Memorandum

Privileged and Confidential

To: **General Counsel, Efwon Investments Inc.**

From: **H. Lance Williams**

Re. **Advice for Restructuring Maximov Racing**

Introduction

You have requested our advice and analysis on how to restructure Maximov Racing and the various entities in the corporate group (collectively the "**Efwon Group**"), to a) effect a transfer of the team to a Malaysian entity to permit the participation of the Malaysian state owned company KuasaNas in the team, including the acquisition by it of 51%; and b) to address the current liquidity and insolvency issues affecting the group.

We have reviewed the information provided by you, as set out below, and included a number of further information requests. We would be pleased to discuss these matters with you once you have had a chance to review and consider.

All references to $ in this memorandum are to United States dollars.

Executive Summary

Based our review, our advice is as follows:

1) A financial advisor should be engaged by you to assist with preparing the financial modeling and liquidation analysis necessary to permit meaningful negotiations of a restructuring plan with your creditors.

2) Depending on the further information received, a substantively consolidated Chapter 11 restructuring proceeding of the Efwon Group under the United States Bankruptcy Code should be considered to effect a consolidated solution.
3) Negotiations should commence immediately with the members of the Syndicate (defined below) to restructure their debt on a voluntary basis. A Chapter 11 proceeding involving just the Syndicate would be possible if the other debts can be addressed or a consolidated Chapter 11 is not possible..
4) The Bridge Loan with the Bridge Lender should likewise be renegotiated. Failing that (and comprehensive Chapter 11), it may be possible to effect a compromise through a Dutch scheme of arrangement and a Romanian restructuring.
5) Efwon Romania will likely need to be complete a Romanian restructuring (unless a comprehensive Chapter 11 is undertaken), to effect both a compromise of debt and a transfer of assets.
6) Efwon Singapore requires further investigation to determine if it can be liquidated.

Following receipt of further information, we anticipate being able to narrow our recommended course of action. However, we believe that a comprehensive, substantively consolidated Chapter 11 proceeding offers the best likelihood of success.

Background

We have prepared this analysis using certain key information provided by you. Please advise if any of this information is incorrect, as it may materially affect our analysis:

- In 2014, Benedict Maximov ("**BM**") incorporated Efwon Investments Inc. ("**Efwon Investments**") under the laws of Texas. Efwon Investments was capitalized with $100 million in equity from BM, as well as a loan from a syndicate of lenders (the "**Syndicate**") in the principal amount of $250 million (the "**Syndicated Loan**").

The Syndicated Loan

- Efwon Investments is the borrower under the Syndicated Loan. The terms of the Syndicated Loan include, among other things, a negative pledge prohibiting Efwon Investments from further encumbering its assets. The term of the Syndicated Loan is 10 years, with interest at LIBOR + 6% (after a prior amendment). We have assumed that the Syndicated Loan has been migrated to the standard overnight financing rate (the LIBOR replacement), and the rate remains equivalent.
- As security for the Syndicated Loan, the Syndicate has:
    - a charge over certain homes of BM located globally, with an estimated value of $75 million;
    - a pledge of BM's shares in Efwon Investments; and
    - apledge of Efwon Investments's shares in Efwon BV (defined below), as the result of an amendment.
- The Syndicate is made up of:
    - two senior lenders (the "**Senior Lenders**"), having an aggregate exposure of $100 million;
    - two mezzanine lenders (the "**Mez Lenders**"), having an aggregate exposure of $60 million; and

- five junior lenders (the "**Junior Lenders**") having an aggregate exposure of $90 million.

We have requested a further breakdown of each lender's position in the information requests below.

Efwon BV

- Also in 2014, BM set up a company Efwon Trading B.V. ("**Efwon BV**") under the laws of the Netherlands.
- Efwon Investments lent $350 million to Efwon BV. As security, Efwon Investments took security over the future revenues of Efwon BV.
- Efwon BV has resident directors in the Netherlands, though they take direction from BM. This is a recent change from "local" directors. We have requested further information on who the prior "local" directors were.

