**LEGAL MEMORANDUM – INTERIM ADVICE ONLY**

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| To: | Mr. Benedict Maximov |
| From: | Will Paterson |
| Date: | 15 April 2024 |
| Re: | Efwon Group Restructuring Strategy |

This memo provides our interim professional advice on a comprehensive strategy for dealing with the insolvency issues affecting the companies in the Efwon group and the various stakeholders involved. The main objectives of our advice are: (i) to facilitate the sponsorship deal with KuasaNas; (ii) save the Maximov F1 team; and (iii) safeguard Mr. Maximov’s position.

The note is structured in eight sections. We first summarize the facts as we understand them. Then we provide a high-level overview of the proposed strategy. The next three sections discuss the group’s recommended legal filings and strategy in Romania, the Netherlands, and the United States in succession. Subsequently, the details of the restructuring plan negotiation and adoption are then reviewed. We then review the overall risk profile of the strategy with a section on the strengths and weaknesses of the approach. Finally, we review whether the group should have been structured through England rather than the Netherlands – a question asked by Mr. Maximov’s counsel.

Please note that the information below does not constitute our final advice, which you can rely on. We are missing key pieces of information which limits the analysis we can provide below, including the likelihood of the success of the legal strategy outlined below. Please see Annex A for a list of information we require to complete our analysis. We would be pleased to swiftly update our analysis after receipt of the information.

1. **Summary of Facts**

We will first summarize the facts relevant to the legal strategy as we understand them. As noted above, key information is missing which we outline in Annex A.

In early 2014, Mr. Maximov established Efwon Investments Inc. (Efwon Investments) in Texas as an investment vehicle to fund the establishment of a Formula One (F1) team. He invested USD 100 million into Efwon Investments and obtained USD 250 million from a syndicate of nine banks.[[1]](#footnote-1) The banks took security over various parts of the business as well as a number of Mr. Maximov’s homes across the world. Next, Mr. Maximov established Efwon Trading B.V. (Efwon Trading) under the laws of the Netherlands and lent the entire USD 350 million that Efwon Investments had obtained. He secured the loan on future revenues from Efwon Trading.

In late 2014, to start racing quickly, Efwon Trading acquired a Romanian F1 team, including the competition license, the company’s business, and inventory (including several machines[[2]](#footnote-2)). Efwon Romania was established as a wholly owned subsidiary of Efwon Trading for purposes of using the F1 license. Efwon Trading then lent Efwon Romania USD 150 million, secured on the team’s share of broadcasting revenue. Two drivers were also contracted with Efwon Romania.

In the first several years of trading, Efwon Romania’s team (Team Maximov) placed modestly in the rankings and did not return sufficient revenue to pay back lenders upstream. Waivers were obtained from the relevant lenders, but the loan margin was increased from 4 to 6%. Around 2016, another USD 100 million was advanced from Efwon Trading to Efwon Romania. That year the team placed higher in the rankings and revenues increased. In 2017, another USD 100 million was lent to Efwon Romania. Around that time, Efwon Singapore[[3]](#footnote-3) was established in Singapore to deal with potential sponsors, needed to increase investment. In 2018, Kretek in Indonesia agreed to provide sponsorship of the team through Efwon Singapore. Sponsorship was secured for five years from 2019 of USD 100 million a year. Liquidity was needed from 2018 until beginning 2019, so a USD 100 million loan was secured from a Monaco lender, which had a high interest rate. This was secured on the revenues from Efwon Romania and Efwon Singapore.

Revenues of Efwon Romania grew during from 2019-2022, but Kretek indicated that they may not renew the sponsorship arrangement after the five years expired. Therefore, the Efwon group of companies found KuasaNas, a Malaysian state company who offered to provide in excess of USD 100 million a year in sponsorship from around 2024 onwards. However, KuasaNas had several conditions: (i) they obtain 51% stake in the team; (ii) the team move to Malaysia. However, changes in the Malaysian government meant that the deal could not be finalized before the Malaysian Government reviewed the contract.

Unfortunately, in 2023, the two Romanian drivers were injured in a race. They brought compensation claims before the Romanian courts where they have alleged defects in safety and management. Their lawyers have also filed for the insolvency of Efwon Romania as an interim strategy and have obtained freezing injunctions over the company’s assets and income. The insolvency commencement order is pending.

The freezing injunction will place Efwon Romania in a position to default on its payments to Efwon Trading, due early 2024. This will cause Efwon Trading to default on payments it owes to Efwon Investments and the Monaco lender. Because of this, the US banks are considering foreclosing on the security provided to them. This could have major consequences for the group. Further, KuasaNas has now stipulated another condition: that the insolvency issues affecting the Efwon group are resolved, and the group is stable before they invest.

We understand an Independent Business Review (IBR) was conducted, which concluded: (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) time is up, and it is not realistic to timely expect to find another partner / investor. We also understand that KuasaNas have signaled that they would be willing to, as consideration for their stake in Efwon, pay part of the total consideration for the deal directly on the closing thereof.

1. **Overview of Proposed Legal Strategy**

This section provides an overview of the legal strategy we recommend to pursue Mr. Maximov’s goals.

The strategy we propose is to first deal with the insolvency application in Romania and then restructure the entire Efwon group through a procedure (outside the insolvency procedure) in the Netherlands to emerge stronger with restructured debts, improved cost efficiency as well as a sponsorship deal from KuasaNas.

As further detailed in the sections below, the strategy involves opening a pre-insolvency procedure in the Netherlands as the main foreign procedure. We would then seek to have the procedure recognized in Romania as well as under the cross-border insolvency Chapter 15 in the United States. However, to be completely effective in including Efwon Investments in the restructuring, we may have to also open a Chapter 11 insolvency procedure in the United States, which would be run in parallel with the Netherlands procedure.

This would give the Efwon group breathing room to negotiate a restructuring plan with its creditors in multiple locations. Importantly, for a fixed period of time, the strategy seeks to prevent the US banks from foreclosing on Mr. Maximov’s properties and other security. As part of the strategy, it would be important to make sure the F1 license and machinery in Efwon Romania are preserved as these are the bulk of the assets of the company.

Through the plan, the goal is to restructure the debt owed by the different entities of the group to the creditors. The results of this should be lower payments to creditors, enabling KuasaNas to acquire 51% stake in Team Maximov. For example, the debts owed to the US banks and the high-interest Monaco loan owed by Efwon Trading should be restructured to extend the payment period, temporarily suspend payments, reduce the total debt, or decrease the interest rate. Through the Netherlands restructuring, we may even be able to cancel a portion of the debts of Monaco lender which are at a high-interest rate. Although we are unsure how much is still owing on each loan, if KuasaNas is to invest $500 million – that amount should equal 51% stake in the team.

