Privileged and Confidential Memorandum

Date:	15 April 2024
To:	Benedict Maximov (**Maximov**) and General Counsel
From:	Cassandra Ronaldson
Re:	Preliminary advice regarding the proposed framework for the restructuring of the Efwon Group[1] (the **Group**)

I- Executive summary

As requested, and subject to additional inquiry regarding the underlying facts (detailed at Appendix A), this memorandum provides advice to Maximov, in his capacity as the ultimate beneficial owner (**UBO**) of the Efwon Group. This advice sets out potential strategies to safeguard Maximov's investment in the Efwon Group in light of the winding up petition filed against Efwon Romania. This situation poses a risk of triggering defaults across the Group and jeopardizes vital investment from the new sponsor, KuasaNas (the **Sponsor**).

Based on the information available to date, and subject to the confirmation of matters detailed Appendix A, the process to restructure the financial affairs of the Group and avoid insolvency is as follows:

- Enter into a Standstill Agreement with key stakeholders.
- Institute proceedings in the Dutch Court seeking sanction of a plan through the public WHOA process.
- Voluntary or involuntary liquidation of Efwon Singapore and the incorporation of a new Malaysian entity.
- Seek recognition and confirmation of the Dutch plan pursuant to Chapter 15 of the US Bankruptcy Code.

II- Analysis

a. Issues Identified

The following key considerations have been identified as being the main drivers to the recommend restructuring process.

[1] Comprised of Efwon Investment Inc, Efwon Trading BV, Efwon Romania and Efwon Singapore.

- **Preservation of Ownership:** Maximov has expressed a strong interest in retaining ownership of the Group. Consequently, it is essential that the chosen strategy duly respects and considers the rights and interests of the existing owners. In this regard a value destroying liquidation is to be avoided as any return to the UBO would be negligible, if not nil.
- **Achieving a More Viable Capital Structure**: The Independent Business Review (**IBR**) highlighted that there is a need to restructure the Group's debt and equity in a way that makes the Group more financially stable and sustainable in the long term.
- **Stakeholder management:** There is a diverse and wide range of stakeholders that need to be considered, including shareholders, financiers, creditors, employees and new financiers (the Sponsor). A process that deals with dissenting views and protects incoming capital will be critical to a successful restructuring.
- **Appropriate consideration of jurisdictional issues**: The Group operates across multiple jurisdictions. Understanding and navigating this potential issue is key to ensuring the restructuring process proceeds smoothly and without undue interference.

If there are any further commercial imperatives not addressed above, it will be important to communicate these as this may change the following analysis.

III- Informal mechanisms

a. Implementation of Standstill Agreement

The Efwon entities are interconnected through control and through its capital structure. The US lenders of the parent company, Efwon Investment, have direct recourse against the assets of the certain subsidiaries in the Group. There are several intra-group arrangements in place, including:

- **Cross guarantees**: Efwon Singapore and Efwon Romania guarantee the debt of the Monaco Lender.
- **Intra-group provision of collateral**: The loan from Efwon Investment to Efwon Trading of US$350million
- **Pledges / secured assets**: US Lenders have a charge over the shares of Efwon Trading and the revenue of the Group. Additionally, the Monaco Lender has a claim over the revenue of the Romanian and Singaporean entities.

Due to these arrangements, a default at Efwon Romania, triggered by either the winding-up petition, or nonpayment of debts due to the potential freezing orders, will cause other entities within the Group to default on their obligations. This interconnectedness poses a significant risk to the financial stability of the Group.

To assert control over the process and have some breathing room to pursue a restructuring, it is advisable, in line with Principle One of the Eight Principles outlined in Insol International's Statement of Principles for a Global Approach to Multi-Creditor Workouts II, for the Group to execute a Standstill Agreement among influential stakeholders. A Standstill Agreement will ensure that creditors do not enforce their rights for a period of time to enable the Group to negotiate a restructuring. This approach will provide some stability to the restructuring process (particularly in respect of the US lenders as it there may be some time between commencement of the Dutch process and US recognition, after which a stay can be granted).

Utilising Kalle Pajunen model, with regard to (1) Resource Dependence Based Influence; and (2) Network Position Based Influence the Group should enter into a Standstill Agreement with the following influential parties:

- US Lender
- Monaco Lender

(together the **Lenders**)

- Employees

It is assumed that the Lenders are sophisticated parties which are capable of managing the risk and benefits associated with a Standstill Agreement. Comparatively, the employees (regardless of representation) may be unfamiliar with this process and it is unlikely they will be able to agree to a Standstill Agreement on an expedited basis. In this Group, the employees have considerable influence, due to the current proceedings, however regardless of the employees' lack of cooperation in a Standstill Agreement, a similar outcome can be achieved through a court-ordered stay (discussed in detail below).

