

Global Insolvency Practice Course 2023/2024 | Case Study II

To Mr Benedict Maximov (“**Maximov**”)
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Re GIPC | Case Study II | Maximov / Efwon Group

1. Introduction

- 1.1. This advice has been prepared at the request of our client Maximov. Maximov is the sole owner and founder of the Efwon group (the “**Efwon Group**”), comprising a multi-national conglomerate of enterprises acting within the domain of international motor racing. Maximov has expanded this business over the years, with current presence in the United States (US), Europe and Asia.
- 1.2. Over the years, the Efwon Group required significant investments to become the well-positioned competitor within the Formula 1 (F1) arena it is today. Unfortunately, over recent years, while the sporting results were improving, the Efwon Group has experienced financial headwind due to non-renewal of existing sponsorship arrangements and one-off (alleged) liabilities (see [Annex 1](#)).
- 1.3. To overcome these financial difficulties, the Efwon Group (as defined below) has sought to enter into alternative partnerships that would result in a capital injection strengthening the financial health of the Efwon Group. This value exploring endeavour has yielded one potentially interested party in joining forces with the Efwon Group: KuasaNas, the Malaysian state company supplying alternative energy fuels. Amongst other things, KuasaNas has expressed interest in acquiring 51% of the shares in Efwon Group and entering into a multi-year sponsorship agreement yielding more than USD 100 million annually.
- 1.4. In light of the above, the advice set out in this memorandum considers:
 - a. how to facilitate the deal with KuasaNas;
 - b. secure the future of the Maximov F1 team; and
 - c. best safeguard Maximov’s position.
- 1.5. In summary, we propose that Maximov proposes to the Efwon Group to explore the feasibility of a consensual out-of-court workout, backed by a strategy of launching parallel restructuring proceedings:
 - a. Efwon Investments (as defined below) enters US Chapter 11 proceedings;
 - b. Efwon Trading (as defined below) enters Dutch restructuring proceedings;
 - c. Efwon Romania (as defined below) applies for restructuring agreement proceedings; and
 - d. Efwon Singapore (as defined below) does not enter any restructuring or insolvency proceedings.
- 1.6. The contemplated restructuring of the Efwon Group is displayed in [Annex 2](#), yielding the following anticipated result:
 - a. Maximov will retain 49% of the shares in Efwon Trading and 100% of the shares in Efwon Investments, and will be released from security provided to the Syndicate (as defined below) over the real estate in his personal ownership pursuant to a capital injection into Efwon Investments;

- b. The Syndicate will receive a pay-out amounting to at least the value of their security of the shares in Efwon Investments and the real estate portfolio from Maximov (in a liquidation scenario);
- c. Efwon Investments will receive rights under the Efwon Trading restructuring plan amounting to at least the value of the pledged revenue (in a liquidation scenario);
- d. The Monaco Lender (as defined below) will receive rights under the Efwon Trading restructuring plan calculated at a minimum (liquidation) value of the guarantees provided by Efwon Romania and Efwon Singapore; and
- e. The drivers will receive a pay-out under the contemplated restructuring plan of Efwon Romania amounting to at least the pay-out that pari-passu ranked creditors would receive in the event of a liquidation of Efwon Romania.

2. Transaction framework

Founding of the Efwon Group

- 2.1. The Efwon Group originated in the US, when Maximov founded Efwon Investments Inc. (“**Efwon Investments**”), incorporated under the laws of Texas, US. This company was capitalized through a USD 100 million sponsoring on the part of Maximov, and a syndicated loan of USD 250 million (the “**Syndicated Loan**”). The syndicate comprised of 2 senior banks (aggregate exposure USD 100 million), 2 mezzanine financial creditors (aggregate exposure USD 60 million) and 5 junior financial creditors (aggregate exposure of USD 90 million, all creditors together the “**Syndicate**”), and the Syndicated Loan was concluded under the following key conditions:
 - a. Security on a number of homes of Maximov across the world, collectively worth some USD 75 million;
 - b. a pledge on the projected revenue;
 - c. a pledge over the shares of Efwon Investments;
 - d. a positive pledge;
 - e. a negative pledge;
 - f. repayment term of 10 years; and
 - g. an interest rate of LIBOR + 4%.
- 2.2. To establish in the European market, similar to other F1 teams, Efwon Investments incorporated the Dutch company Efwon Trading B.V. (“**Efwon Trading**”). The company was funded by a loan provided by Efwon Investments amounting to USD 350 million. This loan was secured by a pledge over future revenue of the company. In addition, the Syndicate obtained a pledge on the shares in the Dutch company held by Maximov.
- 2.3. Subsequent to the founding of Efwon Trading, the Efwon Group endeavored acquiring a Romanian racing team. A new subsidiary Efwon Romania was incorporated to buy the Romanian racing activities together with relevant licenses and other assets, such as racing equipment. Efwon Romania also entered into employment contracts with the existing two Romanian racing drivers that were previously employed by the seller.
- 2.4. As the revenues generated by these activities fell short of expectation, Efwon Group was not able to meet the interest payment date under the Syndicated Loan. While the Syndicate waived the default occurred under the Syndicated Loan, the interest rates increased to LIBOR + 6%.
- 2.5. To increase the generation of funds, the Efwon Group incorporated Efwon Singapore to attract interest from potential sponsorship parties in Asia. Efwon Singapore soon reached an exclusive sponsorship agreement with Kretek (Indonesia) for a duration of

five years, generating an annual influx of cash amounting to USD 100 million. In addition, Efwon Trading secured a USD 100 million loan from a wealthy individual residing in Monaco ("**Monaco Lender**"), with securities over revenues generated by Efwon Trading, Efwon Romania and Efwon Singapore.

- 2.6. A group chart showing the most important stakeholders and their position vis-à-vis the Efwon Group is appended as Annex 1.

Financial difficulties

- 2.7. Recently, Kretek expressed to Efwon Group that it was reluctant about extending and renewing the existing sponsorship arrangements. This urged Efwon Group to explore alternatives. KuasaNas offered funding of more than USD 100 million annually. Under the condition that KuasaNas would be able to acquire a majority stake (51%) in the team and that the team would move to Malaysia, where, amongst other benefits, a deal could be secured to obtain the use of the Sepang GP racetrack for practice and training purposes and new drivers sufficiently qualified to be able to obtain Super Licences could be engaged. While it was expected that this deal would be signed on short notice, it has been stalled due to political developments in Malaysia. The deal has not been consummated to date.
- 2.8. In addition, the drivers employed by Efwon Romania have been severely injured in the course of their work. They have held the company liable for any damages incurred.
- 2.9. In connection with the above, an insolvency petition has been filed against Efwon Romania and freezing injunctions have been obtained over the company's assets and income. This will result in a (further) default under the loans granted by Efwon Trading, which in turn will default under the loans provided by Efwon Investments. This will also preclude Efwon Investments from making the necessary (due and payable) interest payments under the Syndicated Loan.
- 2.10. Following the aforementioned events, both the Syndicate and Monaco Lender may proceed to enforcing their security. Furthermore, for successful signing of the KuasaNas sponsorship deal, it has been stipulated that all insolvency related issues are solved and financial stability is restored.

