Memorandum of Advice

From: Owen Walker

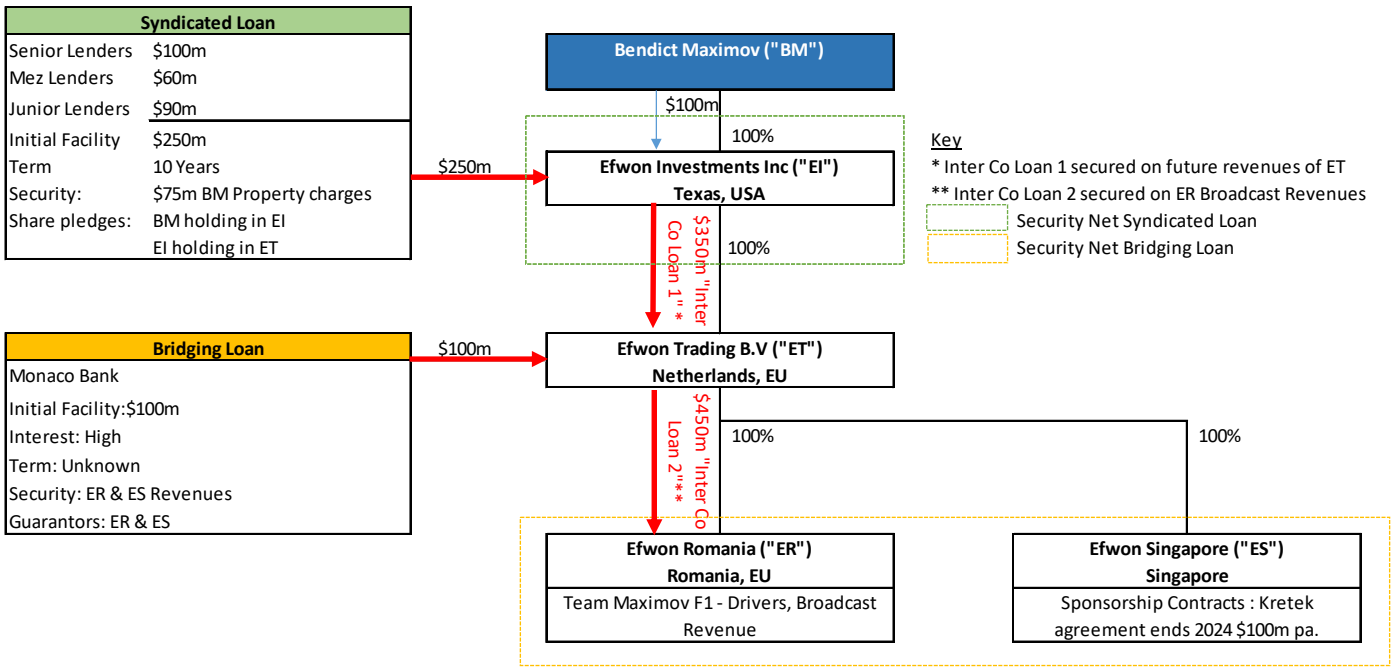
To: General Counsel Benedict Maximov

Introduction

1. The Efwon Group is currently facing a number of operational and strategic threats and there is a real risk of a collapse of the structure into a series of uncontrolled insolvency processes in a number of jurisdictions.

2. In light of the issues and threats, you have requested our advice in relation to how to facilitate a Transaction (defined further below), save the F1 team and best safeguard Mr Maximov's position.

Current Efwon Group Structure - End of 2023



Summary of Current Structure and Financing

3. The underlying beneficial owner of the Efwon Group is Benedict Maximov who established Efwon Investments Inc ("EI") in 2014 in order to invest into Formula 1 ("F1").

4. EI was capitalised by a $100m equity investment by BM, as sole shareholder, together with $250m of debt finance provided by way of a 10-year syndicated loan facility (the "Syndicated Loan"). The Syndicated Loan is made up of senior debt ($100m), mezanine debt ($60m) and junior debt ($90m), assumed to rank accordingly in terms of priority. Please advise if this is not the case.

5. The Syndicated Loan is secured by way of charges over property owned by BM (with a collective value of $75m), a pledge on the shares of EI, a pledge on the projected revenue to flow back from the resulting investment and participation in F1, together with "positive and negative" pledges. The Syndicated Loan providers also hold a pledge over the ET (defined below) shares owned by EI.