Efwon Romania

- In late-2014, Efwon BV sought to purchase the business and inventory of an existing Formula One team in Romania. This included the necessary competition licence to participate in Formula One events.
- This transaction was accomplished through the incorporation of a subsidiary, Efwon Romania ("**Efwon Romania**") under the laws of Romania. To capitalise Efwon Romania and complete the acquisition, Efwon BV lent Efwon Romania $150 million, being $50 million for the acquisition and $100 million in operating costs for the 2015 season. This loan was secured by a pledge of the team's share of broadcasting revenue. Broadcasting revenue is administered directly by

the Formula One Group, located in the United Kingdom, and each team's proportion is distributed to them.

- The team had two Romanian drivers employed by Efwon Romania, until the recent accident and lawsuit (discussed below). We do not know their current employment status. All existing contracts of the Romanian team were acquired by Efwon Romania on acquisition.
- The Formula One team was renamed Maximov Racing, and its logo primarily is the face of BM, along with the corporate logo of Efwon Romania.
- Efwon Romania has resident directors in Romania, though they take direction from BM.

Initial Financial Issues

- Since 2015, Maximov Racing, and thereby Efwon Romania, have not been successful. In 2015, returns totalled $30 million, which were re-invested in the team. No payments were made on the Syndicated Loan, and the Syndicate provided a waiver.
- In 2016, Efwon BV advanced a further $100 million for the 2016 season. 2016 was more successful, and some funds flowed from Efwon Romania to Efwon BV and from there to Efwon Investments for loan servicing.
- Efwon BV advanced a further $100 million in 2017, and investigated sponsorship. Financing was required for the 2018 season and, as Efwon Investments had exhausted its resources, a $100 million high-interest loan (the "**Bridge Loan**") was obtained from a lender based on Monaco (the "**Bridge Lender**"). The Bridge

Loan is secured by the revenues of Efwon Trading (borrower) and Efwon Romania and Efwon Singapore (defined below) (guarantors).

Sponsorship

- In 2017, Efwon Singapore was created under the laws of Singapore as a wholly-owned subsidiary of Efwon BV to attract sponsorship in Asia.
- In 2018, a deal was signed with Indonesia-based Kretek, commencing in 2019 for 5 years. This deal generated $100 million annually, which when combined with TV revenues (paid to Efwon Romania) allowed the team to operate. However, Kretek has indicated it will not continue its sponsorship going forward after 2024.

Efwon Romania Claims

- In late-2023, the Romanian-based drivers for Maximov Racing were injured. They have brought a claim against Efwon Romania and, if successful, would be entitled to “material damages”. The potential quantum range has not been provided to us. Insolvency proceedings have been commenced in Romania against Efwon Romania, and an order has been granted freezing the company’s assets and income.

Go forward plan

- A new sponsor has been found, KuasaNas, which is a Malaysian state-owned company. The transaction requires that KuasaNas acquire 51% of Maximov Racing in exchange for funding in excess of $100 million annually.

- Maximov Racing will be expected to move to Malaysia. The government of Malaysia is reviewing the agreement, but it is a condition that the existing issues and insolvency be dealt with expeditiously. We would expect a new Malaysian entity to be created to hold the relocated Maximov Racing, owned 51% by the Malaysian state, and the balance owned by the restructured Efwon Group.

Analysis

Efwon Investments

Subject to the group-Chapter 11 option discussed below, the restructuring of the debt at the Efwon Investments level requires attention to ensure the groups' survival. This debt is due shortly, and there is insufficient value in the short-term to repay it. Accordingly, the debt must be addressed with the Syndicate. Given the Syndicate's lack of security beyond Efwon BV, the Syndicate's position in a liquidation is tenuous: the Efwon Group does not have material assets that would be available in a liquidation, as the majority of revenue is derived from sponsorship and television revenue, and a going-concern restructuring appears the only way to meaningful recovery.

As a result, there is a strong opportunity to negotiate with the Syndicate. Key terms of this negotiation would be to:

a) extend the maturity to allow the new sponsorship to come into place;
b) ensure a payment-holiday for a period of time while the restructuring occurs and revenues stabilise; and
c) explore the potential for a reduction in the total debt.

The potential for c) will depend on the result of the business review conducted, and the liquidation analysis contained therein.