Transaction is the only solution

- 2.11. As follows from the Independent Business Review ("**IBR**"), the performance of the Efwon group is declining. The key conclusions yielded by the IBR, is that (a) Efwon will need to improve operations to be more cost efficient, but (b) can never (service its debt and) be cash-positive without a sponsorship deal such as KuasaNas, and (c) there is no more time to explore alternative transactions. That means that the options in terms of partnering up with other parties to secure the future of the Efwon Group are limited to KuasaNas and survival of the Efwon group without such transaction very unlikely.
- 2.12. Against this background, this memorandum provides for a strategy how to facilitate the deal with KuasaNas, while at the same time securing the future of the Maximov F1 team and safeguarding Maximov's position in the best way possible.

3. Strategic considerations

Out-of-court workout

- 3.1. As follows from the above, there are various moving pieces threatening the continued existence of the Efwon Group. At the heart of the financial difficulties lie the cashflow issues that Efwon Romania has been facing, which can have a cascading effect throughout the Efwon Group. This could ultimately also impact Efwon Investments, as the revenues of all relevant Efwon Group entities have been provided as a security for the benefit of Efwon Investments and other creditors (see Annex 1).

- 3.2. To prevent that the creditors of the various Efwon entities further enforce any rights attributed to them, which may ultimately also impair Maximov, it is essential for the Efwon Group to enter into discussions with the relevant parties to restore order and trust amongst the creditors that the distress can be overcome.
- 3.3. In general, the most favourable approach for the Efwon Group (and thereby Maximov) would be to effectuate an informal reorganisation. Compared to insolvency proceedings, informal reorganisations are generally more *flexible*, *silent* and *controlled*.¹ In such proceedings, the Efwon Group could take a tailor-made approach and offer case-specific solutions.² Informal proceedings also allow for mutual agreements amongst the stakeholders to articulate specific remedies (e.g. payment holidays or provision of new secured loans) to facilitate a turnaround, for the benefit of all stakeholders involved. Another benefit of pursuing an informal approach, is the private nature of such trajectory.³ An informal workout is usually explored outside the spotlights. And finally, it leaves the Efwon Group in charge of its business and assets (save for maybe, in this case, Efwon Romania that is already facing a filing for formal insolvency proceedings).⁴
- 3.4. Insol International's Statement of Principles For A Global Approach To Multi-Creditor Workouts (II) (the "**Principles**")⁵ serves as a solid basis and guideline for entertaining informal cross-border multi-creditor workouts. As such, these Principles offer a useful framework for articulating a strategy for Efwon Group's rescue in this multi-jurisdictional setting.
- a. As per the first principle, it is important to promote cooperation amongst relevant creditors. In this case, that would, amongst others, apply to the Syndicate, the Monaco Lender and the drivers. It is pertinent that the creditors give sufficient time (i.e. a 'standstill') to the Efwon Group to allow for (a) providing and evaluating relevant information and (b) contemplating and assessing proposals to resolve the Efwon Group's financial difficulties, unless inappropriate under the given circumstances. This ultimately is a value preserving exercise, also for the benefit of the creditors. Uncontrolled foreclosure or enforcement of rights at various group levels could lead to value destruction that will generally also leave the creditors in a worse position. To reach a standstill, the Efwon Group must adopt a coordinated approach.
 - b. It is furthermore an impediment that the relevant creditors refrain from exercising any enforcement actions they may be entitled to, as reflected in the second principle. That could be very detrimental to the restructuring process and often causes a chain reaction amongst creditors quickly shifting the balance from a joint approach to a more individual approach. A standstill agreement usually entails mandatory repayments to be deferred, default interest no longer to be charged and incurred defaults to be waived. In addition, such agreement normally stipulates that respective positions amongst creditors should remain relatively unchanged. Pending the restructuring attempt, this is what Efwon Group should try to agree with its relevant creditors. As such, Efwon Group should endeavour to agree that the Syndicate does not foreclose, and that the interim relief measures rendered in Romania are not further exercised.
 - c. In accordance with the third principle, Efwon Group should refrain from taking any actions that could have an adverse impact on the prospective return of the

¹ Adriaanse, J.A.A., & Kuijl, J.G. (2006). Resolving Financial Distress: Informal Reorganisation in The Netherlands as a Beacon for Policy Makers in the CIS and CEE/SEE Regions?, *Review of Central and East European Law*, 31(2), p. 145.

² *Ibid.*, p. 145.

³ *Ibid.*, p. 146.

⁴ *Ibid.*, p. 147.

⁵ Statement Of Principles For A Global Approach To Multicreditor Workouts II, *Insol International*, last accessed through <https://www.insol.org/focus-groups/financiers-group/technical-projects> on 15 April 2024.

creditors in comparison with the commencement of the standstill period, such as benefitting certain creditors over others.

- d. Fourthly, the Principles hold that a coordinated approach works best to execute a multi-creditor work-out. Efwon Group should consider if it would be useful to appoint a representative body of creditors to engage with efficiently and effectively. In this case, as the Syndicate more or less already serves as a single point of contact for the capital providers, there likely is no need for further formation of such a 'steering committee', but it ultimately depends on the composition of the entire creditor base (which, currently, is not entirely clear).
 - e. As per the fifth principle, it is essential that Efwon Group adequately provides any relevant information about the Group in a timely and accessible manner. It is key that the relevant creditors are able to properly evaluate Efwon Group's financial position and restructuring proposals to retain any confidence in the process and the prospected outcome. Reliability of the information provided is crucial.
 - f. By extension, as articulated in the seventh principle, it is important that any information provided and shared amongst these stakeholders, is treated with the confidence (save for public information). There must also be a level playing field, meaning that all relevant creditors must be treated equally. It is recommended that Efwon Group periodically entertains joint creditor briefings to ensure that all creditors have the same information position.
 - g. Finally, on a more formal note, as per the sixth principle it is relevant that any agreement between Efwon Group's creditors properly reflects applicable law and relative positions of creditors.
- 3.5. At the same time, from a more business-oriented point of view, Efwon Group and, by extension, Maximov are advised to review whether they should implement any measures to improve business performance. One could argue that the causes for Efwon Group's financial difficulties rest in one-off difficulties, but at the same time Efwon has a significant burn-rate of cash on a rolling basis. The question is whether this is a sustainable situation, leaving only little headroom for any financial downturn. Naturally, an IBR has been performed, but this does not constitute a more holistic analysis of internal and external factors driving business performance. That should comprise a comprehensive approach of (i) stabilising the companies' financial health, (ii) analysing and reconsidering medium-long term strategy and financial targets, (iii) initiating re-trenchment actions to implement and adapt and (iv) reinforcing the changes implemented.⁶
- 3.6. As a final point, it is worth noting that the Efwon Group should not lose sight of managing the internal stakeholders and ensuring they feel sufficiently comfortable to pursue an out-of-court restructuring. Given that there are various jurisdictions in play in Efwon Group's restructuring, that all have their distinct legal framework relating to i.a. mandatory filing requirements and legal issues like directors' liability, the group should continuously remain cognizant that these stakeholders must adequately be informed and involved in the restructuring to prevent that they would feel obliged to file for insolvency proceedings or disconnect from the restructuring effort.