The syndicated loan is comprised of a disparate group of lenders (2 senior, 2 mezzanine financial creditors and 5 junior financial creditors), given the timing of commencing the Dutch proceedings and obtaining recognition/confirmation, the Standstill Agreement will promote cooperation and reduce the likelihood of opportunistic behavior or pressure from any of these lenders that could disrupt the process.

An essential aspect of the Standstill Agreement would be a provision that allows lenders the flexibility to transfer/ sell their debts. This feature would accommodate debt holders who wish to maintain their exposure to the Group, while simultaneously offering an exit strategy for those lenders who prefer not to continue with the relationship. This provision can help to circumvent the risk of interference from a dissenting lender, however, it does not entirely eliminate this risk and other more formal measures may need to be taken (for example class cram down).

A Standstill Agreement is of vital importance to the entities upstream from Efwon Romania, which are on the cusp of insolvency. Based on the facts provided, the local directors have been deeply unsettled[2] by the filing against Efwon Romania. Given the lack of apparent commonality of control, the directors will be considering their duties and obligations in respect of their relevant entity's stakeholders. The local directors' may have obligations to initiate a formal process for their respective entities. However, by securing the Standstill Agreement this may prevent these statutory obligations from crystalising.

IV- Restructuring framework

Whether a Standstill Agreement is in place or not, it is advisable for the Group to consider a formal restructuring process that is capable of compromising debts and binding stakeholders.

a. The proposed process: WHOA / Dutch Scheme

Based on an assessment of the facts, an extrajudicial restructuring could be best achieved through the Dutch restructuring process commonly referred to as WHOA. WHOA allows a debtor, or restructuring expert, to propose a plan (scheme) to restructure an entity's (or a Group of entities) affairs to avoid insolvency proceedings.

The Netherlands enacted the restructuring regime following the European Union's 20 June 2019 directive on preventive restructuring frameworks through the implementation of the Act on Court Confirmation of Extrajudicial Restructuring Plans. The WHOA officially came into effect on 1 January 2021, whilst it is in its early stages there has been a number of successful high profile, cross border restructurings implemented using WHOA along with

[2] See the facts of the case "sent local directors into a panic".

ancillary or parallel proceeds (examples include Steinhoff International Holding N.V. Diebold Nixdorf and Royal IHC).

i. Applicability to the Group

The domiciles of the respective group entities are known and a diagram of the group structure can be found in Appendix B. However, the governing laws of the various stakeholder agreements remain unknown. A crucial assumption made in this chosen process is that the debts are regulated by the laws of the home jurisdictions of the entities.

Under the WHOA, similar to the Chapter 11 procedure, the public[3] process is available to debtors with a 'Centre of Main Interests (**COMI**)'[4] or 'establishment'[5] in the Netherlands. This is a much harder test for founding jurisdiction than comparable regimes such as the UK's scheme which only requires sufficient connection.

The rebuttable presumption of COMI is that it is an entity's domicile. It is expected that Efwon Trading, which is incorporated in the Netherlands, has its COMI in Netherlands. There are other contributing factors which bolster this assessment including the loan with the Monaco lender which is assumed to be governed by Dutch law and the independence of the local Dutch management team.

In relation to the foreign group entities, subject to meeting the relevant criteria, for entities that are not domiciled in the Netherlands the WHOA may also provide for the amendment of creditors rights against legal entities who, together with the debtor form a 'group'[6]. A group is defined in the Dutch Civil Code as an *economic unit in which legal persons and commercial partnerships are organizationally interconnected*.

It must be established that for each of the foreign entities that the Dutch court is the competent authority (ie either that COMI is in the Netherlands, or else that the entity has an establishment[7] in the Netherlands), and that the relevant company cannot pay its debts as

3 There is a private procedure, however, recognition of the process depends on applicable treaties. Due to cross border nature of company, recognition will be vital to bind the stakeholders.
4 Current consolidated version: 09/01/2022: Consolidated text: Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)
5 Establishment shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods. See Article 1(h), of the Council Regulation No 1346/2000 available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2000R1346:20100402:EN:HTML#tocId3
6 Section 2:24b of the Dutch Civil Code
7 shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and good

they fall due. The later threshold test can be evidenced by the requirement for critical funding, the pending winding up petition, cross group guarantees and other rights of lenders. I will now address the Dutch Court's founding jurisdiction in respect of each of the foreign entities/ foreign creditors below.

