swift and amicable settlements with the injured drivers should be prioritised. This approach minimises the duration and public exposure of the litigation, thereby reducing potential reputational harm to the Efwon Group and Maximov F1 team.

Insurance Coverage: As the Maximov F1 team's drivers are presumably insured, engaging with the respective insurance carriers and re-insurers to ensure their active and efficient participation in the claims process is crucial. This will alleviate the financial burden on the Efwon Group and expedite resolution.

Transparency and Communication: While a swift settlement with the injured drivers has the potential to bring prompt resolution to the ongoing litigation, it is crucial to maintain open communication with potential and future investors regarding the litigation and the steps being taken to address it. Transparency is key in fostering trust and demonstrating a proactive approach to managing potential risks. We strongly recommend engaging in open and transparent communication and dialogue with the future investors, including KuasaNas.

B. Potential Insolvency Proceedings or Preventive Restructuring Frameworks - United States Restructuring Proposal

Considering that the Efwon Group has creditors based in the United States and assuming that the loan documentation is governed by New York law or another state law within the United States, it is important to explore a restructuring proposal tailored to the United States jurisdiction.

Under US Chapter 11 bankruptcy law, Efwon Investments could potentially file for chapter 11 bankruptcy protection even if it is technically still solvent, as long as it meets the broader eligibility requirements under section 109(d) of the Bankruptcy Code.

Section 109(d) states that any "person" or "municipality" may be a debtor under Chapter 11, except a railroad, insurance company, bank, or domestic building and loan association. As a company, Efwon Investments would qualify as

an eligible "person" to file. The statute does not expressly require a company to be insolvent to file under Chapter 11. It only requires that the debtor has a desire to reorganise its financial affairs and have a ongoing business to rehabilitate.

If Efwon Investments can demonstrate sufficient financial distress through contingent liabilities or difficulty meeting obligations as they come due, but has not yet crossed into technical balance sheet insolvency, it could still meet eligibility for a prepackaged or pre-negotiated Chapter 11 filing aimed at restructuring its debts and streamlining operations on the cusp of insolvency. The key question would be whether it has a valid bankruptcy purpose beyond mere liquidation.

Another requirement to meet in order to apply for Chapter 11 restructuring is that Efwon Investments must reside, have a domicile, place of business, or property located in the US.

While Efwon Investment is a corporation formed under the laws of Texas, it does not necessarily imply that it maintains an ongoing presence in the United States or qualifies as "residing" or having a "domicile" in the US for the purposes of 109(a). Without any operations, employees, offices, or property or assets located stateside, it does not meet the place of business or property location requirements either. Therefore, while Efwon Investments Inc. may have originally incorporated in Texas, without retaining ongoing US business ties it is not appropriately considered a US debtor eligible to restructure debts through US Chapter 11 proceedings.

If Efwon Investments wishes to create eligibility to file for Chapter 11 bankruptcy protection under US law, some options it could consider include: (i) relocating its center of main interests (COMI) and principal place of business to

the US. This would likely require establishing operations, employees and offices in the US on an ongoing basis; (ii) paying retainer to its US lawyers; (iii) purchasing or acquiring title to real estate or other physical assets located in the US that could constitute "property" under Section 109(a); (iv) negotiating changes with US lenders to collateralise or secure debts with US-situated assets; and (v) initiating US bankruptcy proceedings through an involuntary petition filed by a friendly creditor, though this is less certain and desirable than a voluntary filing.

Taking into account the factors mentioned above, it is highly likely that Efwon Investments will be able to meet the necessary requirements to file for a Chapter 11 restructuring.

One of the key advantages of a Chapter 11 restructuring is that Mr. Maximov and his senior management team can remain in control of the business and direct the restructuring process as the debtor-in-possession ("DIP"). In particular, Chapter 11 allows the current management and ownership of a business to continue operating the company as the DIP during the bankruptcy case. As DIP, Mr. Maximov would continue to oversee day-to-day operations and make business decisions for the Efwon Group and the Maximov F1 team. The DIP also retains exclusive right for 120 days to file a proposed restructuring plan for repaying creditors. A trustee is only appointed to run the business in very rare circumstances, such as if the DIP is guilty of malfeasance or mismanagement. This structure allows Mr. Maximov to drive the strategic direction and negotiate terms of any debt restructuring or sponsor transactions to stabilise the business upon exit from bankruptcy.