Formal proceedings

- 3.7. In the event that Efwon Group would not be able to effectuate an out-of-court workout, for instance because key creditors would lose confidence and commitment in the process, the informal reorganisation could spiral into (petitions for) formal insolvency proceedings, as it did with Efwon Romania. This is a characteristic downside of informal reorganisations – they are generally 'unprotected' and the process is therefore

⁶ Adriaanse, J.A.A., & Kuijl, J.G. (2006). Resolving Financial Distress: Informal Reorganisation in The Netherlands as a Beacon for Policy Makers in the CIS and CEE/SEE Regions?, *Review of Central and East European Law*, 31(2), p. 140.

vulnerable to creditors seeking to secure their own interests above the joint interests. This is generally not rational, as it will generally lead to value destruction. In this scenario, the aim will be to seek a implementation of a restructuring plan that will enable the Efwon Group to overcome its financial difficulties. The strategy for exploiting the existing global insolvency framework to this end, is covered in more detail in paragraph 4 below.

Restructuring proposal

- 3.8. The IBR clearly leads to the conclusion that the deal with KuasaNas is the only (remaining) viable solution to secure the future of Efwon Group as a going concern. Any solutions to be implemented, either through an informal out-of-court workout or through formal insolvency proceedings, should therefore have as a focal point to secure this transaction. Against this background, the following elements could be included in a restructuring proposal by the Efwon Group to safeguard Maximov's and the Efwon Group's interest, and result in a favourable outcome for the relevant creditors at the same time:
- a. (Approval for) entering into a sponsorship contract with KuasaNas for an annual consideration of > USD 100 million;
 - b. Sale of 51% stake in Efwon Investments by Maximov to KuasaNas, consideration to be paid directly to Maximov, due in whole or in part at closing;
 - c. Capital injection in Efwon Investments by Maximov amounting to the consideration received for sale of the shares to KuasaNas to be used for partial repayment of the Syndicated Loan;
 - d. Release of the pledge on the shares held by Maximov in Efwon Trading by the Syndicate (which will likely be a condition for KuasaNas to acquire the 51% stake in Efwon Investments);
 - e. Release of the personal security provided by Maximov;
 - f. A refinancing, either provided by existing lenders (i.e. the Syndicate) or new money providers to allow for an exit of the existing lenders.
- 3.9. From a creditor's perspective, any proposal should at least be more favorable than the bankruptcy scenario – in formal insolvency proceedings often referred to as the *best interest of creditors test*. This requires an assessment (i.e. valuation) of the expected pay-out to individual creditors if the Efwon Group would be liquidated. The baseline for the most important creditors of the Efwon Group is as follows:
- a. The Syndicate would receive the liquidation value of (i) the shares in Efwon Investments, (ii) the pledged real estate owned by Maximov and (iii) revenues (if any) generated at the level of Efwon Trading;
 - b. The Monaco Lender would receive the liquidation value of any assets available for distribution amongst the pari-passu ranked joint creditors at the levels of (i) Efwon Trading, (ii) Efwon Romania and/or (iii) Efwon Singapore.
 - c. The drivers would receive the liquidation value of any assets available for distribution amongst the pari-passu ranked joint creditors at the level of Efwon Romania.

4. Insolvency framework

4.1. General

- 4.1.1. If an out-of-court restructuring is not (entirely) feasible, the Efwon Group will be forced to fall back on existing restructuring schemes that are implemented in the various

relevant jurisdictions. This insolvency framework paragraph of this advice therefore consecutively covers the following topics:

- a. The insolvency proceedings / (preventive) restructuring frameworks required to achieve the goal of selling a stake in the group to KuasaNas (assuming the intended contract receive government clearance);
- b. Where and how restructuring proceedings would be undertaken;
- c. Any interaction or influence amongst the restructuring proceedings;
- d. The impediments (if any) to proceedings taking place, and advantages / disadvantages in relation thereto;
- e. Factors, further facts or information needed to answer the questions / solve the situation;
- f. The application of the European Insolvency Regulation (“**EIR**”) and / or UNCITRAL Model Law and / or other international instruments in achieving this and how the provisions of these texts assist or impede the strategy;
- g. If Efwon (with hindsight) should have structured through England rather than the Netherlands.

4.1.2. The envisaged outcome for each of the various stakeholders in this contemplated restructuring scenario is reflected in paragraph 5 below.

4.2. Relevant restructuring frameworks and insolvency proceedings

Introduction

4.2.1. If it turns out that formal restructuring proceedings are inevitable to realize a transaction with KuasaNas and turn the Efwon Group’s financial situation around, subject to further review of the matter (as per paragraph 4.6 below), on a preliminary basis it is advised that:

- a. Efwon Investments enters US Chapter 11 proceedings;
- b. Efwon Trading enters Dutch restructuring proceedings;
- c. Efwon Romania applies for restructuring agreement proceedings; and
- d. Efwon Singapore does not enter any restructuring or insolvency proceedings.

4.2.2. This strategy is explained in more detail below for each of the jurisdictions involved.

Maximov / Efwon Investments

4.2.3. No proceedings have (yet) been entertained against the US holding of the Efwon Group, Efwon Investments, or its ultimate beneficial owner Maximov. However, the Syndicate has become aware of the financial difficulties currently experienced by the Group as a whole, the fact that certain insolvency proceedings have been initiated at a Romanian subsidiary level as well as the fact that other secured creditors are considering enforcement as well. As the Efwon Group is already defaulting under the Syndicated Loan, there is a considerable risk that the Syndicate could soon move forward with foreclosure of its secured assets, including those of Maximov and Efwon Investments.