- *Efwon Romania:* The financing provided by Efwon Trading to Efwon Romania since 2014 is arguable evidence that there is non transitionary economic activity, an establishment, with the Netherlands. Accordingly the Dutch Court will have jurisdiction over Efwon Romania. Importantly as Romania as a member state of the EU, the public WHOA procedure will subject to the EU Insolvency Regulation[8] and as a result any judgments made by the Dutch Court will be automatically recognised in all Member States[9].
- *Efwon Singapore:* At the time of restructuring, this entity has no assets and only liabilities, specifically a guarantee in favour of the Monaco Lender. Whilst it is possible that the Monaco Lender could take actions in Singapore against Efwon Singapore, since there are no assets in the company and there appears to be no ongoing benefits from the company's continuance, the Group could allow this entity to be wound up (or else wind it up as part of the restructuring). Subject to advice, it is anticipated that the funds to be paid by the new sponsor would be transferred into a new Malaysian entity. To determine whether this is the best course of action to safeguard the funds, it would be prudent to seek corporate legal advice.
- *Efwon Investment Inc (US):* It can be contended that this entity has an established presence in the Netherlands, primarily through its interest in the Dutch subsidiary Efwon Trading. Consequently, it is likely that the Dutch Court will assume jurisdiction over this entity. However, to ensure that US creditors are bound by the proceedings, it is advisable to secure recognition/ confirmation under Chapter 15 of the U.S. Bankruptcy Code (discussed in detail below).
- *Monaco Lender:* One of the relevant lenders is based in Monaco. Monaco, is not a EU member state, and it has not ratified, acceded to, or enacted any relevant any relevant[10] UNCITRAL Conventions and Model Laws. Even in circumstances where the Monaco lender was to bring an action and obtain a judgment in Monaco there are no assets located in Monaco to enforce against. Therefore no steps need to be taken in Monaco as enforcement issues limits the remedies available to the Monaco lender.

---

8 Regulation EU 2015/848

9 With the exception of Denmark

10 Save for New York Convention 1958 which relates to enforcement of Foreign Arbitral Awards. overview-status-table.pdf (un.org)

b. Ancilary proceedings: Chapter 15

Given that Efwon Investments has major creditors and financing in the United States, with those financiers having claims against Efwon Romania, it is advisable to seek Chapter 15 recognition and confirmation of the plan to bind the US lenders.

The Group should seek recognition as a foreign main proceeding as its primary case. Unlike the EU regulations, Chapter 15 framework considers an entity's COMI at the time of the Chapter 15 filing for each of the debtor entities. Therefore, the fact that the restructuring is taking place in the Netherlands[11] will also anchor the entities in the Netherlands for the purposes of the Chapter 15 analysis. It is also suggested that COMI is bolstered by seeking the appointment of a restructuring expert in the Netherlands proceedings.

Should foreign main classification be unattainable, the restructuring could still be treated as being a foreign non-main proceeding with little impact to the relief that will be sought. To meet this classification the US debtor will need to prove an establishment in the Netherlands. The definition of establishment is less rigid than the EU Insolvency Regulation's definition of that term, however, it still requires that the entity has a "place of operations" in the jurisdiction where it "carries out a non transitory economic activity." The US court has shown flexibility[12] in applying this assessment.

c. Implications and benefits of the proposed process

i. Stay

Initiating WHOA-proceedings does not automatically result in a stay or moratorium on claims. However, the debtor has the option to request this relief from Dutch Court. If the Court grants this request, it will result in a stay that prevents creditors from enforcing their rights against the debtor(s). This stay will be automatically enforced by the Romanian Courts as an EU state.

---

11 See Fairfield Sentry, n. 201 above, 714 F.3d at 137. 209 Ibid. 714 F.3d at 137 (stating "any relevant activities, including liquidation activities and administrative functions, may be considered in the COMI analysis").
12 In Servicos de Petroleo the court relied upon Brazilian assets indirectly held through subsidiaries to recognize as a non-main proceeding a Brazilian restructuring of a Luxembourg holding company

In situations where not all US lenders are party to a standstill agreement, the Dutch restructuring expert, also known as the foreign representative, has the ability to apply for relief in the US. This can be done irrespective of whether the process is considered a foreign non-main proceeding[13].

ii. Certainty and speed

Based on the information provided, a condition of the potential sponsor KuasaNas prior to advancing critical funds (new capital) is that the restructuring is “prompt” and the “stable”. Under the WHOA, upon confirmation of the plan, the plan becomes legally binding on all impacted creditors and shareholders, regardless of their individual stance or vote on the proposal.