Although this is our interim advice on strategy, there is not one way to proceed. The legal details as well as the advantages, disadvantage and risks are described in the sections below.

1. **Dealing with the Efwon Romania Insolvency Application**

The lawyers of the drivers have filed for the insolvency of Efwon Romania in Romania as a strategy and interim measure. The first and most urgent part of the strategy involves opening a proceeding in the Netherlands as quickly as possible and to ensure Romania does not become the centre of main interest (COMI) because of the insolvency application filed for Efwon Romania.

As the choice of COMI in the EU will determine the governing law for most of the procedures, it is important to have the law of the Netherlands apply instead of Romania. We are more likely to succeed with a restructuring in the Netherlands. The Netherlands restructuring procedures and general insolvency framework has been found to be much more efficient and effective than those in Romania.[[4]](#footnote-4)

As a potential starting point, we could try to have the application withdrawn by the drivers by negotiating a settlement with them out-of-court. Although, the withdrawal is not guaranteed even if the drivers withdraw the application as the Romanian Court may find that the company is insolvent and continue the process. Another possibility is to argue to the Romanian Court that the Efwon Romania is not insolvent, and the application should be dismissed. However, there is significant risk with this approach as there is no fallback[[5]](#footnote-5) should the Romanian Court find it justified to open an insolvency procedure and find that COMI is in Romania.

In any event, we recommend pursuing a legal strategy that the COMI under the European Insolvency Regulation (EIR)[[6]](#footnote-6) is in the Netherlands. This would allow the Netherlands Court to be the main proceeding and the proceedings we will recommend opening in other jurisdictions would be the non-main foreign proceedings. To do this, we would recommend Efwon Trading immediately commence a restructuring procedure in the Netherlands.

First, since the case was started in Romania, we examine what the arguments would be for the COMI in the Netherlands rather than Romania. Both Romania and the Netherlands are in the European Union and therefore subject to the EIR. The Netherlands procedure we recommend is listed in Annex A of the EIR and therefore is a procedure recognized under it. The EIR “primarily provides a framework for jurisdiction and recognition of insolvency proceedings opened in other member states”.[[7]](#footnote-7) Below we review the legal requirements and the relevant facts.

As discussed above, the lawyers acting for the Efwon Romania drivers have filed for insolvency and have obtained a freezing injunction over the company’s assets and income. However, the insolvency order is pending. Therefore, it appears that only preservation measures have been ordered – this “does not imply a decision on the presence of COMI”.[[8]](#footnote-8) No interim or provisional measures are reported to have been decided in Romania.[[9]](#footnote-9) The first court in the EU to take a decision on where COMI is situated will be recognized by all other courts in member states.[[10]](#footnote-10) The consequences of the COMI being in the Netherlands include that: the law of the Netherlands would determine many insolvency issues[[11]](#footnote-11); the insolvency practitioner in the main proceeding can act in all other EU member states automatically,[[12]](#footnote-12) judgements are automatically recognized and can be enforced in other member states.[[13]](#footnote-13) Therefore, it is imperative that Efwon Trading file for a procedure in the Netherlands and that the Netherlands court opens a main proceeding as quickly as possible.

The EIR defines COMI as “the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.”[[14]](#footnote-14) Further, the location of the registered office of the company “…shall be presumed to be the centre of its main interests in the absence of proof to the contrary."[[15]](#footnote-15) The European Court of Justice (ECJ)’s *Eurofood* judgement[[16]](#footnote-16) provides more details on how to determine the COMI. In that case, the ECJ found that “the mere fact that [the company’s] economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by the Regulation.”[[17]](#footnote-17) Factors the ECJ stated can be considered to rebut the presumption that the COMI is the location of the registered office are:[[18]](#footnote-18) a contract concluded with a financial institution, and location of immovable property. There must be a full assessment of whether “the company’s actual centre of management and supervision and of the management of its interests is located in that other Member State.”[[19]](#footnote-19) Predicting where COMI will be found not straightforward. Given the many factors involved, it can be difficult to predict which location the COMI will be held to be.[[20]](#footnote-20)

In the case of Efwon Trading, the factors which militate towards the COMI being in the Netherlands are that: (i) they have the USD 100 million loan with a Monaco bank; (ii) they entered into a contract to acquire the Romanian team; (iii) Efwon Romania is a wholly owned subsidiary; (iv) all of the financing of Efwon Romania comes from Efwon Trading; (v) Efwon Singapore was established by Efwon Trading to deal with potential sponsors; (vi) the major operational decisions seem to come from Efwon Trading. However, there are risks with this approach as many facts are missing (see Annex A) and some do not support COMI in the Netherlands. It could also be argued by the drivers that Romania is the COMI. This is because Efwon Romania has staff (the two drivers) as well as all of the valuable assets: the license from Formula 1 (F1), inventory and machines for racing. Presumably, Efwon Romania also has its registered office in Romania, which is a rebuttable presumption under the EIR.

If the Dutch court opens the procedure before the Romanian court and agrees that the COMI is in the Netherlands, the drivers would need to challenge this decision in the Netherlands.[[21]](#footnote-21) This could delay the restructuring of the whole group. Similarly, if the COMI was decided to be in Romania, the Efwon group would want to challenge the designation in Romania. We do not fully analyze the possibility of a Romanian COMI here. However, we would need to significantly revise the strategy should that be decided.