Therefore, by filing Chapter 11 voluntarily, Mr. Maximov would maintain control of the Efwon Group and Maximov F1 team business operations and

leadership of the restructuring process for Efwon Investments, subject to court and creditor oversight.

An additional benefit of filing for a Chapter 11 bankruptcy application in the United States is that, according to the US bankruptcy law, the US bankruptcy court has the authority to consolidate subsidiary applications into a single set of proceedings. This means that the applications made by Efwon Investment and potentially Efwon Trading could be consolidated and adjudicated together, ensuring a streamlined process for determining the restructuring plan expeditiously.

Further, the US Bankruptcy Court has the authority to grant priority liens or security interests over others as part of a court-approved restructuring plan, provided it meets certain criteria. Under the Bankruptcy Code, a reorganisation plan can be "crammed down" even if a dissenting class of creditors opposes it, as long as the plan is not unfairly discriminatory and is fair and equitable. For instance, in the absence of information regarding negotiations between the Efwon Group and its creditors, if these negotiations fail to yield a resolution, a cram down plan negotiated between the debtor (Efwon Investment and/or Efwon Trading) and their respective creditors could potentially result in the court granting KuasaNas a higher secured priority over the liens and/or pledges held by the US Syndicate Bank Creditors and High Interest Rate Monaco-based Creditor. This can be achieved through the issuance of a "priming lien."

Adequate protection would need to be provided to the existing secured creditors who are being primed, such as additional collateral or compensation. The plan would need to demonstrate KuasaNas' investment is necessary for viability and maximises value/returns for all creditors. The US Bank Syndicate Creditors could seek adequate protection as well if their secured recovery is

adversely affected. Therefore, while not guaranteed, it is legally possible through a confirmed Chapter 11 plan for the US court to elevate the priority of a new secured investment by KuasaNas over others, with appropriate protections for displaced secured parties.

Based on the facts presented, if Efwon Investments were to file for Chapter 11 bankruptcy protection in the US and obtain court-approved debtor-in-possession (DIP) restructuring order, the following principles would apply under US law: (1) A US bankruptcy court's order approving DIP financing would be effective within the US and legally binding on creditors subject to US jurisdiction, even if the original collateral is located abroad; (2) For the existing US lenders and banks that provided financing and hold security interests, the US court order would prevent them from taking enforcement actions against Efwon Investments' US assets for the duration of the bankruptcy case; (3) The US court order would also bind these US creditors from interfering with Efwon Investments' restructuring efforts and use of the approved DIP funds, helping stabilisation; (4) However, the effectiveness of the US court order against the foreign collateral itself held by banks outside the US would depend on recognition by courts at the location of the collateral based on principles of international comity.

As a legal matter, recognition of foreign bankruptcy orders globally relies on the principle of territoriality in insolvency law. While not absolute, a US DIP restructuring order could provide breathing room and protections against US creditors during restructuring, even if some original collateral lies outside US jurisdiction, due to principles of jurisdiction and comity in cross-border insolvency law.

International insolvency law is based on the principle of territoriality (or modified universality) and each country has jurisdiction over assets within its

borders. While courts generally recognise foreign proceedings based on comity, this does not mandate automatic enforcement of orders affecting local assets. For a DIP US court order to effectively bind foreign collateral, the foreign court would need to provide some type of ancillary relief under its own laws. However, foreign courts often choose to defer to the primary proceeding in the interest of cooperative international insolvency administration. The US bankruptcy court order would carry more weight if Efwon Investments initiates recognition proceedings in the foreign jurisdiction. Ultimately, the foreign court retains discretion on whether and how to recognise the US court order within its own territory based on local laws and policies.

While foreign courts often cooperate, they are not legally obligated to enforce DIP US court orders touching upon assets under their own sovereignty without some additional recognition under local law. Comity does not replace territoriality in cross-border cases.

Based on the facts provided, if Efwon Investments Inc. files for Chapter 11 bankruptcy protection in the US and obtains court approval for debtor-in-possession (DIP) financing, the US Bank Syndicate Creditors holding security over US-situated collateral would generally need to comply with the US court order during the bankruptcy case, even if the order has limited effect on foreign collateral. Non-compliance could result in contempt sanctions. However, foreign creditor such as the High Interest Rate Monaco-based Creditor whose security relates solely to collateral located outside the US would not be legally obligated to comply with or be bound by the terms of the US court order in their home jurisdictions, since the order does not override local territorial insolvency laws.