4.2.4. This could be countered by the Efwon Group filing for US Chapter 11 proceedings. The opening of such proceedings – which does not require any specific entry test to be met – automatically triggers an automatic stay, shielding Efwon Investments from any creditors that seek enforcement of their rights.⁷ Disregarding this automatic stay, will likely be regarded as contempt of court, which generally has a deterring effect on such

⁷ Chapter 11 US Bankruptcy Code, § 362(a).

behavior. US Chapter 11 proceedings do allow for foreign entities to apply for these proceedings, but there is no clear nexus of other Efwon Group entities with the US jurisdiction (such as place of business or property in the United States), so these entities will have to consider alternatives.

Efwon Trading

- 4.2.5. The financial difficulties of the Efwon Group impacting Efwon Investments' compliance with the terms of the Syndicated Loan, also put the Dutch subsidiary Efwon Trading in a precarious position. To avoid formal bankruptcy proceedings, Efwon Trading could file for Dutch suspension of payment proceedings (*surseance van betaling*) or apply for preventive scheme proceedings (*Wet Homologatie Onderhands Akkoord, WHOA*).
- 4.2.6. In both proceedings, Efwon Trading could file a petition to grant a stay,⁸ which unlike US Chapter 11 proceedings is not effectuated automatically. However, under suspension of payment proceedings, secured debt cannot be restructured.⁹ As such, it would be advised to apply for Dutch WHOA proceedings, in parallel with other restructuring proceedings.¹⁰ Efwon Trading is eligible to enter these proceedings, as it is reasonably plausible that Efwon Trading will not be able to continue to pay its debts without a restructuring agreement.¹¹

Efwon Romania

- 4.2.7. As displayed in Annex 1, an insolvency filing has been done in respect of Efwon Romania. According to Romanian law, one should distinguish restructuring plan proceedings (*concordat preventiv*) and insolvency proceedings. Both are governed by Romanian Law no. 85/2014 on insolvency prevention and insolvency proceedings, as amended by Law No 216/2022 ("**RLIP**"), which was implemented pursuant to Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks. Efwon Group would be eligible to enter such insolvency prevention proceedings if it can demonstrate to the court it is experiencing financial difficulties, but not yet insolvent.¹² Efwon Romania would be deemed insolvent if it does not have enough funds readily available to satisfy a claim which is undisputed, due and payable, amounting to RON 50,000 (approx. USD 10,700) or more and the claim has been left unpaid for over 60 days after it fell due. It is uncertain if the claims of the drivers would qualify as such. Also, as a result of the freezing order, it will be difficult for the Syndicate to enforce against Efwon Romania. That could constitute a window for Efwon Romania to come to a restructuring on the basis of restructuring plan proceedings.

Efwon Singapore

- 4.2.8. Efwon Singapore has been established as a point of entry for the Efwon Group into Asia to facilitate sponsorship deals. Since its inception, this has also been quite successful. Efwon Singapore has annually delivered over USD 100 million in revenue available for upstreaming to other group companies. Clearly, now the deal with Kretek is expiring without renewal and the agreement with KuasaNas remains uncertain, that puts Efwon Singapore in a difficult position. This most notably is the result of the guarantee provided to the Monaco Lender for its claim against Efwon Trading. As this guarantee has been provided in connection with a loan to Efwon Trading, this guarantee could be restructured under the Dutch preventive scheme proceedings but if Efwon Trading would apply for the private track proceedings and it would not be necessary to

⁸ Article 225 Dutch Bankruptcy Act ("**DBA**"); Article 376 DBA.

⁹ Article 232 DBA.

¹⁰ There are precedents of such parallel proceedings, for instance Amsterdam District Court 27 February 2024, ECLI:NL:RBAMS:2024:1154 (Mercon).

¹¹ Article 370(1) DBA.

¹² Article 5(26)(2) RLIP.

initiate local restructuring proceedings.¹³ The reason being that in that case, jurisdiction of the Dutch court is not established on the basis of *Centre of Main Interest* (which is the case in public track proceedings)¹⁴ but as soon as there is a sufficient connection with the Dutch jurisdiction.¹⁵ The latter applies if the debtor is liable for debts of another debtor in respect of which the Dutch court has jurisdiction, which is the case for Efwon Singapore vis-à-vis Efwon Trading.¹⁶

4.2.9. Since there is no real benefit for Efwon Trading to apply for the public track proceedings, as Efwon Trading will need recognition proceedings in Singapore anyways, but there is a clear upside of the private track proceedings as described, Efwon Trading should opt for the latter. As such, Efwon Singapore will not be required to file for insolvency proceedings. It would be advisable to seek an anti-enforcement injunction against the Monaco Lender if he would try to enforce the guarantee in Singapore pending the Dutch proceedings (as a stay in the Dutch proceedings would not prohibit such enforcement)

4.3. Commencement of the proceedings

US Chapter 11 proceedings

4.3.1. US Chapter 11 proceedings can be opened in respect of Efwon Investments by filing a petition for entering US Chapter 11 proceedings.¹⁷ This automatically leads to creation of a bankruptcy estate, comprising all assets belonging to the debtor, regardless of their location and possessors. These assets form the foundation of the US Chapter 11 plan offered in the proceedings. The application for US Chapter 11 proceedings must be accompanied by sufficient evidence of Efwon Investments' current assets and liabilities, its income and expenses, important running contracts and an overview of its financial affairs.

Dutch WHOA proceedings

4.3.2. Dutch WHOA proceedings can be initiated by submission of a declaration by Efwon Trading to the court reflecting that Efwon Trading has officially commenced preparing a WHOA restructuring plan. Given that WHOA proceedings are of a hybrid nature, the court does not have to confirm that the WHOA proceedings have been opened. In theory, the court could first be involved when Efwon Trading would file a request for confirmation of the WHOA restructuring plan, or even never at all (if all creditors would agree with the proposed plan and there are no interests served by plan confirmation). In any event, if and when a request is submitted to the WHOA court for the first time, it will determine whether Efwon Trading is eligible for entering into these proceedings (i.e. if it is likely to become insolvent if no restructuring plan is adopted but not yet insolvent).

Romanian restructuring agreement proceedings

4.3.3. Restructuring agreement proceedings under RLIP are initiated by a petition filed by Efwon Romania before the Romanian bankruptcy court. Efwon Romania will have to demonstrate to the court that it is eligible to enter such proceedings in view of its financial situation. It should substantiate that a reorganization plan is feasible and for the benefit of the debtor and its creditors. Efwon Romania will also have to provide details about its financial condition, the current state of assets and liabilities as well as current creditors. The fact that the drivers have already filed for Efwon Romania's bankruptcy does not preclude Efwon Romania from applying for restructuring agreement

¹³ Article 372 DBA.

¹⁴ Article 3(1) EIR.

¹⁵ Article 3 Dutch Code of Civil Proceedings.

¹⁶ Explanatory note Dutch Parliamentary history 2018/19, 35249 nr. 3.