The EIR also recognizes that a single COMI can be established for a group of companies, in particular the “possibility for a court to open insolvency proceedings for several companies belonging to the same group in a single jurisdiction if the court finds that the centre of main interests of those companies is located in a single Member State.”[[22]](#footnote-22) Chapter V of the EIR also provides for the possibility of group coordination, including: the appointment of a group coordinator,[[23]](#footnote-23) a coordinated restructuring plan[[24]](#footnote-24), as well as cooperation and communication between courts.[[25]](#footnote-25)

Because there is significant risk that COMI will not be found to be the Netherlands, in our COMI analysis we have also considered taking other actions to transfer the COMI. These actions would strengthen the case that Efwon Trading is the place where the debtor conducts administration.[[26]](#footnote-26) However, we did not pursue this avenue as the EIR, and case law have made it so that it is very difficult to shift COMI. In particular, the *Eurofood* and *Interedil* judgments referred to above make the successful transfer COMI prior to the opening of insolvency proceedings unlikely.[[27]](#footnote-27)

Lastly, if the COMI is found to be in the Netherlands, and the case opened there prior to Romania, we would still need to continue with the insolvency case in Romania. In that case, we would open a secondary proceeding in Romania.[[28]](#footnote-28) The main EIR requirement is that an establishment is located in the country of the secondary proceeding.[[29]](#footnote-29)

1. **The WHOA & Initial Filing in the Netherlands**

Given the COMI analysis above, we recommend Efwon Trading urgently open a public[[30]](#footnote-30) procedure under the Court Approval of a Private Composition (Prevention of Insolvency) Act or *Wet Homologatie Onderhands Akkoord* (WHOA) in Dutch. The WHOA provides for Efwon Trading to propose a restructuring plan to creditors outside of the formal Dutch insolvency procedure. Coming into force in January 2021, the procedure is designed to be fast, efficient, and less expensive than other options such as US Chapter 11 cases.

The WHOA is a “debtor-in-possession” procedure, which means that Efwon Trading will remain in control of the company and conduct business as usual. Only the court supervises the procedure, no insolvency administrator is required to be appointed. An expert can be appointed by the court on petition of creditors, shareholders, or employees to prepare a plan, but the debtor can still propose a competing plan and continue running the company.[[31]](#footnote-31)

*Eligibility and Commencement*

To start the process, under the WHOA, Efwon Trading will need to demonstrate that it is reasonably likely that it will not be able to continue paying its debts.[[32]](#footnote-32) This is the case because Efwon Trading is “at risk of insolvency and will be unable to meet its payment obligations, including those to the Monaco lender.”[[33]](#footnote-33) As soon as Efwon Trading starts preparing the restructuring plan, a statement will need to be filed with the Dutch Court Registry.[[34]](#footnote-34) The shareholders do not need to consent to such a filing.[[35]](#footnote-35) Crucially, along with initiating the process, Efwon Trading will need to seek a Court imposed stay (called a “cooling off period” in the WHOA), which will prevent creditors from enforcing and give it some breathing room to negotiate a restructuring with its creditors and deal with the other components of the group.[[36]](#footnote-36) To obtain the stay, Efwon will need to undertake that it will offer a plan to the creditors within two months.[[37]](#footnote-37) After the stay has been granted, it will prevent secured creditors from taking enforcement actions: the Monaco lender and the US banks from seizing their relevant security (revenues over Efwon Romania & Singapore as well as the shares in Efwon Trading). The stay is available initially for four months and can be extended up to eight months.[[38]](#footnote-38)

At the commencement, it is also important to evaluate the contracts which are in place to make sure those which are too onerous are terminated or amended and those which are critical can continue. The WHOA will allow both options. Termination is permitted if the court approves.[[39]](#footnote-39) While no facts thus far point towards a termination, it is a good option to keep in mind. Clauses in important contracts that automatically terminate on insolvency (called *ipso facto* clauses) are also not permitted to be triggered by a WHOA procedure. This may be important for the FIA licensing contract which Efwon Romania has, which is key to the overall restructuring strategy. The licensing contract must be maintained so that the team can eventually move to Malaysia under the KuasaNas sponsorship deal.

Lastly, Efwon will need to request that the court designate the Netherlands procedure as the COMI for the Efwon group. See the analysis in the above section.

1. **US Filings**

Immediately after the stay is granted and COMI in the Netherlands determined, a US Chapter 15 case should be filed. Broadly, Chapter 15 incorporates the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross–Border Insolvency, with some exceptions.[[40]](#footnote-40)  Chapter 15 was created to enable:

“cooperation between United States courts, trustees, examiners, debtors and debtors in possession and the courts and other competent authorities of foreign countries; greater legal certainty for trade and investment; fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; the protection and maximization of the debtor’s assets; and the facilitation of the rescue of financially troubled businesses.”[[41]](#footnote-41)

The petition from Efwon Trading would seek recognition of the Netherlands case as the foreign main proceeding under US law. That will result in recognition of the foreign insolvency representative (likely the lawyers in the Netherlands) as well as issue preliminary relief[[42]](#footnote-42) such as an automatic stay to stop the US banks from foreclosing on Mr. Maximov’s homes and take other actions.[[43]](#footnote-43) The foreign representative is also authorized to operate the debtor's business in the ordinary course. The ultimate goal of the strategy is to eventually file the accepted Dutch restructuring plan with the US court and have it enforced in the United States.

The requirements for the US Court to recognize a foreign proceeding are:[[44]](#footnote-44) (i) that the foreign proceeding is a foreign main or foreign non-main proceeding; (ii) the foreign representative applying is a person or body; (iii) the petition meets the requirements of s. 1515.[[45]](#footnote-45)

Firstly, the US Court must recognize that the Netherlands case is the COMI. The US Court will look to many factors in consideration of its analysis.[[46]](#footnote-46) The Court may consider if the jurisdiction is the “nerve center…including from where the debtor’s activities are directed and controlled.”[[47]](#footnote-47) In the *OAS* case, it was found that if the business only maintains a post-office box in the location and “does not conduct business, own assets, have a physical location, or employ anyone” in the country then those factors, along with others, are sufficient to find that the COMI does not exist in that country.[[48]](#footnote-48) As discussed under the EIR COMI analysis above, Efwon Trading can be argued to be the COMI (the nerve center of decisions) over Efwon Romania, although the facts are limited, and the analysis could also lead to Efwon Romania being found to be the COMI. Presumably the US Court will also look to where the European Court under the EIR found the COMI as well.

Arguments that other parties may also present to the US Court are that the US company, Efwon Investments, is in fact the COMI and not the Netherlands. The US banks may want to have the US bankruptcy framework control the entire process. However, this seems unlikely to succeed because Efwon Investments appears solely to be a financing company with debts, no assets or employees are mentioned or any business activities (i.e., not a nerve center). The only available argument would be that the majority of the group’s creditors are in the US.