6. EI invested this funding via a $350m inter-company loan, ("Inter Co Loan 1") to its subsidiary, Efwon Trading B.V ("ET"), which was secured by way of future revenues of this entity's trading activities. In turn, EI established Efwon Romania ("ER") to acquire an existing F1 team, subsequently renamed Team Maximov.

7. ET provided funding to ER for the purposes of both the initial acquisition of the F1 team and subsequent annual racing budgets via inter-company loans secured on the teams future broadcasting rights ("Inter Co Loan 2"). In total, ER received $350m of funding from ET between 2014-2017.

8. Efwon Singapore ("ES") was established in 2018, as a wholly-owned subsidiary of ET, to generate sponsorship revenue for the group in relation to its F1 activities. Kretek (Indonisia) entered into a $100m pa 5-year sponsorship agreement with ES in 2018 for the seasons 2019-2024.

9. A $100m bridging loan was drawn down by ET in 2018 (the "Bridging Loan"), to support group cash flows prior to the commencement of the Kretek sponsorship deal in 2019. This bridging loan was secured by way of charges over the revenue of ER and ES, and guaranteed by ER and ES.

10. EI, ET, ER and ES are collectively referred to as the "Group" throughout this memorandum of advice.

Current Threats and Issues Faced by the Group

Cash Generation of Underlying Business

11. We do not have updated figures for the outstanding loan balances due to the various parties at the start of 2024, but understand that whilst the Group has generated surplus cash to service these debts, much of the surplus has been re-invested into the F1 team in, order to comply with Fédération Internationale de l'Automobile ("FIA") regulations.

12. The Group has been notified that following the expiration of the Kretek (Indonesia) sponsorship agreement in 2024, they do not intend to renew their support of the team. A recent Independent Business Review ("IBR") concluded that the Group can never be cash positive without such an agreement. It is also clear that debt cannot be service by the Group without this sponsorship.

13. Whilst there is a new sponsor, KuaseNas, which is willing to provide sponsorship funding in excess of $100m pa, this is subject to government approval. We understand that the IBR concluded that there was no longer a runway to identify an alternative sponsor and as such to save the Group a transaction with KuaseNas must be concluded.

14. As a condition of any agreement, KuaseNas require the Group to agree to its acquisition of a majority stake in the team, which will re-locate to Malaysia. We also understand that a pre-condition to any agreement with KuaseNas they also require the current insolvency issues affecting the Group to be dealt with promptly, albeit they have signaled a willingness to allow part of the consideration, for a stake in the Group, to be paid up front.

Insolvency Threats

15. Alongside the threat to the underlying cash generation of the Group, we are advised that claims have been brought for damages in Romania against ER as a result of safety issues during the last race of 2023, in which two of the teams' drivers were injured, Claims for insolvency have also been filed in the Romanian court and the claimants have obtained, pending orders being made, freezing injunctions over the assets and income of ER.

16. We understand that should the orders be granted by the Romanian court, then ER would default on its loans to ET under Inter Co Loan 2, which in turn would cause the latter to default on its obligations to EI under Inter Co Loan 1.

17. ET also has debt service obligations in relation to the $100m Bridging Loan, whilst EI has debt service obligations to the Syndicated Loan. Both EI and ET are therefore also at risk of insolvency in the US and Netherlands respectively, in the event that the Romanian freezing injunction is granted over ER's assets and income.

18. Should the Bridging Loan default, ES will also be at risk from insolvency proceedings in Singapore owing to its revenue being pledged as security for the loan, as well as ER being a guarantor for this facility.

Conclusion

19. All entities in the Group are therefore currently at risk from insolvency if the freezing injunction over ER is granted, with a cascade effected flowing through the structure.

20. We also note that the Syndicated Loan term expires in 2024 and it would appear there has been insufficient cash flow generation from the Group to facilitate meaningful repayment of these facilities over the last 10 years.

21. This indicates that the Group is overleveraged in its current form and this should be addressed in order to effect a successful long term restructuring of the Group, in addition to dealing with the immediate threat of insolvency posed by the freezing injunction in Romania and uncertainty over sponsorship income going forward.