While the foreign lenders would be constrained from enforcing rights against any US assets for the duration of the case, they may still be able to act against

the foreign collateral as the DIP order has no authority there. The foreign lenders' voluntary compliance would depend on notions of international comity and whether their home courts choose to cooperate and defer to the primary US proceeding.

If Efwon Investments files for Chapter 11 bankruptcy protection in the US, a further benefit is that it would automatically trigger an automatic stay under section 362 of the US Bankruptcy Code that would prevent secured lenders from proceeding with foreclosure or collection actions against the debtor or its property without court permission.

The stay takes effect immediately upon the bankruptcy petition date without a court order. It bars all entities from commencing or continuing any lawsuits, enforcement of liens, and other actions that seek to recover pre-petition claims against the debtor or property of the bankruptcy estate. The stay protects both US and global assets of the debtor, regardless of location. Secured lenders would need relief from the stay through a motion filed with the bankruptcy court to proceed with enforcement of liens or foreclosure sales. The court typically only grants relief from stay if the debtor lacks equity in the collateral and it is not necessary for an effective reorganisation. The automatic stay is one of the core protections of US bankruptcy law and would squarely prevent secured lenders from immediate foreclosure or collection without the bankruptcy court's involvement and oversight. It provides crucial breathing room.

Under certain circumstances the debtor can modify the terms of secured debt through a Chapter 11 plan over a creditor's objection in the US. The plan must comply with the "cram down" provisions under section 1129(b) of the Bankruptcy Code. This allows confirmation of a plan even if an impaired class of creditors rejects it, so long as it does not discriminate unfairly and is fair and equitable. For

secured claims, "fair and equitable" means the claim holder must retain its lien and receive deferred cash payments totalling the allowed claim amount. The plan can alter payment terms like amount, timing and interest rate from the original contract. However, the present value of payments under the modified terms must equal the value of the collateral. Secured creditors are thus protected from an artificial impairment of their rights for reorganisation purposes. While modification over objection is permitted, Chapter 11 still requires respecting the fundamental rights and position of secured creditors through the cram down safeguards. This balances the interests of restructuring versus those of dissenting creditors.

Based on our experience, in most situations, principal reductions require consent, collateral valuation proceedings showing depreciated value, or cram down approval by the bankruptcy court. A unilateral principal haircut without basis would not likely be confirmed.

INTEREST RATE

Based on the facts presented, if Efwon Investments files for Chapter 11 bankruptcy in the US and proposes a restructuring plan, we expect that the proposed restructuring plan could potentially modify the interest rate payable on secured debts from the original contract rate, subject to court approval through the cramdown process. As part of cramdown, the court would need to determine the modified rate is sufficient to provide the creditor with the present value of its claim, equal to the collateral value securing the debt.

If the court finds the existing 6% margin to be too high and not reflective of current market conditions, it could impose a lower rate consistent with Section 1129(b)'s fair and equitable standards. However, significant challenges exist in cram down rate adjustments given debate over appropriate valuation methods

and rates. Creditors may dispute any forced decrease in the contract rate as an artificial impairment of rights.

While rate modifications are legally permissible, the court applies stringent standards and would need compelling evidence and evaluation and likely creditor support to confirm such changes over objection in a restructuring plan.

REPAYMENT PERIOD

Based on US Chapter 11 bankruptcy law, a restructuring plan could extend the repayment period for secured debts beyond the original contract terms, provided the bankruptcy court approves it through the cram-down process. Under section 1129(b), a plan can be crammed down if it does not discriminate unfairly and is fair and equitable to dissenting classes. For secured claims, fair and equitable allows modifying the repayment schedule so long as the present value of payments equals the collateral value. This provides flexibility to propose extended amortisation of the secured obligations. However, the court would carefully review any extended term for fairness, considering factors like asset depreciation. The debtor would need to demonstrate the modified schedule is necessary for an effective and feasible reorganisation.

In other words, while not guaranteed, Chapter 11 does allow repayment period extensions as part of a court-approved plan that satisfies all cram down standards over creditor objections. The court serves as arbiter of what is equitable.