With respect to the second and third requirement, the petition to the US Court must be accompanied by translated documents from the Netherlands court showing the existence of the foreign proceeding (i.e., the WHOA case stay) and the appointment and authority of the Dutch lawyers.[[49]](#footnote-49)

In terms of the substance of the WHOA as a tool, several recent cases have shown that it is possible to have a Dutch WHOA recognized in the United States under Chapter 15.[[50]](#footnote-50) Therefore, there is no need to conduct a detailed analysis here of whether the US Court would generally accept a WHOA here as a “foreign proceeding”.[[51]](#footnote-51)

It would be best to effectuate the Efwon group’s entire restructuring through the Dutch WHOA plan, with the Chapter 15 recognition in the US which would include Efwon Investments, the US-based entity. Even if Efwon Investments was found to be the parent company of the Dutch and Romanian companies, there is precedent for this approach with the *Karhoo* case.[[52]](#footnote-52) In the *Karhoo* case, there was a group with a US parent and UK subsidiaries. The US bankrutpcy court recognized that the UK case was the COMI and the Chapter 15 case proceeded with the US parent entity included.[[53]](#footnote-53) Although, in our case, it is not guaranteed to be recognized and there may be opposition from the US banks. In particular, the US-based banks may object to proceeding with a Chapter 15 and not a Chapter 11 case for the US entity. In the *Karhoo* case, there was no objection by stakeholders to the approach.

*Possible Chapter 11 Filing*

If the approach of only using Chapter 15 in the US (with the WHOA as the main restructuring tool), above does not work, it would likely be prudent to open parallel US Chapter 11 proceedings for the group through Efwon Investments. Parallel proceedings where there is a Dutch restructuring plan along with a US Chapter 11 restructuring plan have worked in several recent cases with respect to complex cross-border enterprise group insolvencies.[[54]](#footnote-54) In this case, Efwon Investments could petition the US Court to open a Chapter 11 case in parallel with the Efwon Trading case in the Netherlands. The two cases would need to be closely coordinated between the parties and the Courts. To coordinate and simplify the entire process, the two plans could be very similar, and the creditors only vote for or against both plans. This approach would also require the Dutch Court to recognize the US restructuring plan, which would likely succeed.[[55]](#footnote-55)

1. **Plan Negotiations, Voting and Adoption**

*Plan Negotiation*

Once the stay against creditors’ actions is in place in the United States, Netherlands and Romania, a plan will need to be negotiated with creditors. Ideally, one plan with consolidated assets and liabilities across the group will be presented to creditors. The plan will list the assets and liabilities of each member of the group.[[56]](#footnote-56) If it is possible to have advanced negotiations with some creditors (who will not immediately take foreclosure action if they are notified of the strategy), it would make the process run smoother and faster while the case commences.

The debtor will effectively have up to eight months (including an extension) to have a WHOA plan voted on and presented to the court. After that period, the stay will expire. The WHOA is flexible and specifies a minimum of what the restructuring plan must contain.[[57]](#footnote-57) It also does not limit what kind of options the parties can use to restructure the company. Once the plan is finished, it must be provided to creditors at least eight days before voting occurs.[[58]](#footnote-58)

Classes for voting will need to be organized around the category of creditors who are affected by the plan. Creditors with different priority rankings in insolvency need to be put in separate classes according to their rights upon liquidation.[[59]](#footnote-59) In this case, there appear to be four broad categories of creditors within the group:

* Secured creditors: the US syndicate of banks, which have been structured between senior, mezzanine and junior lenders, as well as the Monaco bank. There is also one within the group: Efwon Romania owes Efwon Trading $150 million (or some smaller amount) secured on the team’s share of broadcasting revenues.
* Employees: at least the two drivers in Romania (if they are classified as employees), who also have a tort claim against the company.
* Unsecured creditors: The $350 million of loans from Efwon Investments to Efwon Trading does not appear to have security attached to it directly. The other $200 million in loans from Efwon Trading may also be unsecured.
* Shareholders: Mr. Maximov’s equity investment of $100 million.

The WHOA also allows group company obligations to be dealt with under the same plan.[[60]](#footnote-60) This means that it is possible that all the group members’ debt in other jurisdictions may be restructured through the WHOA plan. However, as noted above, it may be that circumstances require[[61]](#footnote-61) a parallel restructuring with a Chapter 11 filing as well.

*Fresh Financing[[62]](#footnote-62)*

Fresh financing is often required during a restructuring keep the company running, effectuate changes in the company and pay certain costs. The group will likely need a fresh cash injection to complete a successful restructuring. This is because it is unclear whether the group has enough funds coming in to fund the restructuring.

The WHOA protects fresh financing from claw-back risks if the plan ultimately fails and a liquidation occurs. This protection is afforded once the plan is confirmed by the Court. The plan must explain the reasons why the fresh financing is necessary.[[63]](#footnote-63) Further, it must demonstrate that the financing is in the interest of creditors, and they will not be materially damaged.[[64]](#footnote-64)

In this case, in order for the sponsorship deal to come through, and the team be able to continue to compete, and obtain more broadcasting revenue, fresh funds are likely imperative. This is because monies are required to pay for the costs of the restructuring as well as to improve the operations to be more cost effective. The financing is in the interest of creditors because without it, there is a high likelihood that the company go into insolvency and the creditors are likely to receive less in insolvency than in the restructuring. All of the assets appear to be in Efwon Romania and for the team to continue, it will need to keep investing and deal with the Romania insolvency filing. Through the restructuring the creditors could be made almost whole.

If a parallel proceeding is also required through Chapter 11 and fresh financing is sought in the United States, it is also protected. The financing is entitled to priority over all pre-petition unsecured claims as an administrative expense.[[65]](#footnote-65) If sufficient unsecured debt is not available, the Court may permit credit to be obtained as “super-super priority” over all administrative expenses.[[66]](#footnote-66)

*Group Obligations and the Plan*

One of the important features of a WHOA is that it allows the restructuring of group obligations (such as guarantees).[[67]](#footnote-67) In order to apply this feature, the following requirements must be met – the entities (i) are within the same group as the debtor;[[68]](#footnote-68) (ii) like the principal debtor, can reasonably state that they will not be able to pay their debts as they fall due;[[69]](#footnote-69) and (iii) the Dutch court has jurisdiction over these affiliates if they would file for a Dutch Scheme individually.[[70]](#footnote-70)

Depending upon how the obligations are structured and the agreement of other creditors, this would likely allow the plan to restructure the obligations that the Efwon group owes to each other. For example, Efwon Romania owes significant amounts to Efwon Trading, and Efwon Trading owes amounts to Efwon Investments. They appear to meet the test for group obligation restructuring in the WHOA: they are all in the Efwon group; the entities in the group do not seem able to pay their debts as they fall due; and the Dutch court likely has jurisdiction over at least the Netherlands and Romania entities (if the Netherlands COMI is established) and the US company could also be subject to the Dutch jurisdiction.[[71]](#footnote-71)