¹⁷ Chapter 11 US Bankruptcy Code, § 301.

proceedings, as these proceedings can be entertained in parallel in an attempt to restructure financial affairs and continue business operations.

4.4. Interaction the restructuring proceedings

- 4.4.1. There are various cross-border interdependencies within the Efwon Group from a creditor perspective (see Annex 1). In the first place, Efwon Investments has security rights on the revenues generated by Efwon Trading. As such, Efwon Investments is considered a secured creditor in the Dutch restructuring. Secondly, the Monaco Lender has provided a loan to Efwon Trading backed by guarantees issued at the level of Efwon Romania and Efwon Singapore. Finally, Efwon Trading has provided intercompany financing to Efwon Romania for the acquisition of the F1 team and operating budget, secured by a right of pledge on the broadcasting revenue generated by Efwon Romania.
- 4.4.2. These cross-border interdependencies will require a coordinated approach of entertaining parallel restructuring proceedings, to ensure that creditors impaired or prohibited to enforce their claims at one level do not turn their interest to the next, thereby prejudicing the restructuring effort. This coordinated approach requires inter alia that the timelines of the restructuring proceedings are aligned and that interim measures are requested where necessary (if possible). For instance, if the restructuring proceedings are opened, a moratorium is automatically effectuated at the level of Efwon Investments and Efwon Romania, but not at the level of Efwon Trading. This means that Efwon Trading shall have to apply for granting of a stay (*afkoelingsperiode*) as soon as it initiates Dutch WHOA proceedings. It could subsequently file for US Chapter 15 proceedings to ensure that any court order issued in the Dutch proceedings is also recognized in the US domain. In addition, Efwon Singapore should file for anti-enforcement injunction as soon as proceedings are launched in the Netherlands (see paragraph 4.2.1.d) to counter any actions contemplated by the Monaco Lender.
- 4.4.3. Naturally, most of the cross-border relations are of an intercompany nature, which makes it generally easier to manage, but it should not be forgotten that there are different directors across all Efwon Group entities with different requirements under local law. As such, these directors should be closely involved in the process to ensure they remain of the opinion that a cross-border restructuring remains feasible and there is no need for their entity to disconnect from the process (by filing for insolvency).
- 4.4.4. On a final note, Efwon Romania and Efwon Singapore have provided group guarantees to the Monaco Lender for the benefit of Efwon Trading. The Dutch WHOA proceedings allow for restructuring of such guarantees if certain conditions are met (see paragraph 4.2.8). This should therefore be included in any plan proposal submitted in the Dutch proceedings and subsequently recognized in the foreign jurisdictions. For Efwon Romania, this could be effected through inclusion by reference of the Dutch restructuring plan in the Romanian restructuring agreement. To ensure that the Monaco Lender does not turn to Efwon Singapore, however, Efwon Singapore shall have to start recognition proceedings to have the impairment recognized.

4.5. Impediments and advantages / disadvantages pertaining to proceedings

US Chapter 11 proceedings

- 4.5.1. US Chapter 11 proceedings have been the leading restructuring proceedings globally for many decades, because of its many advantages, amongst which:
 - a. Automatic stay: the opening US Chapter 11 proceedings automatically triggers an automatic stay, providing breathing spell for Efwon Investments. It serves to provide sufficient time and opportunity to articulate a reorganization plan proposal that can be submitted to the US creditors. The stay basically operates as an injunction against all actions taken against Efwon Investments. This entails, amongst other things, that, Efwon Investments is temporarily relieved from any

payment obligations that existed pre-petition and that the Syndicate cannot repossess or take any other measures to foreclose property falling within the scope of said security. Violation of the stay is threatened by sanctions.

- b. Cross class cram down: a reorganization plan proposed by Efwon Investments to the creditors can either be consensual or non-consensual, the latter meaning that the plan submitted for confirmation was rejected by one or more creditor classes. If a non-consensual plan is confirmed by the bankruptcy court meeting all the criteria required in that regard (i.a. the *Absolute Priority Rule* and the *Best Interest of Creditors Test*), it could involuntarily bind the opposing classes of creditors and thereby lead to an impairment of their claims against their will. This makes US Chapter 11 proceedings a very powerful tool and may provide the much-needed necessary relief for Efwon Investments.
- c. Ability to borrow new money: Under US Chapter 11, Efwon Investments could file for authorization to obtain new financing. This could either entail unsecured credit and – if that is not feasible – secured credit with super-seniority compared to other creditors of the estate, for instance by securing property that was not already subject to security or, super senior security on previously secured assets. This is a very important feature of US Chapter 11 proceedings, as it can facilitate that new money becomes available to the debtor to finance the plan and projected turn around.

4.5.2. There are also certain less favorable aspects to US Chapter 11 proceedings, which may impede the restructuring of Efwon Group:

- a. Adequate protection for secured creditors: While US Chapter 11 principally provides for a stay that prohibits any actions relating to repossession or foreclosure of secured assets, it also stipulates that any secured creditor is adequately protected against any declines in value of the secured assets. This, for instance, could entail that the debtor offers periodical cash payments to the secured creditor – which could have a significant impact on free cash flow available –, provide additional security or provide any other type of relief that could remediate a decline in value. This may impact the free cashflow available to Efwon Investments to achieve the turnaround.
- b. Costs of the proceedings: US Chapter 11 proceedings generally require a substantive amount of motions to be filed as part of the proceedings. US Chapter 11 proceedings are therefore generally very expensive, as all the motions filed before the court are subject to scrutiny by other participants in the proceedings.
- c. Competing plans: If US Chapter 11 proceedings are entered, creditors are entitled to propose their own reorganization plan competing with the plan proposed by the debtor. This could potentially impose upon Efwon Investment a plan that is not aligned with the plans proposed in other local proceedings.
- d. Involvement of a Trustee: The opening of US Chapter 11 proceedings also triggers the appointment of a United States Trustee with a more or less supervisory role, which includes monitoring of the costs of professionals involved and review of the feasibility of plans proposed, which could lead to dismissal of a bankruptcy case. In addition, there are certain special powers attributed to the Trustee, on the basis of which the Trustee could avoid certain transaction (e.g. invoking fraudulent conveyance). As such, one should be mindful that US Chapter 11 proceedings lead to the involvement of an independent third party that will scrutinize the process and any past legal acts, that could impact the outcome of the proceedings. As such, any legal acts entered into (shortly) before the opening of bankruptcy proceedings, can be avoided or subject to a discussion to that end.