CONTRACTUAL TERMINATION CLAUSE

In a Chapter 11 bankruptcy proceeding, the bankruptcy court would have authority to modify or invalidate an existing contractual termination clause as part of a court-approved restructuring plan if certain standards are met. Under Section 1123(a)(5) of the Bankruptcy Code, a reorganisation plan can provide adequate

means for plan implementation, including modification of creditor rights. Section 1123(b)(1) also expressly authorises a plan to impair creditor claims or interests, subject to the cram down rules. Through the cram down process outlined in Section 1129(b), the court can override dissenting creditor objections if the plan does not discriminate unfairly and is fair and equitable. For secured claims, fair and equitable generally means maintaining the lien and receiving deferred payments equal to the present value of the allowed claim amount. If necessary for effective reorganisation, the court could invalidate a termination clause or approve plan provisions that have a similar practical effect through its equitable powers.

While a bankruptcy court cannot unilaterally rewrite contracts, it does have broad authority and flexibility under Chapter 11 to modify particular provisions like termination clauses through a court-approved plan, if properly evaluated as part of the overall restructuring process. The limitations of cram down would still apply.

C. Summary of a Potential Chapter 11 Restructuring Application

Under a Chapter 11 bankruptcy proceeding in the US, the Bankruptcy Code provides some flexibility regarding contracts and the debtor has the power to assume, assign, or reject executory contracts subject to court approval. Thus, the Efwon Group could initially be required to continue performing under useful contracts like the sponsorship deals. However, the Efwon companies could file motions to reject contracts imposing net burdens on the estate if consistent with a successful reorganisation. Adequate protection may be required for counterparties if the contracts' benefits are relied upon.

In a Chapter 11 bankruptcy proceeding, Efwon Investments would not be able to generally "reject" valid pre-petition security interests, as they represent

property rights. However, the value of collateral could be redetermined through valuation proceedings. Rejection would not rescind or void the existing contracts in their entirety, but rather constitute a pre-petition breach of contract claim. Efwon Investments could also seek to "assume" favourable contracts to retain benefits for the reorganisation.

To summarise, the Bankruptcy Code and court provide flexibility to modify certain contract terms like repayment schedules through a Chapter 11 plan, if fair and equitable. While not able to invalidate vested property rights, the Bankruptcy Code does gives Efwon Group options to modify contracts or security interests to a limited degree through the court-supervised restructuring process, subject to creditor protections.

Additionally, in a Chapter 11 proceeding, Efwon Investments would be able to seek court approval to assign executory contracts, including sponsorship agreements, to other entities as part of a court-approved restructuring plan, notwithstanding anti-assignment clauses. Section 365(f) of the Bankruptcy Code overrides ipso facto clauses and provisions in contracts restricting assignment of rights by the debtor. To do so, Efwon Investments would need to cure any defaults, compensate for actual pecuniary losses from assignment, and assume the contract obligations in a manner that does not otherwise breach the contract. Court approval depends on whether the assignment materially alters the contractual risks to the counterparty and is in the best interests of the estate and creditors. Assignment could aid restructuring by transferring useful contracts to a reorganised entity while relieving the estate of burdensome agreements.

While pre-bankruptcy anti-assignment clauses are typically enforceable, the Code provides flexibility in a Chapter 11 case to seek assignment with court

approval under the right commercial circumstances where it facilitates reorganisation.

Finally, as aforementioned, in a Chapter 11 bankruptcy case involving multiple debtor entities within an interconnected corporate group, the US bankruptcy court has authority to administratively consolidate the separate cases for procedural purposes. Administrative consolidation does not substantively consolidate assets and liabilities, but combines case administration. It allows joint administration of key functions like notices, claims processing, plans and disclosure statements. This promotes efficiency and prevents inconsistent treatment of creditors across related cases. The interests of creditors as a whole would need to be best served according to applicable legal standards.

The plan would treat all consolidated cases as one collective bankruptcy estate. Classes of creditors would vote on the plan taking into account all entities' assets and liabilities. Section 1123 allows one plan for all cases pending before the same court as long as eligibility requirements are met. Consolidated administration ordered by the court under Rule 1015 facilitates this approach. The plan would need to satisfy all confirmation standards including accepting by impaired classes under Section 1129. This can help streamline the process and maximise value for creditors of the integrated Efwon group.