*Plan Voting and Adoption*

Since it is proposed that the Netherlands WHOA plan may affect all creditors, they are all entitled to vote on it. At least one class of creditors or shareholders must support the plan with two-thirds majority for it to be presented to the Court.[[72]](#footnote-72) Within 8-14 days, the report on the creditor voting must be presented to the Court for confirmation. The court may reject a restructuring plan if procedural requirements are not met or the “creditors or shareholders will be worse off under the agreement than if the debtor’s assets were liquidated in bankrutpcy.”[[73]](#footnote-73) A creditor may also object to the plan because it deviates from the legislative priority ranking unless there are reasonable grounds for this change and the interests of the dissenting creditor would be adversely affected.[[74]](#footnote-74)

As soon as the plan is adopted in the Netherlands, it will need to be filed with the US Court and accepted under the Chapter 15 case in order to enable its enforcement in the US and make it binding upon the US creditors. If a parallel US Chapter 11 case is required to complete the restructuring, the same plan would be put to the US creditors for voting according to Chapter 11. A condition precedent of both the US plan and Dutch plan would be that they are both accepted in order for the reorganization to succeed.

*Possibility of Cross-Class Cram Down of Dissenting Creditors*

The WHOA allows for a “cross-class cram down” of dissenting creditors. This means that it is possible that the plan is approved even if some classes of creditors do not vote in favor of the plan. The plan is voted on by each class, and approval is obtained if the creditors representing at least 2/3 of the total debt vote in favor of the plan.[[75]](#footnote-75) The debtor can submit the restructuring plan for court confirmation if the plan is approved by at least one of the classes of creditors (who would recover under a liquidation). If there is opposition to the plan because it deviates from the priority ranking, the court will only confirm the plan if it meets certain conditions such as that there are reasonable grounds for the deviation. If the court confirms the plan, it is binding upon all creditors. A discussion related to Efwon’s creditors of cross-class cramdown is in the next section.

*Positions and Likely Outcomes for Stakeholders*

Although we do not know the current amounts due to each creditor, given the information we have, we analyze the likely outcomes under the proposed strategy for the relevant creditors below. Under the WHOA, the debtor is permitted to submit the plan for Court confirmation if at least one of the classes of creditors votes for it.[[76]](#footnote-76) However, the Court will not confirm the plan if the unsecured creditors who voted against the plan do not receive at least as much in cash as it would have received in a liquidation.

Syndicate of US banks

The US banks were the largest creditor of the group at the start. They are also in the strongest position with respect to security as they have security over Mr. Maximov’s homes, many pledges, as well as a negative pledge, which suggests that they will maintain priority if Efwon defaults. Depending upon the existing repayment schedule, it may be possible to obtain better terms from the 5 junior lenders who will likely rank lower if there is a default. Since the junior lenders rank lower, if there are insufficient funds from the security and insolvency estate, in the event of a liquidation they will likely receive less than the senior lenders. Therefore, it may be easier to negotiate better terms (such as reduced interest, longer repayment periods or even a haircut) with these lenders because they know they are likely to do better with a full restructuring.

The mezzanine lenders will have the right to convert the debt to equity in Efwon in case of default. We will need to be cautious regarding the possibility of the debt being converted to equity as we need to keep in mind that KuasaNas wants to obtain a 51% stake in the new team. If we can restructure the remaining amounts due for better terms, that may be preferrable to an equity position.

The senior lenders are in the best position because of the security. They will likely want to negotiate the fewest changes in terms as possible. However, if the assets available in the group are less than their remaining amount due, there may still be a good amount of room for negotiation. Depending upon the structuring of the security, if we can pay these lenders off during the restructuring that would be even better. This is because we could possibly lift the security over Mr. Maximov’s homes and the pledge over the shares of Efwon Trading.

Mr. Maximov

Mr. Maximov has a USD 100 million equity investment in Efwon Investments. He wants to protect this position. If there is a liquidation, he will likely be paid out last (as shareholder). In the plan we propose to leave Mr. Maximov’s equity position unchanged. He may also want to provide a shareholder loan (partially protected as fresh financing) or increase his equity position (this would only make sense if it looked like the restructuring would succeed). Indeed, if the group cannot find any fresh financing, he may have to increase his investment in order to finance the restructuring. Because of his very low priority upon liquidation, he has one of the strongest interests in ensuring the success of the restructuring.

Monaco lender

The Monaco lender to Efwon Trading is secured on the revenues of Efwon Romania and Singapore. The loan is at a high interest rate. As part of our strategy, we recommend trying to decrease this loan as much as possible as well as lower the interest rate to a more reasonable level. We anticipate that the lender will not be very keen on this and may vote against the plan.

However, we will attempt to “cram-down” this creditor as they will likely receive almost nothing from a liquidation (best interest of creditor test). If there is a liquidation, Efwon Romania and Singapore are unlikely to receive any further sponsorship, the team is likely to be sold off and no more revenues will come in. Assuming that the Monaco lender can be put in the same class as the US banks and the US banks vote for the plan (and that equals at least 2/3 of the value) then the plan can be put to the Court for confirmation. We have to be mindful that the WHOA adopts the US Chapter 11 “absolute priority rule” where creditors lower in priority do not have a better position in the plan than creditor above. One exception to this is where the shareholder provides fresh financing that is key to the success of the plan (which is what we propose Mr. Maximov do).

Efwon Romania drivers

The drivers’ could potentially have two claims. The first is as employees of Efwon Romania, if they are still owed any amounts in their capacity as employees. Employees often have priority over other creditors under a special category. Dutch law provides for a “works council” to play a part in the restructuring. We do not know if there are other employees in addition to the drivers. Secondly, if the drivers’ claims for defects in safety and management are found to be true in the Romanian courts, then their claim could again have priority. In the recommended restructuring plan, we have recommended that the employees claims are paid.

Other group members

As we mention above, we will attempt to restructure the obligations of group members to each other. This could be done by consolidating the obligations each entity owes to each other through the restructuring plan.

Seven days after the voting as taken place, Efwon will need to file a report with the Court on the outcome of the voting.[[77]](#footnote-77)

1. **Advantages and Disadvantages of the Proposed Strategy**

This section highlights the advantages and disadvantages of the approach we have highlighted above. This risk analysis has been taken into account in the strategy presented above.

*Advantages*

The proposed legal strategy is centered on using the Dutch WHOA procedure, which has many advantages, some of which have been briefly described above. If it is necessary to file a parallel Chapter 11 filing, some of these advantages may be lessened.