Dutch WHOA proceedings

4.5.3. As with US Chapter 11 proceedings, there are certain advantages to entering into Dutch WHOA proceedings:

- a. Debtor-in-possession: Like US Chapter 11 proceedings, WHOA proceedings are debtor in possession proceedings, which means that Efwon Trading would remain in control during the entire process with the continued authority to control and dispose of its assets as it sees fit.
- b. Moratorium: WHOA proceedings do not trigger an automatic stay as is the case in similar proceedings. WHOA proceedings do however allow for Efwon Trading to request the WHOA court to grant a 'cooling-off period' (*afkoelingsperiode*) of maximum eight months to preclude unwilling creditors from enforcing their rights and invoke termination clauses (or *ipso facto* clauses) in relevant contracts.
- c. Plan offering: The purpose of WHOA is to accommodate out-of-court restructurings. Restructuring plans, can therefore principally be offered to creditors by the debtor, i.e. Efwon Trading. There is also a possibility that Efwon Trading requests that a so-called court-appointed restructuring expert (i.a. lawyers, financial expert) to prepare such plan, but that would not be recommended in this case given the alignment required between the parallel cross-border restructuring proceedings. If creditors would move to request for the appointment of a restructuring expert, the restructuring expert in principle has the exclusive authority to propose a plan to the creditors. In that case, however, Efwon Trading can request that the restructuring expert simultaneously also submits the restructuring plan composed by Efwon Trading to the creditors for voting.
- d. Dual tracks: to maximise deal certainty, the WHOA facilitates two tracks: a public and non-public WHOA track. The public track is included in Annex A of the EIR, and as such subject to the applicability of the EIR. As such, other EU Member States will automatically recognize the outcome of the restructuring proceedings, which is not the case in with the non-public track. It also means that jurisdiction of the court must be determined in accordance with the EIR, i.e. on the basis of the center of main interest. This is not the case with the private track, as jurisdiction is determined in accordance with Dutch Code of Civil Procedure. This private track also is entirely *in camera* and as such will be executed with strict confidentiality. Given the Dutch Code of Civil Procedure provides relatively more leeway to establish jurisdiction than the EIR, Efwon Trading would benefit from choosing the private track proceedings. This is particularly relevant for restructuring of the inter-company guarantee that was issued by Efwon Singapore to the Monaco Lender, which is only eligible for restructuring in Dutch WHOA proceedings if the Dutch WHOA court has jurisdiction. This is not the case on the basis of EIR, but it is under Dutch law.
- e. Plan contents: the WHOA does not stipulate any specific content requirement for a restructuring plan and as such, a plan can basically entail anything. The WHOA does, however, detail extensively formal requirements (e.g. information sharing, voting process, timelines etc.) that must be taken into account. For Efwon Trading, the former is important, as this allows for close alignment with the plans submitted in the parallel proceedings. There are precedents of parallel proceedings in which substantively similar plans were submitted and the consummation of which had been made conditional upon the confirmation of both plans.
- f. Cross class cram down: As is the case in US Chapter 11 proceedings, WHOA proceedings facilitate cross class cram down of non-consenting classes. Once confirmed by the court (subject to the fulfilment of relevant criteria), creditors are bound by the plan. The plan only needs one consenting (in the money, if any) class to be eligible for confirmation.

- g. Court involvement: For deal certainty, the WHOA allows all stakeholders including Efwon Trading to seek a court's opinion on substantive and procedural aspects of the plan process at any time of the restructuring plan process. Court decisions, including court confirmation of the plan, cannot be appealed. This allows for significant visibility on key elements of the plan at an early stage and increases deal certainty.
- h. Restructuring intercompany guarantees: Dutch WHOA proceedings facilitate that intercompany guarantees issued for the benefit of the debtor, in this case Efwon Trading, can be restructured through WHOA proceedings subject to fulfilment of several requirements, without the need for restructuring proceedings at the inter-company levels. For Efwon Trading, this means that the guarantees provided by Efwon Romania and Efwon Singapore can be restructured through WHOA proceedings of Efwon Trading. As a request for insolvency proceedings has already been filed against Efwon Romania, Efwon Romania will have to initiate own restructuring proceedings anyways, but Efwon Singapore will not have to do so (assuming that the Dutch WHOA can be recognized in Singapore).

4.5.4. There are also certain potential disadvantages to WHOA proceedings:

- a. Restructuring expert: Creditors can apply for appointment of a restructuring expert. If that request is granted by the WHOA court, the Restructuring Expert will have the sole exclusive authority to compose and propose a restructuring plan to the creditors as mentioned above, which could interfere with the integrated approach of parallel restructuring proceedings contemplated by the Efwon Group.
- b. No automatic recognition with EU in private track proceedings: As outlined above, private track proceedings do not fall within scope of the EIR and as such, any restructuring of the Efwon Romania guarantee vis-à-vis the Monaco Lender will not automatically be recognized by the Romanian bankruptcy court.
- c. Funding of the proceedings: To be eligible for interim measures such as a cooling-off period, Efwon Trading will have to show that it can cover running costs during the proceedings. Unlike US Chapter 11 proceedings, WHOA proceedings do not allow for priming per se, but it does allow for safe haven provisions to facilitate the provision of new money to Efwon Trading.
- d. Timing: it is key that Efwon Trading commits to the process in a timely manner. Whereas US Chapter 11 proceedings does not have an entry test, WHOA proceedings do. The question is whether Efwon Trading's business at present is still viable should a restructuring plan be confirmed. This will among other things depend on the prospects of Efwon Trading and the question whether it is able to cover running costs during the reorganization process. If that is not the case, Efwon Trading will have no other option than to file for more formal alternatives such as suspension of payments proceedings or bankruptcy proceedings.

Romanian restructuring agreement proceedings

4.5.5. The main advantages of Romanian restructuring proceedings under RLIP are:

- a. Debtor in possession: Like US Chapter 11 proceedings and Dutch WHOA proceedings, Efwon Romania would generally retain charge of the assets and can continue running its business pending restructuring proceedings.
- b. Temporary moratorium: Acceptance of a petition for restructuring agreement proceedings under RLIP automatically effectuates a temporary moratorium, prohibiting any creditors to enforce any rights in relation to outstanding claims. This is to allow for the preparation and offering of a restructuring plan. Such moratorium is issued for a maximum of four months.