IV. Alternative Dutch Scheme

Alternatively, we explore the Dutch Scheme (Wet Homologatie Onderhands Akkoord or WHOA (Act on confirmation of private plans)), a pre-insolvency restructuring mechanism established in the Netherlands.

Since its enactment in 2021, there have been several judgments concerning restructuring plans under the Dutch Scheme. These judgments have analysed

various elements of the new restructuring tool, including confirmation of plans, appointment of restructuring experts, cooling-off periods, lifting of attachments, termination of onerous contracts, permission to obtain emergency financing, and certain interim decisions.

The debtor can initiate the Dutch scheme by depositing a scheme declaration with the court. The debtor may prepare a composition plan or request the court to appoint a restructuring expert. The Dutch Scheme provides for a dual-track approach, where the debtor must choose to follow either the public procedure or the confidential procedure set out in the WHOA. The court plays a crucial role in the Dutch Scheme. It confirms the restructuring plan after considering its reasonableness, adequacy of creditor information, and compliance with legal requirements. The Dutch court ensures that creditors are sufficiently informed and have an opportunity to vote on the plan. The court also considers the treatment of creditors and the viability of the debtor's business post-restructuring.

To get the WHOA (Wet Homologatie Onderhands Akkoord) approved in the Netherlands, the applicant needs to follow certain steps and meet specific conditions:

Eligibility: Firstly, Efwon Trading must be insolvent, meaning the company is unable to pay the debts. The business should be essentially profitable, and the proposed agreement should be more favourable for the creditors than bankruptcy.

Prepare a Restructuring Plan: Secondly, Efwon Trading must develop a comprehensive restructuring plan that outlines how it intends to address its financial difficulties and repay its creditors. The plan should be feasible, reasonable, and provide sufficient information to creditors for them to make an informed decision. Once submitted to the Court, the creditors will be given the opportunity to vote on the proposed plan. The plan must be approved by at least one class of impaired creditors, representing at least two-thirds in value of the

claims in that class. If the plan is approved by the required majority of creditors, a request shall be made for the court approval. The court will assess the reasonableness of the plan, the treatment of creditors, and the viability of the proposed business post-restructuring. If the court is satisfied, it will issue a "homologation decision", confirming the approval of the plan.

The enforcement of a court order approving the WHOA (Act on confirmation of private plans) in other EU countries may be subject to the recognition and enforcement procedures of each individual country. Brussels I Regulation (Recast): Under this regulation, which governs the recognition and enforcement of judgments in cross-border cases, an enforceable judgment issued in a Union Member State can be enforced in other Member States without the need for an intermediary procedure (such as the 'exequatur' procedure).

However, each Member State has its own national rules and procedures for enforcement. To enforce a court decision in another EU country, the business will need to go to the enforcement authorities of that country. These authorities have the power to force the debtor to comply with the judgment, including the payment of sums of money or the performance of other duties. Different European procedures, such as the European Payment Order, the European Small Claims Procedure, and the European Enforcement Order, can be used in cross-border civil cases. However, it is important to note that a judgment must still be enforced in accordance with the national rules and procedures of the State of enforcement.

V. Recognition and Enforcement of a Dutch / US Judgment in the United States / Netherlands

A. UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT (UFCMJRA)

The United States has adopted the UFCMJRA, which provides a framework for the recognition and enforcement of foreign money judgments. However, it is important to note that not all states in the United States have enacted this law, and the specific requirements and procedures may vary from state to state.

The principle of comity is often applied in the United States when considering the recognition and enforcement of foreign judgments. Comity refers to the recognition and respect given to the judgments of foreign courts based on principles of mutual respect and reciprocity. For a foreign judgment to be recognised and enforced in the United States, it must meet certain due process requirements. This includes ensuring that the foreign court had jurisdiction over the parties and that the parties were given notice and an opportunity to be heard.

The recognition and enforcement of a foreign judgment may be denied if it is contrary to the public policy of the United States. However, the public policy exception is narrowly construed and generally applies only in exceptional circumstances. A Dutch restructuring order may be enforced in the United States under certain circumstances. The enforcement of a Dutch restructuring order in the United States depends on the recognition and enforceability of the order under U.S. private international insolvency laws.