Given the structure of the Syndicate, and the security held over BM's residences, we would expect that the Senior Lenders are unlikely to consider a material discount, but should be comfortable with an extension and payment holiday so long as they see themselves made-whole in the shorter term. We expect the Mez Lenders would be more inclined to offer incentives to ensure recovery, including a longer payment holiday, further extended maturity, and perhaps a reduction in debt (or interest rate). The Junior Lenders are the most exposed, and accordingly we believe this is the group you are most likely to obtain material concessions from, including through a longer extension of maturity, a longer payment holiday, and a reduction in principal (again, dependant on their expected recovery in liquidation, which does not seem material to the Junior Lenders). It should be anticipated that the Junior Lenders, if they are expected to take a material reduction on the principal of their debt, will seek an equity position to benefit if the turnaround is successful.

The basis of such negotiations will be primarily driven by an understanding of the economics for the lenders in a liquidation, as well as understanding the projected economics and cash-flow of the organisation going forward with a transaction with KuasaNas. To ensure proper, reputable information is provided to the Syndicate, we suggest engaging a reputable financial advisor to ensure the accuracy and creditability of the information put forward to the Syndicate, and to ensure that you have someone in place that can liaise with their advisors 'on the same level'. In order to allow such

discussion to take place efficiently, it is desirable to seek a moratorium and forbearance with the Syndicate to allow discussions to progress.

If the negotiations do not progress such that you can achieve unanimous support, and an Efwon Group Chapter 11 is not pursued (discussed below), it would be possible to look to a Chapter 11 filing under the United States Bankruptcy Code by Efwon Investments. The filing of a Chapter 11 petition with the court results in an automatic stay of proceedings[1], and is generally a 'debtor-in-possession' proceeding[2].

The creditors under a plan are arranged by class with others who are "substantially similar". In order to be approved by a class of creditors, the plan must be approved by more than 50% of voting creditors in the class representing at least 2/3 of the total claims voting in the class.[3] In this scenario, the Syndicate are all subject to the same security and part of the same syndicate. While they have different priorities among them, we do not think it is likely they would be successful arguing they should be classified in separate classes. Further, strategically, there is a risk that isolating some of the Syndicate lenders into a smaller class could give them over-weighed influence. Assuming all Syndicate members participate in a vote, you would need at least five creditors representing at least $166.67 million to vote in favour of the plan. While any combination is acceptable, this would most likely be achieved by striking an acceptable deal with the Senior Lenders, the Mez Lenders, and at least 1 Junior Lender (having at least $6.67 million in debt). If approved, the plan must then be approved by the court. In order to be approved, it is necessary to demonstrate that one class of unrelated

[1] 11 U.S.C. §362(a).
[2] *Ibid* at §1107.
[3] *Ibid* at §1126(c).

creditors whose claims are impaired vote in favour.[4] To the extent that Efwon Investments has unsecured creditors, they would be in a separate class. So to would BM's equity. Both would be deemed to vote 'no' on the plan, but can nonetheless be bound by it, as they are no worse off under the plan than they would be under a liquidation (being no recovery). The United States has the 'absolute priority rule', meaning that subordinate classes cannot recover ahead of those having priority.[5] As such, BM's equity interest cannot recover under the plan as the secured lenders are being impaired. He can, however, remain a full or partial-equity holder.

Given Efwon Investments is a Texas company, the presumed centre of main interest is Texas. This is rebuttable, but we have not been provided with any information to suggest that Efwon Investments primary management or control is located other than in Texas.

Efwon BV

Efwon BV's primary debts are to Efwon Investments ($350 million secured against revenues) and to the Bridge Lender for the Bridge Loan (also secured against revenues). Its sole asset appears to be its receivable from Efwon Romania. We don't have sufficient information to understand the accounts as between Efwon BV and Efwon Singapore. Please provide those as they may affect our analysis. We have also asked for information regarding the priority of the Bridge Lender's security vs that of Efwon Investments. Given the timing of the Bridge Lender's loan, we have presumed

[4] *Ibid* at §1129(a)(10).
[5] *Ibid* at §1129(b)(2).

that they obtained subordination of the inter-corporate security. However, if this is not the case, it would materially affect our analysis.