* The WHOA approach under Dutch law is better suited to this restructuring than the other possible Dutch procedures – the suspension of payments and bankruptcy procedures. Those procedures do not allow protection of fresh financing in a restructuring. Nor do they allow important tools like debt-to-equity swaps.
* The approach of rapidly opening a Netherlands case where COMI is asserted provides more certainty and likely a better outcome than the COMI being in Romania where, as discussed above, insolvency outcomes have not been as good as in the Netherlands.
* Having the COMI in the Netherlands rather than in the US allows the Netherlands law and court to drive the insolvency through the EIR, which makes recognition and enforcement throughout Europe easier.
* The WHOA allows the debtor to continue to manage the company (debtor-in possession) while insolvency proceedings are ongoing.
* Compared to the US Chapter 11 approach, the WHOA requires less court involvement and administrative requirements. The WHOA is also thought to be less litigious and costly. Therefore, it will also likely be faster and less expensive than a Chapter 11 approach. Time is of the essence in this case because KuasaNas will not conclude the sponsorship deal unless the insolvency situation is resolved.
* Creditors play a more limited role in a WHOA than Chapter 11. For example, creditors’ committees are not possible in a WHOA. However, in Chapter 11 they normally play a large role. Moreover, if a creditor has an issue in a WHOA, they cannot go right to court like they would in a Chapter 11. They must first contact the debtor to resolve it. If problems continue, a court appointed restructuring expert can be appointed if requested by creditors.[[78]](#footnote-78)
* As described above, the WHOA specifically allows for the restructuring of group guarantees.
* Both the Netherlands and the United States have specialized bankruptcy judges. Romania does not have specialized judges.

*Disadvantages*

Many of the disadvantages below can also be thought of as risks involved in following the strategy as outlined above.

* Should the WHOA plan not succeed on a vote of creditors or it is rejected by the Court, then another plan cannot be initiated for another three years.[[79]](#footnote-79)
* The WHOA only came into effect in January 2021 and there is less experience with courts and professionals in using the procedure than Chapter 11. Chapter 11 has been in effect since 1979 and has been used thousands of times and has a rich case law. This improves the predictability of a Chapter 11 case.
* The strategy initially relies on the US entity – Efwon Investments – being found by the US Court as being subject to the Dutch WHOA under Chapter 15. If this strategy does not work, a Chapter 11 case would then have to be filed. There is a risk that if Efwon Investments are not part of the initial stay that the US banks could take foreclosure action.
* Attempting to have the COMI of the European case centered in the Netherlands is also a risk. There are many unknowns in the facts regarding the Romanian and Netherlands entities. The Romanian entity could be found to have more of a head office function, ascertainable by third parties than the Netherlands company. The Romanian entity has staff (drivers), assets (machines) and licenses (F1 license).
1. **Should the group have used England as a location to structure?**

In an effort to learn from this experience, we were asked whether Efwon should have structured the group through England rather than the Netherlands. While there are some arguments for an English structure, the facts of this case militate towards the Netherlands structure.

The main procedures that would be available if the English structure were in place would be Schemes of Arrangement (Schemes), Restructuring Plans, Administration[[80]](#footnote-80) (e.g., pre-pack) and Company Voluntary Arrangement.

The Schemes of Arrangement under the Companies Act 2006 (Companies Act) provides for a flexible restructuring with limited court involvement. It is available to companies with a sufficient connection to the UK. However, there normally needs to be a high level of creditor appetite for the scheme from the start. Schemes are mostly discussed below because they are the most similar to the WHOA. Introduced in 2020, the new Part 26A restructuring plans (Part 26A Plans) from the Companies Act are also discussed below where appropriate.

*EU COMI & Recognition*

The Dutch structure allows for the possibility of the COMI being found to be in the Netherlands pursuant to the EIR. That means that the Netherlands court judgement would, with no other requirements, “produce the effects in any other member state as under the law of the state opening the proceedings.”[[81]](#footnote-81) Absent appeals in the Netherlands, that recognition must then be respected in other member states – in this case, in Romania. However, as a result of its withdrawal from the European Union, proceedings in England can no longer benefit from the EU-wide effects of the EIR. Further, the Brussels I Regulation no longer applies to Schemes, which are not under the insolvency law and were never subject to the EIR.

*Enterprise Group Restructurings Explicitly Enabled in the Netherlands*

As described above, the WHOA explicitly allows for the restructuring plan to release group guarantees. The English procedures do not explicitly allow for this feature which can enable group enterprise restructurings.

*English Procedures Require More Creditor Support*

The Schemes require at least 50% in number representing at least 75% approval by value in each class of creditors.[[82]](#footnote-82) The new Part 26A Plans require only the 75% approval by value in each class of creditors. Both are higher than the 2/3 of debt or subscribed capital required for the WHOA. As opposed to the WHOA, the Schemes do not provide for a cross-class cram-down. However, the Part 26A Plans do.

*Stay More Limited in England*

Both the Schemes and Part 26A Plans allow for a stay on request for certain types of pre-stay claims. Whereas the WHOA provides for a broad stay against pre-stay claims.

*Requirements of Insolvency or Imminent Insolvency*

One advantage of the English system is that neither the Schemes of Arrangement, nor the Restructuring Plans require the debtor company to be in “pre-insolvency” or insolvency. For example, access to the Part 26A Plans require only that the company have financial difficulties that affect its ability to carry on business as a going concern. This means that companies can access the proceeding at an earlier phase of financial difficulty. However, the Dutch WHOA requires the company to demonstrate that it is reasonably likely that it will not be able to continue paying its debts.[[83]](#footnote-83)

*US-related Restructurings*

Both the WHOA and the English Schemes and insolvency proceedings can be recognized in the United States under Chapter 15. There is a long history of the United States recognizing English Schemes of Arrangement,[[84]](#footnote-84) while the Dutch WHOA has been recognized, but there are only a few cases to draw from.

*Ipso Facto Clauses*

The WHOA allows for the cancelation of *ipso facto* clauses during the procedure. However, under the Schemes, *ipso facto* clauses are upheld. In the Part 26A Plans, some clauses are cancelled, but an analysis of the type of parties and contracts needs to be done.

1. **Conclusion**

This memo has provided our interim advice on a strategy which has these main objectives: (i) to facilitate the sponsorship deal with KuasaNas; (ii) save the Maximov F1 team; and (iii) safeguard Mr. Maximov’s position.