If a Dutch restructuring order is recognised as a "foreign main proceeding" under the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) and Chapter 15 of the U.S. Bankruptcy Code, it facilitates the enforceability of the order in the United States. There have been precedents where Dutch Scheme proceedings were recognised as "foreign main proceedings" by U.S. Bankruptcy Courts. For example, the Diebold Nixdorf Group's public Dutch Scheme proceedings were recognised as "foreign main proceedings" under Chapter 15, resulting in a restructuring of debts in both the Netherlands and the United States.

Based on our experience, the recognition and enforceability of a Dutch restructuring order in the United States are determined on a case-by-case basis.

B. RECOGNITION OF A US RESTRUCTURING ORDER IN THE NETHERLANDS

Before a U.S. Bankruptcy Court-approved Chapter 11 plan can be enforced in the Netherlands, the Dutch court will have to assess whether it recognises the Chapter 11 proceedings. Based on the recent experience, the Dutch court has not refused to recognise Chapter 11 proceedings and the approved plan.

VI. Should Efwon Group (with hindsight) have structured through England rather than the Netherlands

As per your request, we have conducted a preliminary evaluation of whether the Efwon Group would gain advantages by structuring through an English entity instead of a Dutch entity.

If Efwon Trading was incorporated in the UK and it possesses creditors and is potentially insolvent, a restructuring plan or scheme of arrangement in the United Kingdom may be applicable as a formal arrangement between a company and its creditors.

An English scheme of arrangement or restructuring plan is an arrangement that aims to restructure a company's liabilities and obligations. It is a court-approved process that becomes legally binding on all parties involved once it is approved by the relevant creditors or members and sanctioned by the court.

In the United Kingdom, there are several statutory processes available for companies to restructure their debts. These include (1) Scheme of Arrangement

("Scheme" or "Scheme of Arrangement") (Part 26, Companies Act): A court-approved arrangement between a company and its creditors and/or members to restructure its obligations. (2) Restructuring Plan ("RP") (Part 26A, Companies Act): A court-approved arrangement that allows the company to vary obligations or liabilities owed to creditors, subject to the approval of the requisite majority of creditors. (3) Company Voluntary Arrangement ("CVA"): A formal agreement between a company and its creditors to restructure its debts, usually in cases of financial difficulties.

Each restructuring tool has its own differences and conditions that make it suitable for different situations.

Scheme of Arrangement is for single class of debt: A scheme of arrangement can be used for debt restructuring, takeovers, or capital returns and it is not exclusively for insolvent companies. The scheme of arrangement provides more flexibility and potentially less publicity compared to a CVA. Unlike a CVA, a scheme of arrangement does not necessarily provide the right to apply for a moratorium. If a moratorium is needed, the company may need to enter administration first and then propose a scheme of arrangement.

Restructuring Plan (RP) is for multiple class of debts: The RP is a new insolvency option introduced under the Corporate Insolvency and Governance Act 2020 in the UK. Once approved, the RP is legally binding on both secured and unsecured creditors, including landlords. It also allows for cross-class cram down, meaning it can become binding on all creditors even if there are dissenting classes of creditors. Implementation and contingency planning, as well as significant stakeholder management, are critical for the successful deployment of RP. The RP offers the potential for creating shareholder value through a realistic turnaround plan for the business.

Company Voluntary Arrangement (CVA) is a formal agreement between a company and its creditors to repay debts over a fixed period of time. It is typically used by financially distressed companies to avoid liquidation and continue trading. A CVA requires the approval of at least 75% (by value) of the creditors for it to become binding. Unlike a scheme of arrangement, a CVA provides the right to apply for a moratorium, which protects the company from legal action during the restructuring process. With a CVA, the company's directors can retain control and continue to operate the business.

A scheme of arrangement offers flexibility and potentially less publicity, while an RP provides legally binding restructuring options and the potential for cross-class cram down. A CVA allows for a moratorium and enables the company's directors to retain control.

To get a scheme of arrangement approved in the United Kingdom, the applicant company needs to follow a specific process. Firstly, the company proposing the scheme of arrangement must develop a detailed proposal outlining the terms and conditions of the arrangement. Negotiations should take place with the relevant creditors or shareholders to gain their support for the scheme. The company must make an application to the court for permission to convene a meeting of the creditors or shareholders to consider the scheme. The court will review the application and determine whether it meets the necessary requirements for approval.