Efwon BV appears to be solely a financing vehicle. We considered a joint proceeding with Efwon Investments under Chapter 11 of the United States Bankruptcy Code. However, we note that a) the Netherlands has not adopted the UNCITRAL model insolvency law, so recognition would be difficult, and b) the Court of Justice of the European Union (the "**CJEU**") held in *EuroFoods*[6] that simply being a financing vehicle does not rebut the registered office presumption that Efwon BV's centre of main interest is the Netherlands. Finally, we note that there are local directors. Accordingly, if a US Chapter 11 is sought with multiple parties, it would be best to restructure the entire Efwon Group (as discussed below). We also considered a joint Dutch proceeding with Efwon Romania, however as analysed below, determined that was unlikely to succeed.

Accordingly, we believe the best solution to address the debts of Efwon BV is to seek a negotiated settlement with the Bridge Lender. Given the Bridge Loan has a high interest rate, and security we assume has priority over that of Efwon Investments (subject to verification), addressing their loan quickly and efficiently is key to a successful restructuring. This negotiated agreement would seek to:

a) take a portion of pre-funding is available from KuasaNas, less what is needed for operations and to settle other claims in the group, and use it to pay down (or off) the Bridge Loan;

[6] *EuroFood IFSC*, Case C-341/04, ECLI:EU:C:2006:281 (May 2, 2006) ["EuroFood"].

b) seek to reduce the interest rate in exchange for security on the Efwon group's interest in the Malaysian enterprise shared with the Syndicate; and
c) prioritise repayment and discharge of this debt as quickly as possible.

Much like the Syndicate in Efwon Investments, the success of this arrangement is going to be driven by the economics of the transaction, and the likely recovery in a liquidation. Accordingly, it is advisable to have a financial advisor appointed to lend creditability to this analysis, and if liquidation recovery is sufficiently poor, seek a corresponding reduction in debt.

Should it not be possible to negotiate an agreement, we considered whether it would be possible to implement through a Dutch scheme of arrangement. As noted below, it would not be possible to address the guarantee claim against Efwon Romania in a Dutch proceeding. Further, given the limited creditors of Efwon BV, that we have presumed the Bridge Lender has a superior priority for its security, and that the other main creditor is a related party, we think it would be unlikely a) that a Dutch court would permit cross-class cram down, if the debts were in different classes; or, b) if in one class, find the plan fair and reasonable if the related party creditor with subordinate security was allowed to vote and swamp the third-party creditor. Dutch law advice should be sought on this point. If it is possible to vote and swamp the Bridge Lender, of if it has subordinate of *pari passu* security, we note that the debt owing to Efwon Investments is sufficient to carry a single class with both creditors (being 2/3 of value voting). There is no number of creditors requirement under a Dutch scheme, just value.[7]

[7] Job van Hoof & Daisy Nijkamp, "The Dutch Scheme – Classes and Voting" (13 January 2021), online: <https://www.stibbe.com/publications-and-insights/the-dutch-scheme-classes-and-voting>

Efwon Romania

Efwon Romania poses an interesting challenge, because an insolvency proceeding has already been commenced, and there is pending litigation with the injured drivers. Accordingly, the primary creditors of Efwon Romania appear to be:

a) $350 million owing the Efwon BV (secured against broadcasting revenues);
b) $100 million owing to the Bridge Lender (secured against revenues);
c) the unliquidated potential claim of the drivers (unsecured); and
d) other unsecured creditors (unknown).

We understand that television revenues were paid directory to Efwon Romania, and that some were then paid up to the parent company Efwon BV (and further to Efwon Investments). We will need to understand the nature of those payments, and their quantum. In addition, we understand the Efwon Singapore obtained the sponsorship in Asia, but the funds were ultimately used (in part) by Efwon Romania to fund operations. We will need to understand those transactions and their quantum.

Subject to this further information, it appears that Efwon Romania will need to undertake a formal insolvency proceeding in order to effect its restructuring. This restructuring will need to:

a) transfer the assets for Maximov Racing to a new Malaysian company, to be part of the transaction with KuasaNas; and
b) address the claims of the Efwon Romanian creditors.

As noted below, we require further information on where the operations of Maximov Racing are conducted. However, based on the information you have provided, we understand that:

a) Efwon Romania is incorporated and has its registered office in Romania;
b) it has local directors;
c) the drivers were employed by Efwon Romania;
d) the contracts dealing with Maximov Racing were assumed by Efwon Romania when the team was purchased; and
e) the logo of Efwon Romania appeared on the racing cars/materials, along with a picture of BM and Maximov Racing.