- c. Plan contents: A restructuring agreement can take many forms, such as divestment of activities or assets, debt write-off. This is similar to US Chapter 11 proceedings or Dutch WHOA proceedings. This means it also allows for extensive alignment with the restructuring plans submitted in the cross-border parallel proceedings.
- 4.5.6. There are also potential disadvantages of entering into restructuring agreement proceedings under Romanian law:
- a. Appointment judicial administrator: If Romanian restructuring agreement proceedings are opened, the court will automatically appoint a judicial administrator. The administrator's role is to oversee the process and is burdened with assessment of the financial situation at Efwon Romania level. The administrator could even propose a reorganization plan in certain circumstances. If a plan is confirmed, the administrator will also have to ascertain that it is actually implemented. As such, Efwon Romania will to a certain extent be reliant on the administrator's cooperation to successfully implement the restructuring as envisaged. It should be noted that could of course also
 - b. Implementation monitoring: Efwon Romania will be burdened with reporting obligation subsequent to implementation of the plan, provided it is accepted by the court.
 - c. Entry test: Similar to Dutch WHOA proceedings, Efwon Romania will have to satisfy the entry test for eligibility. Efwon Romania will have to demonstrate to the court that it is experiencing difficulties to meet financial obligations, but is not yet in a state of insolvency. This will be tested by the administrator.
- 4.6. Information provision
- 4.6.1. All of the restructuring proceedings as reflected above, will require a vast amount of formal requirements to be satisfied for a plan to be confirmed. These requirements essentially all rest on the principle that the creditors that could be impaired under the reorganization plan should be able to comprehend and judge the context and the necessity (i.e. no alternatives) for implementation of the restructuring plan. In order to articulate the specific features of the plan, Efwon Group will have to provide sufficient details on the following topics:
- a. The assets base on an entity-by-entity basis;
 - b. The creditor base on an entity-by-entity basis;
 - c. An analysis of creditors who are seen as key creditors that should not be impaired;
 - d. The liquidation value of the respective companies;
 - e. The (reorganization) value that can be unlocked or secured by acceptance of the relevant restructuring plans, both on the respective entity levels and on a group level;
 - f. The liquidation value of secured assets (i.e. real estate portfolio Maximov, generated revenue, to understand to what extent secured claims are secured in a bankruptcy scenario and to ;
 - g. Any cashflow forecasts of the respective company levels, and to what extent there is a need for new money in order to fund the restructuring proceedings and effectuate the envisaged turn-around; and
 - h. In the event that new money is required, to what extent there would be any unencumbered assets that could serve as collateral for the new money.
- 4.6.2. To determine if the envisaged strategy outlined in paragraph 4.2 would be feasible, the following factors should be confirmed:

- a. That the KuasaNas agreement is greenlighted subject to the effectuation of the respective restructurings;
- b. The consideration that KuasaNas is offering to pay directly at closing is sufficient for waiver of the security by the Syndicate vis-à-vis Maximov (pursuant to the contemplated capital injection into Efwon Investments to sponsor the restructuring plan);
- c. That the claims filed by the drivers against Efwon Romania can be restructured through a Romanian restructuring agreement procedure (as these arise from or in connection with employment contracts, which may not be eligible for restructuring);
- d. That the WHOA restructuring plan of Efwon Trading can be recognized in Singapore under International Private law;
- e. If, pending the conclusion of the restructuring plans at the levels of Efwon Investments, Efwon Trading and Efwon Romania, Efwon Singapore could successfully request that the court issues an anti-enforcement injunction against the Monaco Lender;
- f. That applicable director's liability regimes at the respective company levels allow for pursuing this strategy, in particular in view of mandatory filing requirements and the possibility to continue trading pending the proceedings; and
- g. That any court-appointed professionals (e.g. Trustee, restructuring expert) could be convinced that the relevant strategy is in the interest of the joint creditors of the respective companies and the Efwon Group as a whole, to work cooperatively towards implementation of the restructuring plans.

4.7. The effects of supra-international instruments in achieving the strategy

- 4.7.1. As mentioned, all restructuring plans to be contemplated by the Efwon Group have a significant degree of freedom in terms of plan content. As such, the parallel plans could be made interdependent upon the confirmation of the respective plans in the various jurisdictions and include cross-reference to the contents thereof to achieve recognition.
- 4.7.2. The question is whether the companies can also rely on other legal instruments to accommodate cross border effect. This most notably applies to Efwon Trading and Efwon Romania, which are both founded in EU Member States and could thus fall within the scope of the EIR. The Romanian Restructuring Agreement proceedings (*Concordatul preventiv*) are in fact listed on Annex A of the EIR. As such, Efwon Romania could benefit from automatic recognition under the EIR in, for instance, the Netherlands. This could be helpful if the Romanian restructuring agreement contemplates impairment of the guarantee issued by the company to the Monaco Lender. Conversely, as it is envisaged to start private track WHOA proceedings for Efwon Trading which are not recognized by the EIR (see above), Efwon Trading cannot build on the EIR for cross-border implementation of its restructuring plan. Efwon Trading will need to rely on the common international private law framework for that purpose.
- 4.7.3. The subsequent question is whether Efwon Investments, Efwon Trading and/or Efwon Romania can lean on any other soft law or soft law instruments to effectuate cross-border effect of the relevant plans, such as the frameworks articulated by the United Nations Committee on International Trade Law (UNCITRAL), the World Bank Group, INSOL International and the International Insolvency Institute (III).¹⁸
- 4.7.4. UNCITRAL has developed i.a. the Model Law on Cross Border Insolvency (Model Law), primarily for use by states to implement or update insolvency legislation in a harmonized and fair manner. The Model Law has been adopted by the United States,

¹⁸ Ibid, p. 55.

Romania, but not by the Netherlands (although it is used as a reference for further progressing Dutch insolvency legislation).¹⁹ From a European perspective, it should be added that the European Law Institute issued the Instrument on Business Rescue, which like UNCITRAL supports the development of a business restructuring framework in Europe.²⁰ Unlike the EIR (hard law) or the Principles (as elaborately explained in paragraph 3.4 above), however, these framework are not intended to be used directly in specific cases, but rather by states to develop their national restructuring framework.²¹

4.7.5. Consequently, these soft law frameworks generally do not provide a direct legal base for cross-border implementation of extraterritorial restructuring. They can however provide guidance in the coordination between parallel proceedings, for instance by implementing so-called protocols, but this is not a given. This is illustrated by a recent judgment in the Dutch context, where a request was for implementation of a court protocol that was implemented in US Chapter 11 proceedings. This was denied in the Dutch courts reasoning that it contradicts with Dutch statutory law, illustrating the difficulty of seeking relief on the basis of the UNCITRAL Model law.²²

4.8. Comparison with structuring through England instead of the Netherlands

4.8.1. From the Dutch angle in this case, the Efwon Group restructuring, post-Brexit it would not have made a significant difference if Efwon Trading would have been incorporated in the United Kingdom (UK) rather than the Netherlands. The departure of the United Kingdom out of the European Union now requires parallel proceedings be entertained in any cross-border restructuring (as we have seen for instance in the case of shipping company Vroon). As it is currently contemplated that Efwon Trading enters into private track WHOA proceedings which fall out of scope of the EIR (and as such cannot be recognized automatically anyways) there is no significant difference.