Crucially, the confirmed plan is final and not open to appeal, providing a level of certainty and swiftness that is absent in other restructuring processes. The entire procedure—from the submission of the restructuring plan to the final confirmation—takes approximately 6 to 8 weeks, ensuring a relatively expedited resolution. Moreover, the process is also cost-effective compared to other restructuring regimes (US, UK, German)[14].

The Dutch plan will be conditional on US confirmation (Chapter 15) of the plan. This requirement could potentially introduce delays and additional expenses to the restructuring.

iii. Protection of Assets

The Super Licence with the FIA is the core asset of the Group. Preservation of this asset is critical to the continuation of the Group.

The licence is held by Efwon Romania. Unfortunately the requirement by the FIA to hold the licence by Efwon Romania has caused a vulnerability in the Group’s structure as the asset is susceptible to operational risks (such as the current employee claims).

Any strategic planning needs to be cognisant of safeguarding this asset. It is essential to ensure the restructuring, or chosen approach, does not invalidate the licence. One of the major benefits of the Dutch Scheme is that Article 373 of the WHOA addresses “ipso facto”

13 See 11 U.S.C. §§ 1521(a)
14 Comparison of WHOA with the US Chapter 11, the UK Scheme of Arrangement and Part 26A Plan, the German StaRUG and the European Restructuring Directive available at: 20210702-WHOA-Comparative-Overview.pdf (dwbxnuhxoazve.cloudfront.net)

clauses that would ordinarily trigger actions in the event of insolvency, which might be present in the FIA license. The WHOA stipulates that contractual provisions rendering rights to terminate upon insolvency are unenforceable. As per the Explanatory Memorandum the purpose of this provision is “to prevent valuable contracts from being lost as a result of the restructuring”[15].

iv. Protections for new capital

Under Dutch law, actio pauliana is *the legal possibility for a creditor to set aside a prejudicial legal act* (eg claw back). However, the WHOA provides protection for transactions where security interests are granted over assets in exchange for new capital. This new capital can fund the restructuring or become available upon confirmation of the scheme.

The Dutch Court will approve these transactions if:

- The transaction is necessary for the debtor’s business to continue during the preparation of a restructuring plan, and
- At the time the authorization is granted, it is reasonable to assume that the interests of the debtor’s joint creditors would be served by such an act, while none of the individual creditors would be materially harmed in their interests[16].

While the US Lender has positive pledges, unless it provides fresh capital during the restructuring, the Group will be unable to provide additional commitments. It is open to the Lenders to provide this capital either alongside the KuasaNas, the sponsor, or in isolation. Security granted in these circumstances will not be subject to clawbacks (at least from a Dutch law perspective), although this may not be the case in other jurisdictions.

v. Flexibility of the terms of the scheme

The IBR required by the US Lenders has highlighted the need for changes to address the Group’s capital structure and liquidity needs.

The Dutch Scheme (WHOA) allows for the implementation of creative schemes and can adopt a wide range of approaches to the financial restructuring of the existing funded debt, such as:

---

15 Dutch Parliamentary Documents, House of Representatives 2018/19, 35249, no. 3 Explanatory Memorandum (memorie van toelichting), available at: https://zoek-officielebekendmakingen-nl.translate.goog/kst-35249-3.html?_x_tr_sl=nl&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc
16 Article 42a of the WHOA.

- Modification of the terms, i.e. a reduction of interest rates or payment holidays/deferrals until the financial situation improves.
- Debt for equity swaps.
- Waivers, write-offs, or discounts on the debts.
- Sale or transfer of distressed debt to private equity or other investment funds.

vi. Excluded contracts: Relevant to the Group are the Employees

Efwon Romania's employees, the "drivers" have brought claims against Efwon Romania for damages sustained during the course of their employment. It is noted that the potential compensation payout may be substantial, however, there is not enough information to confirm whether there are sufficient assets (or insurance) to meet the claims. For present purposes, it is assumed that the assets are insufficient given the drivers have filed for the insolvency of Efwon Romania.

In a Dutch Scheme the employees are represented by works councils and staff representation bodies whose role it is safeguard employee's interests. Importantly a WHOA plan cannot change the terms and conditions of an employee's contract or reduce the potential liability[17]. This is a disadvantage of the chosen process however regardless, from a commercial perceptive (not just statutory perspective) there may be good reasons to ensure that there is proper compensation in place for the drivers. Failure to do so may impact on the Group's ability to attract "new drivers" who may be conscious of the treatment of the former employees.