Proposed Restructuring

22. In order to prevent the imminent collapse of the Group we are advised the only viable option available is for the proposed sale of a 51% controlling stake in the team to be agreed with KuaseNas.

23. This will secure both a one-off capital injection and longer-term sponsorship revenues both of which are critical, in terms of mitigating the immediate insolvency risks currently faced by the Group.

24. It is our understanding that to effect the restructuring, shares will be issued by ER to KuaseNas, with ET's shareholding in ER being diluted to 49% (the "Transaction"). The structure will otherwise remain the same. Please confirm our understanding.

Our Advice

25. Given the extent of the insolvency threats and the debt serviceability issues evident within the Group, in order to safeguard the operations and prevent foreclosure of the loans a local remedy at ER in isolation, is not deemed to be appropriate in the circumstances[1].

26. Nevertheless, we believe there are principally two viable options available to the Group, which would enable the restructuring Transaction to occur, protect the F1 team and safeguard Mr Maximov's position.

27. In addition, we would also recommend that discussions are initiated with the drivers, in order to ascertain if a compromise settlement may be achieved in relation to their claims.

28. This could be funded as part of the consideration due on completion of the Transaction and would allow the restructuring to focus on the Group's financial creditors only, removing the immediate enforcement risk in Romania. Please advise if there have been any attempts to reach a compromise with the drivers or their legal advisors and provide details of any communications between the relevant parties.

29. Should a negotiated settlement with the drivers not be possible, the two options proposed below would remain viable, however, additional steps and risks in relation to their delivery

[1] Any forclosure of the Syndicated Loans or cascade of defaults throughout the Group would have a personal impact upon Mr Maximov not only in relation to his equity interest in EI but also in relation to the personal properties pledged as security for the Syndicated Loans.

The Syndicated loans are due to mature in 2024, historically there do not appear to have been significant cash surpluses generated from operations to allow for meaningful repayments of the Groups debts and as such both a financial restructuring alongside protection against the enforcement actions currently being pursued in Romania will be required to alleviate the insolvency threats facing the Group.

would need to be considered and we would recommend pursuing these options in tandem with attempts to settle the current driver claims outside of an insolvency process.

Summary of Options

Option 1 - Chapter 11 and Recognition:

30. All entities in the Group facing insolvency risk make Chapter 11 filings in the US, with recognition applications, to the extent that these are required to be filed in the Netherlands (ET) and Romania (ER)[2].

31. Procedural consolidation would be sought in relation to the Chapter 11 processes enabling a "group" restructuring to be presided over by one bankruptcy judge. It is proposed that a bankruptcy restructuring plan would be proposed to creditors, which would see a compromise of debts based on the post Transaction free cash flow available to the Group.

32. Recognition of the Chapter 11 proceedings is recommended to enforce the world wide stay on proceedings outside the US, albeit there are circumstances in which it could be possible to avoid such additional proceedings and costs. This is explored in further detail below and we will need additional clarity to confirm our advice in relation to this point.

Option 2 - Chapter 11 and Parallel Local Proceedings:

33. If it is not possible to obtain recognition of the ET and/or ER Chapter 11 filings, then alongside the EI Chapter 11 filing, local insolvency proceedings will need to be filed in:

    a) Netherlands, in relation to ET under the WHOA legislation together with an application to the Court for a moratorium to the extent that the providers of the Bridging Loan are unwilling to negotiate a restructuring or standstill agreement; and

    b) Romania, under the Law no. 216/2022 to the extent that a compromise with the drivers is not possible and a moratorium necessary at ER.

[2] It is assumed that EI's Chapter 11 will not require recognition given the US Nexus of its creditors and location of its assets. Please advise if this is not the case.

Option 1 - Chapter 11 and Recognition

Overview

34. Chapter 11 of the US Bankruptcy Code is a powerful tool for the restructuring of debts of distressed companies. The relief is available to both US and non-US based debtors, provided they have property in the US. Accordingly, it presents a potentially attractive option not only for EI but also for ET and ER, in the current circumstances.

35. The principal attraction to debtors of Chapter 11 relief are

    a. a worldwide stay to actions against the debtor, following the filing of a petition and whilst the case is pending[3]; and
    b. debtor in possession principal which means existing management retain control of the debtor in the ordinary course[4].

36. Secured creditors may also not foreclose on security interests without the permission of the Bankruptcy Court during the Chapter 11 process.