4.8.2. From a Romanian angle, structuring through England could have led to a different outcome. Similar to Dutch WHOA proceedings, the UK Restructuring Plan also allows for inclusion of group company guarantees in the scheme. That means that restructuring of the guarantee issued by Efwon Romania does not necessarily be restructured in those proceedings, subject to the possibility of recognition of the UK proceedings in Romania. If that is difficult, then the guarantee could be restructured through Romanian restructuring agreement proceedings. Having that restructuring recognized in the UK, however, will be more difficult compared to the structuring of Efwon Trading through the Netherlands, since in case of the latter the restructuring would automatically be recognized pursuant to the EIR.

5. **The outcome for each of the various stakeholders**

5.1. Resulting from a culmination of unexpected events, the Efwon Group is in financial difficulties. Although this has already led to one formal filing for insolvency proceedings in Romania, the most efficient avenue for redressing this situation is to explore an out-of-court workout in line with the Principles, as detailed in paragraph 3.

5.2. If turns out not to be feasible, for instance if certain creditors cannot be convinced to cooperate, on a preliminary basis it is advised that:

- a. Efwon Investments enters US Chapter 11 proceedings;
- b. Efwon Trading enters Dutch restructuring proceedings;
- c. Efwon Romania applies for restructuring agreement proceedings; and

¹⁹ Ibid, p. 55.

²⁰ Ibid, p. 58.

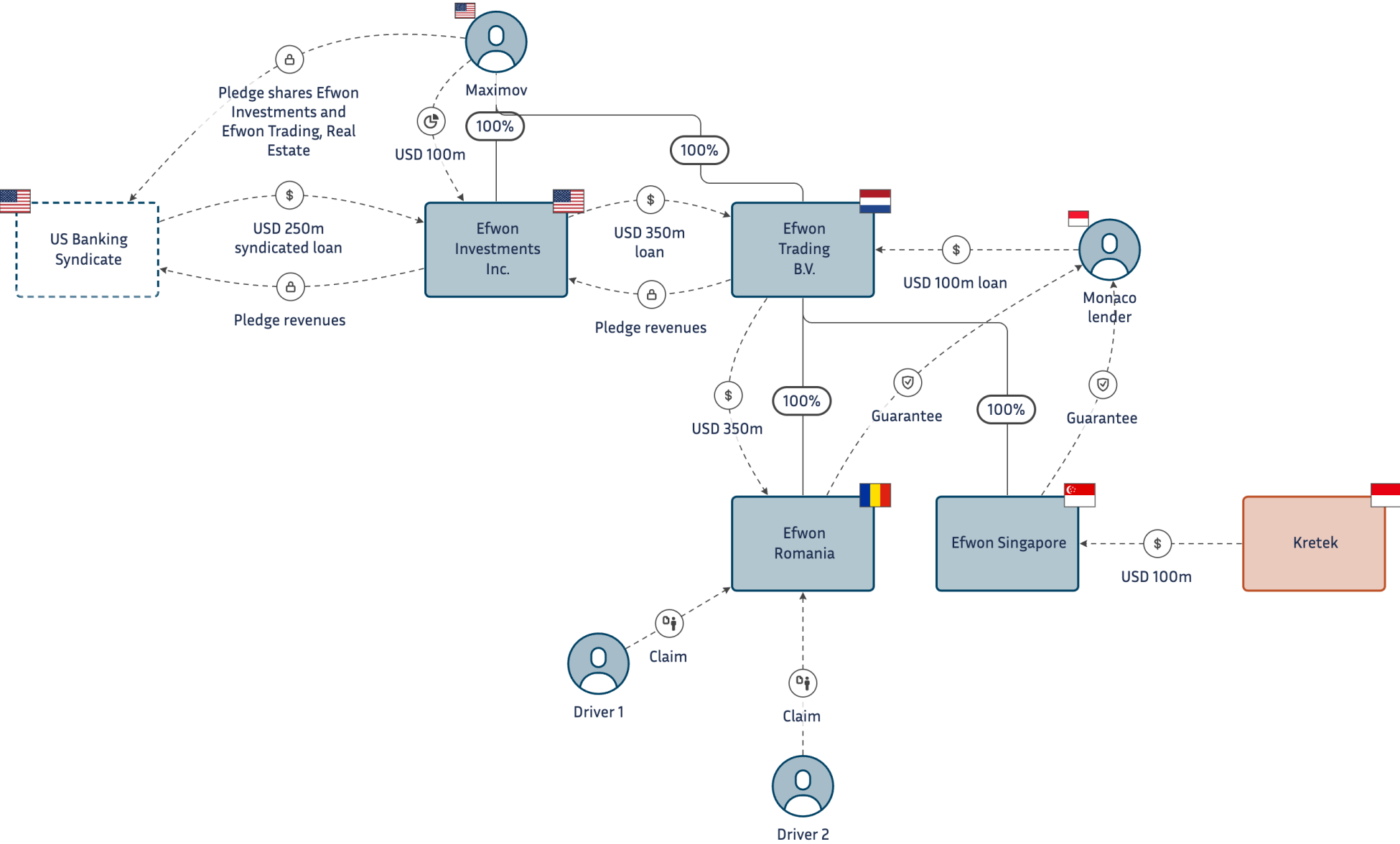
²¹ Wessels, B. & Boon, J.M.G.J. Soft law instruments in restructuring and insolvency law: exploring its rise and impact. *Tijdschrift voor vennootschapsrecht, rechtspersonenrecht en ondernemingsbestuur*, 2019, p. 58.

²² Amsterdam District Court 27 February 2024, ECLI:NL:RBAMS:2024:1154.

- d. Efwon Singapore does not enter any restructuring or insolvency proceedings.
- 5.3. The result of this restructuring for each of the relevant stakeholders will be as follows:
- a. Maximov will retain 49% of the shares in Efwon Trading and 100% of the shares in Efwon Investments, and will be released from security provided to the Syndicate (as defined below) over the real estate in his personal ownership pursuant to a capital injection into Efwon Investments;
 - b. The Syndicate will receive a pay-out amounting to at least the value of their security of the shares in Efwon Investments and the real estate portfolio from Maximov (in a liquidation scenario);
 - c. Efwon Investments will receive rights under the Efwon Trading restructuring plan amounting to at least the value of the pledged revenue (in a liquidation scenario);
 - d. The Monaco Lender (as defined below) will receive rights under the Efwon Trading restructuring plan calculated at a minimum (liquidation) value of the guarantees provided by Efwon Romania and Efwon Singapore; and
 - e. The drivers will receive a pay-out under the contemplated restructuring plan of Efwon Romania amounting to at least the pay-out that pari-passu ranked creditors would receive in the event of a liquidation of Efwon Romania.

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ANNEX 1 – GROUP VISUALISATION PRE RESTRUCTURING



ANNEX 2 – GROUP VISUALISATION POST RESTRUCTURING