Depending on the value break in a liquidation valuation, the employees may be incentivised to support the restructuring of the Group as a going concern as they could stand to recover more in this scenario. Further support of this class could assist with cramming down other dissenting creditors.

vii. Voting and treatment of dissenters

In accordance with Article 374 of the WHOA, a debtor's creditors and shareholders are divided into different classes based on the ranking/ rights in the event of liquidation and/ or the rights they are offered on the basis of the restructuring plan. Secured creditors will be placed into two separate classes, one separate class for the amount of their claims which is

---

17 Roles in WHOA procedures | Business.gov.nl

covered by their security, and for the unsecured part of their debt these creditors will be placed in the class of unsecured creditors.

Under the Dutch Scheme, all classes or creditors and shareholders which are impacted by the restructuring must be given the opportunity to vote. A vote will be passed if:

- a class of creditors, representing at least two-thirds of the total value of claims present and voting, votes in favour[18]; and
- a class of shareholders, representing at least two-thirds of the total value of issued capital belonging to the shareholders present and voting, votes in favour[19].

For reference, this threshold is lower than the UK's scheme which requires support of 75% by value and 50% by number.

Dissenting parties can apply to the Dutch Court to deny a plan on the basis of:

- the party(ies) would receive more in a liquidation 'no creditor worse off rule'; and
- it deviates from the statutory ranking of shareholders/ creditors 'absolute priority rule'.

Should there be dissenting stakeholders in the Group there is a mechanism to implement a cross class cram down. In fact the Dutch courts have been robust in utilising this feature as the majority of the sanctioned WHOA proceedings have involved a cram down within a class[20]. In the first year of the introduction of the WHOA, there was a scheme sanctioned in relation to a large company, which involved a cross class cram down where one class voted in favour and the Dutch Court sanctioned the plan making it binding on all classes.

Crucial evidence for the court's determination on (1) the fairness of the composition of classes, (2) an assessment of the 'no creditor worse off rule' and the 'absolute priority rule', is the liquidation valuation and reorganisation valuation prepared by an expert valuer.

From Maximov's perspective as a UBO, and somewhat unique to the Dutch process, there are exceptions to the 'absolute priority rule'. For instance, in situations where key shareholders are crucial for the successful restructuring[21] of the company, both strategically and possibly through the provision of new capital, it may be justified for these shareholders

18 Article 381 (7) of the WHOA
19 Article 381 (8) of the WHOA
20 one-year-dutch-whoa-(scheme)-some-lessons-learned.pdf (cliffordchance.com) available at: https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2022/02/one-year-dutch-whoa-(scheme)-some-lessons-learned.pdf
21 384 (4) B of the WHOA

to receive a better return than other stakeholders. As such, even though Maximov is likely out of the money, the UBO may still be able to negotiate terms that do not eliminate or dilute his interest.

V- Conclusion

A Dutch Scheme, ratified in the US, is the suggested strategy for the financial restructuring of the Efwon Group's affairs whilst possibly allowing the UBO to maintain its interest in the Group.

Further, it would be advantageous to secure a Standstill Agreement with key stakeholders while also applying for a stay from the Dutch Court and US Bankruptcy Court (byway of a Chapter 15 relief). This would ensure that no creditor actions can be taken while the restructuring is underway.

The Dutch plan can take various forms. A assessment of the liquidation valuation and reorganisation value can help shape the form of the plan. It is important to note that the Dutch plan is not capable of altering the the rights of employees.

In terms of timing, it is anticipated that the Dutch Plan could be prepared in less than a month. Following this, it could be voted on and confirmed within 8 weeks. A Chapter 15 confirmation hearing would need to be scheduled shortly thereafter. The timing of this hearing will be dependent on the availability of the US Bankruptcy Court.

The estimated budget ranges from $50,000 to $60,000 for an uncontested process and from $60,000 to $100,000 for a contested process. This includes costs for local counsel and valuation experts, if necessary.

We welcome further discussion and the provision of the information outlined in Appendix A so that this preliminary advice can be finalised.

Appendix A: Information Request

The following is a list of matters to be clarified / documents to be provided to allow this preliminary memorandum to be finalised.

- Comment and confirm whether there are any additional commercial factors and drivers to the restructuring
- An assessment of the potential compensation that will be awarded to the drivers (insurance coverage etc)
- Complete financial information in respect of each of the entities and on a consolidated basis
- Liquidation / restructuring valuations and analysis of rights of stakeholders in a liquidation / restructuring
- Information relating to the governing law of the Group's debts
- Corporate advice regarding incorporating an entity in Malaysia to receive the funds from the Sponsor

Appendix B: Efwon Corporate Structure