Applying these factors to the current jurisprudence from the CJEU interpreting the location of the 'centre of main interest' and the provisions of the recast *European Insolvency Regulation* (the "**EIR**"), we believe that under European law, the centre of main interest is Romania and that, as insolvency proceedings have been started in Romania, they must be concluded there and it is unlikely we would be successful seeking to have the proceeding moved to either the Netherlands (under the EIR).

The CJEU has been clear in both *EuroFood*[8] and *Interedil Srl v. Fallimento Interedil Srl*[9], that the European test for the centre main interest is an objective one. First, the EIR presumes the registered office of a company to be its centre of main interest[10]. This can only be rebutted where objective third parties (generally creditors) would believe the

[8] EuroFood, supra note 8.
[9] *Interedil Srl v. Fallimento Interedil Srl,* Case C-396/09, ECLI:EU:C:2011:671 (Oct. 20, 2011).
[10] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) at s. 30.

centre of main interest to be. Given the existing contracts and employees dealt with Efwon Romania, and the logo for Efwon Romania appeared on the cars, we believe it would be difficult to rebut. Further, as the Romanian court has already determined that Romania is the centre of main interest, under the EIR, that finding binds other member state.[11] If there is further information that creditors dealing with Efwon Romania would not have thought it was located in Romania, we would be happy to review those factors, as a comprehensive analysis of those may be used to rebut the registered office presumption, but it would need to be brought before the Romanian court (subject to Romanian legal advice).

We considered the potential to move the registered office of Efwon Romania, however there are two issues: the EIR contains a three-month 'look back' clause to prevent moves to 'forum shop' another insolvency regime[12], and the time for determination of the centre of main interest is when an insolvency proceeding is filed, which in this case has already occurred (and as noted above, is binding on other member states).[13]

We have reviewed Romanian insolvency law generally, and believe that a Romania restructuring plan may offer an appropriate result. Prior to proceeding with this route, it is advisable to obtain Romanian legal advice. Under a Romanian restructuring plan, the debtor remains in possession[14]. The plan is presented to creditors, and must be approved by 75% of the accepted and undisputed value claims.[15] However, claims can

[11] EuroFood, supra note 8.
[12] Supra note 10 at s. 31.
[13] Supra note 9.
[14] Andrea Zvac and Gabriela Patrascan, "Romania's Implementation of the Restructuring Directive" (20 January 2023), online: <https://www.wolftheiss.com/insights/romanias-implementation-of-the-restructuring-directive/>
[15] Emeric Domokos and Andrei-George Harciu, "Restructuring Laws and Regulations In Romania", (09 November 2022), online: <https://ceelegalmatters.com/restructuring-2022/restructuring-romania-2022>

be subcategorised by common interest, and a subclass is considered to have voted in favour if a majority in value of claims voting in that class vote in favour of the plan.[16] It would appear that the unsecured claim of the drivers would be in a single class. We were unable to locate any restriction under Romanian law to related parties voting on a restructuring plan.[17]

Accordingly, the structure of the proposed Romanian restructuring plan would be:

1) to facilitate the sale of the Efwon Romanian assets to the new Malaysian company in consideration of a prepayment from KuasaNas of a portion of the future sponsorship funds (but not all);
2) implement a payment plan with the Bridge Lender (discussed above); and
3) compromise the amount payable to the drivers to the extent possible from a reputational and practical perspective.

To achieve this, Efwon BV would agree to stand aside on a portion of its claim in any distribution, such that funds would go to the Bridge Lender other than the amount required to make a payment to the drivers and other unsecured creditors to maintain creditability/ensure there is not reputational damage that would hinder the restructured teams' success. While this compromises Efwon BV's position in the short-term, it allows the restructuring and the pay down of the Bridge Loan, to the Efwon Group's benefit.

Efwon Singapore

[16] *Ibid*.
[17] This should be confirmed with Romanian counsel.

Efwon Singapore is in a unique situation in that its sole purpose was to obtain sponsorship, which is no longer relevant in this entity, and its sole debt appears to be in relation to its guarantee of the Bridge Loan and granting security on its now-irrelevant revenue. If an agreement can be reached with the Bridge Lender, Efwon Singapore should simply be wound-up. If an adversarial approach is to be taken with the Bridge Lender, we would need to review the inter-corporate accounts to determine what, if any, claims Efwon Singapore has against the other parties. As noted above, we do not advise pursuing an adversarial approach with the Bridge Lender.