37. This allows a distressed debtor the opportunity to obtain breathing space from creditor demands, and to negotiate or seek to impose a restructuring of its capital structure that binds all existing creditors and shareholders.

38. This is accomplished through the formulation of a financial restructuring plan, which must be approved by the affected creditor classes[5]. A plan may provide for, amongst other things, cancellation of debt, waiving of defaults, changes in the amount, interest rate and maturity of outstanding debt, and the issuance of new debt or equity.

39. For the purposes of voting and treatment under a plan, claims and equity interests must be grouped into 'classes.' Claims may only be put in the same class if they are

[3] 11 U.S.C §362(a)
[4] Unless "for cause" – fraud, dishonesty, incompetence or gross mismanagement – in which case a trustee can be appointed – 11 U.S.C § 1104.
[5] The plan must provide for the same treatment of claims within the same class. The Bankruptcy Court will evaluate whether the proposed classes discriminate unfairly against certain creditors or is proposed in bad faith. Acceptance within the class requires consent by 2/3 in amount, and more than ½ in number of the claims that are actually voted.

"substantially similar". The plan must provide for the same treatment of claims within the same class.

40. If an impaired class votes to reject the plan, the plan can nevertheless be imposed upon that class (i.e. crammed down) if:

    a. at least one impaired class has voted to accept the plan; and
    b. the court finds that the treatment provided for the objecting class does not "*discriminate unfairly"* and is "*fair and equitable"* to the plan[6].

41. A Chapter 11 can be filed with the terms of a restructuring plan pre-negotiated with, or even approved by relevant stakeholders, minimising the time spent in bankruptcy. However, this is not a prerequisite and many Chapter 11 cases are filed with no plan, with assets and operations of the debtor subject to the oversight of the Bankruptcy Court whilst a plan is developed.

42. Currently we have insufficient information regarding the future free cash flows and debt service available to the Group to provide any detailed comments on any terms of a viable restructuring plan for the Group. We will need this information, together with an insolvency scenario model, in order to assist with the development of a viable restructuring plan in due course.

Eligibility

43. Pursuant to 11 U.S.C § 109 any person residing or with domicile, place of business or property in the US may be a debtor for the purpose of the US Bankruptcy Code. The test for eligibility is the date of the filing of the petition[7].

44. As a US domiciled entity, EI would appear to be eligible to file a Chapter 11 proceeding and obtain the reliefs noted previously. Chapter 11 is not, however, a "group" remedy and eligibility is assessed on an entity by entity basis[8].

[6] 11 U.S.C $ 129(b)(1)
[7] In re Axona International Credit & Commerce Ltd (Bankr S.D.N.Y 1988) applied in Global Ocean Carriers Ltd (Bankr D.Del 200).
[8] Bank of America v World of English (N.D.GA 1982)

45. ET and ER are incorporated outside of the US and therefore must be able to demonstrate either assets / property located in the US to qualify as an eligible debtor under Chapter 11. Please confirm if either entity has such assets or property in the US currently?

46. Assuming this is not the case, prior to filing for Chapter 11 relief ET and ER would need to establish US property. There is no requirement for this property to be substantial and a de minimums amount will be sufficient[9], such as funds held in a US bank account or a retainer paid to a lawyer on behalf of the entity at the filing date.

Limitations to Chapter 11

47. Chapter 11 applies to all of the debtor's property, "wherever located" pursuant to 11 U.S.C § 541(a). In theory the automatic stay on filing would therefore apply to all assets of the debtors (i.e EI, ET and ER assuming US property can be established) on a worldwide basis irrespective of their geographic location and country of incorporation.

48. Chapter 11 will bind all US counterparties as they are unlikely to wish to breach an order of the US Bankruptcy Court. However, this extra territorial effect is, in practice, limited to where assets may be held outside the US and creditors are not subject to the jurisdiction of the US Bankruptcy Court or otherwise have no nexus to the US.

49. In such circumstances, it may be necessary for the debtor to take additional steps to ensure the restructuring is not derailed by local enforcement actions by creditors with no nexus to the US and against assets located outside of the US. Typically, this is achieved by either the recognition of the Chapter 11 proceedings overseas or additional local insolvency filings (both discussed further below).