Due to the global nature of the Efwon group, the strategy proposed centers on the COMI being found in the Netherlands and the use of the Dutch WHOA procedure to restructure the group Efwon group. Further, effective recognition of the WHOA in the US as a Chapter 15 case is also crucial. A parallel US Chapter 11 procedure is also an option if the strategy of consolidating the entire restructuring around the WHOA is not possible.

**Annex A – Further Information Required**

As mentioned in the memorandum, we are providing you with this interim advice based upon the incomplete facts available to us at this point. The following is a non-exhaustive list of information we require to complete our advice.

|  |  |
| --- | --- |
| **Missing information** | **Why required** |
| What, if any, assets, employees, offices Efwon Investments have in the United States, the Netherlands and Romania | To conduct the COMI analysis under both the EIR and the US Chapter 15. |
| Governing law of Efwon Trading loans; what the Efwon Trading shares prospectus states? | To conduct the COMI analysis under both the EIR and the US Chapter 15. |
| Current amount of liabilities and assets in each group; financial statements; revenue projections | To understand whether each group member meets the eligibility requirements for the WHOA (i.e., reasonably plausible that it will be unable to pay its future debts). |
| Where Mr. Maximov’s houses are around the world and what kind of security the US banks have attached to them | This will affect the ability of the US banks to enforce the foreclosure they have threatened. |
| Current amounts due on each loan and the terms | To finalize the strategy, we need to understand how much remains due to each creditor. This will help with plan negotiations – as currently we do not know for certain how much voting power each creditor has. |
| What amounts are due to preferred creditors such as tax and social security? | These government creditors are paid before unsecured creditors under the Dutch liquidation priority of payments. |
| What is meant by “safeguarding Mr. Maximov’s position”? | The instructions to counsel are that one of the objectives is to safeguard Mr. Maximov’s position – does that mean safeguarding his investment, ownership levels, his homes around the world? All of the above? |
| Complete information about the security of each lender and their position vis-à-vis each other – including contractual and statutory. | To conduct a thorough analysis of the creditors and the security. |
| What are the conditions attached to the FIA/F1 license for the Romanian team | Presumably, the license will need to be transferred to the Malaysian team. Understanding if that will be possible and under which conditions would assist in creating a more concrete strategy. |
| Whether the directors (including the resident directors in the Netherlands and Romania) would support the strategy. | The company directors will likely need to support the strategy in order make the insolvency filings and present the proposed restructuring plan. |