Efwon Group Chapter 11

Should there be sufficient evidence suggesting that the mind and management of the various entities is in Texas, and that third-party creditors would have objectively ascertained Texas as the centre of operations, we considered if it would be possible to place all entitles in a Chapter 11 proceeding. The US courts have noted that a very low threshold is required to commence proceedings in the US[18], and as such, each entity opening a bank account would be sufficient to establish jurisdiction. While the Netherlands has not adopted the UNCITRAL model insolvency law, Romania and Singapore have, and accordingly it would be possible to seek recognition in each and avoid the application of the EIR (in relation to Romania) as it only applies to insolvencies between member states, and not with other states. This eliminates the impediment of the existing Romanian insolvency proceeding, but leaves the centre of main interest issue.

[18] *In re Global Ocean Carriers Limited*, 251 B.R. 31 (2000).

Further, even without recognition, we presume (and should verify) that the Bridge Lender either a) has assets in or b) clears funds (including any clearing of $US) through the United States, meaning that even without formal recognition in the Netherlands or Monaco (where the Bridge Lender is based, and which has also not adopted the UNCITRAL model law), the Bridge Lender would be likely to follow a US order to prevent action being taken against its US- based interests. We also note that the drivers participate in global races and have interest with Formula One, which is based internationally, and accordingly are unlikely to violate a US court order even if not ultimately recognised in Romania.

Finally, we note that the Formula One Group (that distributes television revenue) is located in the United Kingdom (which has adopted the UNCITRAL model law and is no longer subject to the EIR), and accordingly it would be possible to seek the recognition of a US bankruptcy order to prevent any creditors attaching to the television revenue contrary to that order.

In order to properly address this alternative, it would be necessary to seek to substantially consolidate the various estates. Under US law, this is possible so long as no creditor is treated worse as a result of substantive consolidation, and this is often accomplished by providing an “opt-in” for substantive consolidation, or an “opt-out”.[19] In this scenario, we would expect a consolidated plan to offer an “opt-in” restructuring that provided:

[19] *Republic Airways Holdings Inc. (Re)*, 582 B.R. 278 (S.D.N.Y. March 28, 2018)

a) restructuring of the Syndicate's debt and the Bridge Loan in accordance with the above proposals;
b) the inter-corporate claims waiving their right to a distribution, to increase and simplify recoveries; and
c) a compromise and payment to the drivers in excess of their expected recovery in liquidation,

to be funded by an injection from the KuasaNas transaction. The "opt-out" option would offer what would be recovered by the creditor in liquidation, after a lengthy claims process, which would make this option unattractive. This would be a 'deemed' substantial consolidation as all entities would remain independent, with distributions as if they were consolidated.

While less advantageous than an out-of-court negotiated settlement (perhaps tied to a Romanian proceeding), the Chapter 11 option provides an alternative if negotiations go poorly with the lenders (in particular the Bridge Lender), if Efwon Singapore has material inter-corporate claims as an asset, and it is necessary to implement something more comprehensive.

Structure of Efwon BV

As a separate point, you asked for our advice on whether Efwon BV should have, with hindsight, been structured under the laws of England instead of the laws of the Netherlands.

With the benefit of hindsight, this would have been preferable, given that the United Kingdom:

a) has adopted the UNCITRAL model law on cross-border insolvency;
b) is no longer subject to the EIR;
c) is the location of the Formula One Group, being the source of television revenue; and
d) has a more commonly utilised restructuring regime, though this is a lesser factor.

Further Information Required

As noted above, we require further information to complete our analysis. The information required includes:

1) a breakdown of loan balances by lender;
2) the governing law of the loan documents and related security;
3) any inter-lender or priority agreements;
4) the current intercorporate accounts;
5) where operations occur, including:
    a. where are accounts paid from?
    b. with whom do creditors liaise?
    c. where are management operations conducted?
    d. when were local directors put in place for Efwon BV and Efwon Romania? Who were the directors before?
6) What is the estimate range of damages for drivers in the litigation?

We look forward to discussing this matter with you further.