50. For the purposes of this initial advice, we have assumed a Chapter 11 as a standalone proceeding is likely to be effective in relation to EI, given it is located in the US and its creditors are all banking institutions. In order to confirm this, we will need to review the Syndicated Loan lending documents and understand the location of the respective lenders. Please provide this information for our further consideration.

[9] See Global Ocean Carriers Ltd (Bankr D.Del 200).

51. Both ET and ER have assets outside the US which might be vulnerable in the event that only Chapter 11 filings are made in relation to these entities. To assess this further we will need to review the Bridging Loan facilities and understand if the Monaco bank has any nexus to the US.

52. ER's creditors appear to be the F1 drivers who are assumed to have no nexus to the US for the purposes of this advice. Please confirm if you are aware of any FIA regulations or other potential links to the US which might create a nexus between the drivers and the US (noting that the team will be moved post Transaction and the drivers replaced).

Recognition of Chapter 11 Proceedings

53. Assuming there remains a risk of enforcement over non-US assets of the Group, we recommend that the Chapter 11 filings be accompanied by recognition applications in any relevant jurisdiction in which assets are held. This would appear to be (at the least), the Netherlands and Romania. Please confirm if any Group assets are held in other geographic locations and which would be at risk from enforcement.

54. The recognition process of foreign insolvency proceedings in the Netherlands and Romania varies owing to the fact that the former has not adopted the UNCITRAL Model Law.

Recognition - Netherlands

55. Our understanding is that recognition of foreign insolvency proceedings in the Netherlands would be governed by the general rules of private international law. In principal therefore, foreign judgments are afforded recognition if four conditions are met[10]:

    a) the jurisdiction of the court that issued the judgment is based on internationally acceptable grounds;
    b) the foreign judgment is the result of legal proceedings that meet the requirements of due process and the proper administration of justice;
    c) recognition of the foreign judgment is not contrary to Dutch public policy; and

[10] Global Restructuring Review. Restructuring in the Netherlands, Job van Hoof and Sophie Beerepoot 15 December 2020.

d) the foreign judgment is not irreconcilable with a judgment of a Dutch court between the same parties, or with an earlier judgment by a foreign court between the same parties involving the same subject and cause, if the earlier foreign judgment is enforceable in the Netherlands.

56. Nevertheless, we would note that the case law of the Supreme Court of the Netherlands has developed a patchy response to these issues due to the lack of clear legislation on this topic, resulting in a complex legal landscape for the recognition of foreign non-EU insolvency proceedings, as is the case here.

57. As such, it may be beneficial to consider alternative options in relation to EI, if there is a risk that it's non-US assets may be pursued by non-US creditors (this will likely turn on our assessment of the nexus between the Monaco bank and the US, assuming there are no other external non-related party creditors of EI. Please confirm).

58. Arguably had EI been incorporated in England then this uncertainty regarding recognition might have been reduced, owing to the fact that England adopted the UNCITRAL Model Law via the 2006 Cross Boarder Insolvency Regulations. See comments below regarding recognition under the UNCITRAL Model Law.

Recognition - Romania

59. The UNCITRAL Model Law was adopted in Romania in 2002 and applies to assistance sought by a foreign court or representative in connection to a foreign proceeding.

60. A Chapter 11 proceeding involving ER would be regarded as a foreign proceeding pursuant to Article 2(a) being *a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation*.

61. Under Article 15, a foreign representative of ER may apply to the Romanian court for recognition of the Chapter 11 proceedings and the foreign proceeding will be recognised[11]

[11] Subject to certain public policy exclusions.

if the foreign proceeding is either a forging main or non-main proceeding. Based on our understanding, ER does not have an establishment under the Model Law[12] in the US and its Chapter 11 could not therefore be regarded as a non-main proceeding. Please confirm if this is not the case.

62. In order to make a recognition application under the Model Law, the foreign representative of ER would therefore need to demonstrate that the US was where ER's COMI (centre of main interest) was located, making the Chapter 11 proceedings a foreign main proceeding as defined by Article 2(b).

63. ER is an entity incorporated in Romania and with a registered office also assumed to be in Romania. Accordingly, there is a rebuttable presumption under the Model Law that ER's COMI is located in Romania.

64. If this presumption is not rebutted then ER would not be able to seek recognition of its Chapter 11 proceedings in Romania as a foreign main proceeding under the Model Law. This would deprive it of the relief which local recognition of the foreign proceedings would bring, such as a moratorium against creditor claims against its' Romanian assets.