Once the court grants permission, the company will convene a meeting of the creditors or shareholders to vote on the scheme. At least 75% in value of each class of creditors or shareholders must vote in favour of the scheme for it to progress. If the scheme is approved by the requisite majority, the company will

apply to the court for the scheme to be sanctioned. The court will review the scheme and consider whether it is fair and reasonable to all parties involved. If the court is satisfied, it will sanction the scheme, making it legally binding. Once the scheme is sanctioned, the company can proceed with implementing the arrangement as outlined in the proposal. This may involve restructuring debts, altering shareholding structures, or other agreed-upon actions.

To get a restructuring plan approved in the United Kingdom, the company in need of restructuring develops a proposal outlining the changes and measures required to address its financial difficulties. All affected members, usually creditors, are divided into different classes based on their rights against the company. Each class of affected members is asked to vote on the proposed restructuring plan. For a class to approve the plan, at least 75% (by value) of the class must vote in favour. Once the plan is approved by the requisite majority of each class, the company must seek court approval. The court will review the plan to ensure it meets certain criteria, including fairness and compliance with legal requirements. The court will hold a sanction hearing to determine whether to approve the restructuring plan. At this hearing, the court will consider factors such as whether the plan is fair, whether the affected members were fairly represented, and whether any defects make the plan unlawful or inoperable.

In some cases, if a dissenting class of affected members does not approve the plan, the court may still impose the plan on that class if certain conditions are met. This is known as cross-class cramdown. Once the court approves the restructuring plan, it can be implemented. The company will need to carry out the necessary actions outlined in the plan to restructure its operations, debts, or other aspects of its business.

To get a Company Voluntary Arrangement (CVA) approved, the company, should prepare a CVA proposal that is reasonable, achievable, and demonstrates the maximum the company can afford to repay. The company needs to obtain the support of 75% of creditors by value for the CVA to be approved. Once approved, the CVA becomes a legally binding agreement for all creditors, even those who voted against it.

However, enforcing a court-approved restructuring order given by a court in the United Kingdom in other EU countries can be a complex process, especially following Brexit. The enforcement of UK court judgments in EU countries is no longer governed by the recast Brussels Regulation (EIR (Recast)), which ceased to apply to the UK after the Brexit implementation period. Instead, the enforcement will depend on various factors, including the specific circumstances of the case, the applicable international conventions, and the domestic laws of the EU member state where enforcement is sought.

Following Brexit, the UK acceded to the Hague Convention on Choice of Court Agreements. This convention applies between the UK and certain EU member states, as well as other non-EU signatories. It provides a framework for the recognition and enforcement of judgments in contractual disputes with exclusive jurisdiction clauses.

Each UK court judgment, unless it falls within the scope of the Hague Convention, will need to be considered by the receiving EU member state on a case-by-case basis under its domestic law. Most domestic legal systems have limited grounds for refusal of the judgment, but these grounds may vary between countries. The Hague Convention applies to contractual disputes with exclusive jurisdiction clauses. If the convention applies, the judgment needs to be recognised and a declaration of enforceability or registration obtained before

enforcement can take place. The process for recognition and enforcement is governed by the domestic law of the receiving state.

For judgments arising from disputes in contracts with non-exclusive jurisdiction clauses, non-contractual disputes, and disputes relating to matters excluded by the Hague Convention, the claimant must rely on the domestic law of the receiving EU member state. In such cases, the enforcement process may vary depending on the specific laws and procedures of each country.

While there is no reason to expect EU member states to refuse recognition and enforcement of English court judgments, the enforcing party should be aware of potentially increased costs and delays. Obtaining local legal advice is often essential, and the process may involve additional steps compared to the previous regime under the recast Brussels Regulation.

United Kingdom restructuring orders can be enforced in the United States under certain circumstances. However, it is important to note that the enforcement of UK restructuring orders in the US may be subject to specific legal requirements and considerations.

The UK government's proposals to partially implement the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments means that creditors of English law debts who do not consent to a foreign restructuring proceeding will still have recourse to enforcing their rights against the debtor's UK-based assets.