1. The syndicate is structured with 2 senior (USD 100 million), 2 mezzanine (USD 60 million) and 5 junior (USD 90 million) creditors. [↑](#footnote-ref-1)
2. Which required upgrading and re-development. [↑](#footnote-ref-2)
3. Given the objectives, Efwon Singapore does not seem to need to be part of the group restructuring at this point. [↑](#footnote-ref-3)
4. See the OECD Insolvency Indicator, 2022: <https://www.oecd.org/economy/growth/oecd-insolvency-indicator.htm> [↑](#footnote-ref-4)
5. Except for a potentially lengthy COMI appeal in the Romanian courts. [↑](#footnote-ref-5)
6. The EIR is composed of Regulation (EC) 1346/2000 and Regulation (EU) 2015/848. [↑](#footnote-ref-6)
7. R J van Galen, An Introduction to European Insolvency Law, Deventer: Wolters Kluwer 2021, Chapter 2, para. 21. [↑](#footnote-ref-7)
8. R J van Galen, An Introduction to European Insolvency Law, Deventer: Wolters Kluwer 2021, Chapter 2, para. 57. [↑](#footnote-ref-8)
9. EIR, Recital 15. [↑](#footnote-ref-9)
10. EIR, Art. 19. [↑](#footnote-ref-10)
11. EIR, Art. 7. [↑](#footnote-ref-11)
12. R J van Galen, An Introduction to European Insolvency Law, Deventer: Wolters Kluwer 2021, Chapter 2, para. 119. [↑](#footnote-ref-12)
13. EIR, Article 32. [↑](#footnote-ref-13)
14. EIR, Article 3(1). [↑](#footnote-ref-14)
15. EIR, Article 3(1). [↑](#footnote-ref-15)
16. Eurofood, ECJ 2 May 2006, C-341/04, ECLI/281. [↑](#footnote-ref-16)
17. Eurofood, ECJ 2 May 2006, C-341/04, ECLI/281, para. 36. [↑](#footnote-ref-17)
18. ECJ 20 October 2011, C-396/09, ECLI:EU:C:2011:671, Interedil v Intesa. [↑](#footnote-ref-18)
19. R J van Galen, An Introduction to European Insolvency Law, Deventer: Wolters Kluwer 2021, Chapter 2, para. 72. [↑](#footnote-ref-19)
20. Christoph G Paulus, Europäische Insolvenzverordnung, 2021, pp. 191-192. [↑](#footnote-ref-20)
21. R J van Galen, An Introduction to European Insolvency Law, Deventer: Wolters Kluwer 2021, Chapter 2, para. 54. [↑](#footnote-ref-21)
22. EIR, Recital 53. [↑](#footnote-ref-22)
23. EIR, Art. 71. [↑](#footnote-ref-23)
24. EIR, Art. 56 (2). [↑](#footnote-ref-24)
25. EIR, Art. 57. [↑](#footnote-ref-25)
26. EIR, Art. 3(1). [↑](#footnote-ref-26)
27. A R J van Galen, An Introduction to European Insolvency Law, Deventer: Wolters Kluwer 2021, Chapter 2, para. 76. [↑](#footnote-ref-27)
28. EIR, Art. 37(1). [↑](#footnote-ref-28)
29. R J van Galen, An Introduction to European Insolvency Law, Deventer: Wolters Kluwer 2021, Chapter 2, para. 171. [↑](#footnote-ref-29)
30. The WHOA provides that the procedure can also be private, but then the decisions are not binding on other EU Member States under the EIR. [↑](#footnote-ref-30)
31. WHOA, Art. 383. [↑](#footnote-ref-31)
32. WHOA, Art. 370(1). [↑](#footnote-ref-32)
33. Case Study, p. 5. [↑](#footnote-ref-33)
34. WHOA, Art. 370(1). [↑](#footnote-ref-34)
35. WHOA, Art. 370(4). [↑](#footnote-ref-35)
36. WHOA, Art. 376. [↑](#footnote-ref-36)
37. WHOA, Art. 376 (1). [↑](#footnote-ref-37)
38. WHOA, Art. 376(5). [↑](#footnote-ref-38)
39. WHOA, Art 373. [↑](#footnote-ref-39)
40. See Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.), 714 F.3d 127, 132 (2d Cir.2013) (Fairfield Sentry); Ad Hoc Grp. of Vitro Noteholders v. Vitro S.A.B. de C.V. (In re Vitro S.A.B. de C.V.), 701 F.3d 1031, 1043 (5th Cir.2012) (Vitro), cert. dismissed. [↑](#footnote-ref-40)
41. See In re Bear Stearns High–Grade Structured Credit Strategies Master Fund, Ltd., 374 B.R. 122, 126 (Bankr.S.D.N.Y.2007), aff’d, 389 B.R. 325 (S.D.N.Y.2008). [↑](#footnote-ref-41)
42. U.S.C. § 1519. [↑](#footnote-ref-42)
43. 11 U.S.C. § 1520. [↑](#footnote-ref-43)
44. See In re OAC S.A., 533 B.R. 83 (2015), p.3 . [↑](#footnote-ref-44)
45. 11 U.S.C. § 1517. [↑](#footnote-ref-45)
46. See In re OAC S.A., 533 B.R. 83 (2015), p. 3. Including: “the location of the debtor’s headquarters; the location of those who actually manage the debtor (which, conceivably could be the headquarters of a holding company); the location of the debtor’s primary assets; the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case; and/or the jurisdiction whose law would apply to most disputes.” [↑](#footnote-ref-46)
47. See In re OAC S.A., 533 B.R. 83 (2015), p. 3. [↑](#footnote-ref-47)
48. See In re OAC S.A., 533 B.R. 83 (2015), p. 4. [↑](#footnote-ref-48)
49. 11 U.S.C. § 1515. [↑](#footnote-ref-49)
50. See In re Diebold Nixdorf Dutch Holding B.V., No. 23-90729, (Bankr. S.D. Texas, Houston Div., July 12, 2023) and In re CB&I UK Ltd., No. 23-90795, (Bankr. S.D. Texas, Houston Div., October 10, 2023). [↑](#footnote-ref-50)
51. Although, this is not without risk of the US court rejecting certain elements of the application/case as every decision is on a case-by-case basis. [↑](#footnote-ref-51)
52. See G. Ray Warner and Michael Veder, Enterprise Group Restructuring: Dutch Options and United States Enforcement, European Insolvency RJ 2021-7; and George W. Shuster, Jr. & Benjamin W. Loveland, Upside Down in Chapter 15: Can U.S. Entities Qualify as “Foreign Debtors” in the U.S.?, 36 American Bankruptcy Institute Journal, 22 (May 2017). [↑](#footnote-ref-52)
53. George W. Shuster, Jr. & Benjamin W. Loveland, Upside Down in Chapter 15: Can U.S. Entities Qualify as “Foreign Debtors” in the U.S.?, 36 American Bankruptcy Institute Journal, 22 (May 2017). [↑](#footnote-ref-53)
54. See In re Diebold Nixdorf Dutch Holding B.V., No. 23-90729, (Bankr. S.D. Texas, Houston Div., July 12, 2023) and In re CB&I UK Ltd., No. 23-90795, (Bankr. S.D. Texas, Houston Div., October 10, 2023). [↑](#footnote-ref-54)
55. See <https://kvdl.com/en/articles/cross-border-group-debt-restructuring-why-combine-u-s-chapter-11-and-dutch-scheme-whoa-proceedings-in-parallel> [↑](#footnote-ref-55)
56. See <https://www.debrauw.com/articles/the-whoa-in-practice-with-greater-clarity-come-teething-problems>. [↑](#footnote-ref-56)
57. WHOA, Art. 375. [↑](#footnote-ref-57)
58. WHOA, Art. 381(1). [↑](#footnote-ref-58)
59. WHOA, Art. 374. [↑](#footnote-ref-59)
60. WHOA, Art. 372. [↑](#footnote-ref-60)
61. For example, if the US banks are uncomfortable with a single Dutch plan, and they can force a Chapter 11 plan. [↑](#footnote-ref-61)
62. This is also sometimes called debtor-in-possession (DIP) financing or post-commencement financing. [↑](#footnote-ref-62)
63. WHOA, Art. 375 (i). [↑](#footnote-ref-63)
64. WHOA, Art. 384 (f). [↑](#footnote-ref-64)
65. 11 U.S.C. § 364 (a). [↑](#footnote-ref-65)
66. 11 U.S.C. § 364 (c). [↑](#footnote-ref-66)
67. WHOA, Art. 372. [↑](#footnote-ref-67)
68. WHOA, Art. 372. [↑](#footnote-ref-68)
69. WHOA, Art. 372 (b). [↑](#footnote-ref-69)
70. WHOA, Art. 372 (d). [↑](#footnote-ref-70)
71. See the De Brauw, Blackstone and Westbroek Guide to the WHOA, January 2023, <https://dwbxnuhxoazve.cloudfront.net/OLD/pdfs-old/20230116-WHOA-Booklet.pdf>, p. 13. Which discusses that even a group company without a COMI in the Netherlands may restructure through a WHOA if there is “sufficient nexus between the restructuring and the Dutch jurisdiction. Dutch courts generally try to align group restructuring, especially if they take place within, or are somewhat related to, their own jurisdiction.” [↑](#footnote-ref-71)
72. WHOA, Art. 383. [↑](#footnote-ref-72)
73. WHOA, Art. 384. [↑](#footnote-ref-73)
74. WHOA, Art. 384. This is similar to the “absolute priority rule” in US Chapter 11. [↑](#footnote-ref-74)
75. WHOA, Art. 381. [↑](#footnote-ref-75)
76. WHOA, Art. 383. [↑](#footnote-ref-76)
77. WHOA, Art. 382. [↑](#footnote-ref-77)
78. WHOA, Art. 371. [↑](#footnote-ref-78)
79. WHOA, Art. 369. [↑](#footnote-ref-79)
80. See the Enterprise Act 2002. [↑](#footnote-ref-80)
81. R J van Galen, An Introduction to European Insolvency Law, Deventer: Wolters Kluwer 2021, Chapter 2, p. 21. [↑](#footnote-ref-81)
82. Companies Act 2006, Part 26. [↑](#footnote-ref-82)
83. WHOA, Art. 370(1). [↑](#footnote-ref-83)
84. G. Ray Warner and Michael Veder, Enterprise Group Restructuring: Dutch Options and United States Enforcement, European Insolvency RJ 2021-7, p. 20. [↑](#footnote-ref-84)