65. Notwithstanding this, the registered office presumption of COMI under the Model Law can be rebutted where there are objective and ascertainable factors available to third parties indicating that COMI is somewhere else.

66. In order to explore the viability of this potential option further, we will need to understand in more detail the business activities and operations of ER, including how these are publicly conveyed to creditors, where these activities are carried out and where the directors of the business are located and meet.

Option 2 - Chapter 11 and Parallel Local Proceedings

[12] UNCITRAL Model Law, Article 2, "Establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

Overview

67. In the event that recognition is not possible or deemed to be uncertain, in a scenario where it is concluded that the assets of ET and ER are not sufficiently protected by standalone Chapter 11 proceedings, local parallel proceedings may be instigated in either the Netherlands and or Romania, as an alternative to pursuing Chapter 11 filings for ET and ER.

68. It is envisaged that EI would make a standalone Chapter 11 filing with a restructuring plan proposed to its stakeholders. This would run in parallel to local proceedings in relation to ET and ER, albeit it is likely that the implementation of the restructuring plan (inclusive of the Transaction) and its final adoption, would be conditional upon the necessary approvals being granted in all proceedings concerning the Group.

Netherlands

69. *Wet homologatie onderhands akkoord*, also known as the WHOA or Dutch scheme, came into effect on 1 January 2021 and is the principal local proceeding available in the Netherlands to implement a financial restructuring of a business and prevent the debtor becoming insolvent.

70. Under the WHOA, we understand that it is not necessary to seek a hearing prior to the meeting of the debtor's creditors and shareholders to vote on a restructuring plan. Debtors are permitted to apply to the court for a stay of individual enforcement actions and bankruptcy requests for a period of four months (extendable to a total of eight months in certain circumstances).

71. We would recommend seeking such protection in the event that the Monaco Bank is unwilling to enter into a standstill agreement alongside initial discussions regarding the proposed restructuring plan.

72. Significantly, under the WHOA unlike a Chapter 11 process, the restructuring plan may amend guarantee claims where the guarantor sits outside of the WHOA proceedings.

73. Given the guarantees provided by ER and ES to the Monaco Bank, this may be an important consideration in the event that a financial restructuring is required to be imposed

on the Bridging lender. To consider this further, we will need to understand if any discussions have been initiated with the Monaco Bank and if they have been receptive to any sort of compromise or restructuring.

74. We also note that cross-class cram-down is a remedy available in the Netherlands under the WHOA, if conditions are met which are similar to those of the Chapter 11 cram-down noted previously[13].

WHOA Eligibility

75. To be eligible to use the WHOA it must be "*reasonably likely that the debtor cannot continue to pay its debts".* This includes where there is no realistic prospect of avoiding future insolvency if its debts are not restructured (looking as far as 12 months ahead)[14].

76. We understand that, given the debt serviceability issues of the Group, this would be applicable to ET, even in the event that the drivers claims were settled by ER. Please provide further clarity on the debt serviceability issues from free cash flow, in order to confirm whether this relief is available to ET.

77. The WHOA is available both to Dutch companies that have a COMI in the Netherlands, and to foreign companies. As previously noted, please provide clarity with regards to the management and operation of EI so we can evaluate where it's COMI is located.

78. Please also confirm the governing law in relation to both the Bridging loan and Inter Co Loan 1 and 2 which will assist with this analysis, given that the entity appears to be a principally financing and holding entity in the Group.

79. Where a debtor's COMI is located in the Netherlands, a "public" Dutch Scheme proceeding may be opened, which is publicised by registration in the insolvency register. Dutch "public" proceedings benefit from automatic recognition throughout the European Union pursuant to the EU Regulation on Insolvency Proceedings[15].

[13] The Big Three: the UK Restructuring Plan, the Dutch Scheme and US Chapter 11 Proceedings by Jennifer Marshall, Jonathan Cho and Geza Orban, INSOL World Second Quarter 2020 p31
[14] Legislative Update, The Dutch Scheme has Arrived, Insights Jones Day. March 2021
[15] https://globalrestructuringreview.com/review/restructuring-review-of-the-americas/2021/article/the-eu-adaption-of-important-chapter-11-provisions.