The "Gibbs Rules" is a 19th-century English court decision that allows creditors of English law obligations to enforce their rights against a debtor's assets in the UK, even if the debtor's plan of compromise that discharges those

claims is sanctioned by a court having jurisdiction in respect of the plan. The UK Supreme Court has affirmed the Rule in Gibbs and stated that any decision to override it lies with Parliament.

US Chapter 11 plans of reorganisation are effective in binding creditors, including those with English law claims, and can override the Rule in Gibbs. A US bankruptcy court order sanctioning a Chapter 11 plan takes effect extraterritorially and applies to all creditors, regardless of whether they have submitted to the jurisdiction of the US court.

Chapter 15 of the US Bankruptcy Code provides a mechanism for recognising and enforcing foreign insolvency proceedings in the US. However, Chapter 15 does not apply extraterritorially like Chapter 11, and its application to subvert the Rule in Gibbs is uncertain.

V. Conclusion

To summarise, we are of the view that addressing the civil litigation arising from the injured drivers requires a multifaceted approach that balances legal considerations with the broader commercial objectives of the restructuring process. By prioritising amicable resolutions, engaging with insurance carriers, and maintaining transparency with investors, the company can navigate this challenge while preserving its reputation and securing future investment.

Regardless of whether negotiations with the injured drivers result in a settlement prior to closing the deal with KuasaNas, it is advisable for the Efwon Group to promptly consider applying for reorganisation. This will enable the restructuring of the repayment terms under the US syndicate loan agreements and the high-interest Monaco lender loan agreement.

Commercial and legal steps must also be taken to ensure that Mr. Maximov's investments made through Efwon Investments are adequately protected in order to deal with difficulties and challenges created in the current situation. Presently, Efwon Investments relied primarily on upstream revenue from subsidiaries like Efwon Trading and Efwon Romania to service its secured bank debt. With the Romanian and Dutch companies now potentially insolvent, this revenue stream may be cut off. A new structure may be suitable including the establishment of an offshore investment holding to hold interest of Maximov F1 team.

Efwon Investments faces significant challenges, including a potentially insufficient security package held by US Syndicate Bank Creditors and the uncertain recovery prospects of its key operating company due to legal issues in Romania. Placing directors at subsidiaries may not guarantee control or value protection, and relocating operations to Malaysia requires further investigation to assess its potential benefits.

To overcome these challenges and secure its future, Efwon Investments needs to attract new investors. Other than our legal analysis, we recommend the Efwon Group to obtain a well-researched business plan with realistic financial projections which plan is crucial to instill confidence in potential investors and support the Group's forthcoming application for restructuring. The business restructuring plan should showcase a sustainable business model that diversifies revenue streams beyond prize money, including sponsorships, merchandise, licensing, and strategic partnerships. A team of experienced professionals with a proven track record in motorsports, business management, and finance will further assure investors of the plan's effective execution.

Showcasing sporting potential and technical expertise is equally important. Collaborations with reputable engineering firms or existing F1 contributors and teams can provide valuable technical support and knowledge transfer, while recruiting a mix of experienced and promising drivers will ensure on-track results and attract fan interest. Investing in state-of-the-art facilities demonstrates a commitment to performance and technological advancement.

Developing a distinct brand identity that resonates with fans and potential sponsors is also crucial. Focusing on a specific target audience and market niche allows for efficient resource allocation and higher return on investment. Exploring opportunities in emerging markets such as Malaysia and Indonesia, with growing F1 fan bases and utilising digital platforms for innovative fan engagement strategies can build a strong fan community and attract sponsors.

Finally, building credibility and trust with potential investors requires open and transparent communication, providing regular updates on progress, challenges, and milestones achieved. Participating in lower-tier racing series or testing programs can demonstrate the team's capabilities and build a track record of success. Securing partnerships with established brands or industry leaders further enhances credibility and attracts investment. Therefore, we recommend that the Efwon Group explore alternative investment models such as crowdfunding, venture capital, private equity. In particular, strategic partnerships can provide access to diverse funding sources. Leveraging technology and digital platforms and building a strong brand and reputation through media coverage, thought leadership, and industry recognition can further enhances the team's attractiveness to potential investors.

By implementing a comprehensive legal, financial and business restructuring approach, we verily believe that the Efwon Group can overcome its current

challenges, attract new investors, and secure the resources necessary for its F1 team to thrive in the long term.

We look forward to assisting you and the Efwon senior management team future.