80. We have not proposed that ER should also consider utilising the WHOA legislation, given we believe it is unlikely that it has its COMI or *sufficient connection*[16] to the Netherlands. Please advise if this is not the case, considering the potentially attractive proposition of any ER approved WHOA plan being automatically recognised in Romania (or in the event of there only being sufficient connections, a non-public approved WHOA which may be capable of recognition in Romania under the UNCITRAL Model Law).

Romania

81. Insolvency filings have been made and interim freezing injunctions over the assets and income of ER obtained by the drivers locally in Romania.

82. Should there be no prospect of ER reaching a settlement with the drivers or successfully challenging the freezing injunction and assuming it does not have COMI in the Netherlands (or US in relation to a Chapter 11 process) or a sufficient connection to the Netherlands, then local proceedings may need to be commenced in Romania. This would mitigate the risk of a liquidation taking place following a freezing of the entity's assets.

83. Romania has enacted new legislation in insolvency matters by Law no. 216/2022, which revises Law no. 85/2014 on the procedures for the prevention of insolvency. This comprehensive reform aligns with the EU Directive 2019/1023 on preventive restructuring frameworks, discharge of debt, and disqualifications[17].

84. Romania now offers two preventive mechanisms: the restructuring agreement and the arrangement with creditors. We understand that the former does not provide for an *ex lege* stay on enforcement and as such would not be a viable option unless the drivers were willing to agree to a standstill agreement in relation to their damages claim.

85. An arrangement with creditors provides for an *ex lege* stay for an initial 4 months, that can be extended to 12 months. ER would file a claim under Law no. 216/2022 with the Romanian court which verifies the requirements for opening the procedure.

[16] This may be established or otherwise evidenced if a (substantial) part of: (i) the debtor's assets or group companies are located in the Netherlands; and/or (ii) the relevant finance documents are governed by Dutch law or include a forum choice for the Dutch courts.
[17] https://www.legal500.com/doing-business-in/preventing-insolvency-in-romania/

86. If the request is allowed, the insolvency practitioner appointed by the debtor is named arrangement administrator and drafts or assists the debtor with the drafting of the restructuring plan, which must be finalised within 60 days[18].

Arrangement with Creditors Eligibility

87. To access the preventive procedures under Law no. 216/2022, the debtor must face a *state of difficulty* which is a state generated by any circumstance that causes a temporary impairment of the activity, which gives rise to a real and serious threat to the debtor's future ability to pay its debts at due date, if appropriate measures are not taken.

88. The threat to the debtor's ability to pay the debts must have a certain gravity and occur within a maximum interval of 24 months from the appearance of the factors that disrupt/impair the activity. The debtor should however, still be in a position to pay its current debts as they fall due.

89. Based on the background provided we understand that ER may be deemed to be in a state of difficulty, however, this would not be the case if the pending freezing orders are granted, given ER could not pay its debts as they fall due at this point. Please provide confirmation of our understanding of the current debt serviceability of ER.

Romania Contingency Options

90. In the event that the arrangement with creditors under Law no. 216/2022 procedures were unavailable, as we anticipate will be the case if the pending freezing orders are granted, ER would still be able to restructure via a judicial reorganization under the surviving insolvency proceedings of Law no. 85/2014 which might be instigated by either the debtor or via a creditor (such as ET).

91. Judicial reorganisation is not mandatory and represents a benefit granted to an insolvent debtor to enable it to restructure its finances and/or operations and to continue as a viable business. Notwithstanding this, given the prospects of developing a viable restructuring plan, a compelling case can be made to the Romanian court to grant this benefit in this scenario, should other options be exhausted or unavailable to ER.

[18] https://www.legal500.com/doing-business-in/preventing-insolvency-in-romania/

92. The Romanian Insolvency Code is generally pro-creditor and a judicial reorganisation is not a debtor in possession process. Nevertheless, either the debtor itself, or creditors (holding at least 20% of the claims registered in the final table of claims), or the judicial administrator, may propose a rescue plan, no later than 30 days after a final table of creditors is published by the judicial administrator. The proposed plan is voted upon at a meeting of creditors. If the plan is approved by the creditors it will then need to be confirmed by the insolvency judge[19].

[19] Restructuring Across Boarders Romania Corporate restructuring and insolvency procedures, March 2020, Allen & Overy