INSOL International Global Insolvency Practice Course 2023 / 2024

Case Study II – Part I

By Chi Wai Ian LO

ADVICE

Re: Advice on the restructuring of the Efwon Group

A. Introduction

1. I refer to the information supplied in "Case Study II – Part I" ("**Information Pack**"), and I am instructed to advise Mr. Maximov ("**Maximov**") on the captioned matter. Unless otherwise specified, this advice shall adopt the definitions and nomenclatures set out in the Information Pack.

2. The particular issues that I am instructed to advise are as follows:-

   (1) How to facilitate the deal with KuasaNas (Section B);
   (2) How to save the Maximov F1 team (Section C); and
   (3) How to best safeguard Maximov's position at the same time (Section D).

3. Further, Maximov's general counsel ("**General Counsel**") has indicated that this advice should address the following matters:-

   (1) Proposed strategy for dealing with the group and its various stakeholders;
   (2) Whether one or more insolvency proceedings or (preventative) restructuring frameworks are required to achieve the goal of selling a stake in the group to KuasaNas (assuming the intended contract receives government clearance);
   (3) Where and how these proceedings will take place;
   (4) How these proceedings may (or may not) interact or influence each other;
   (5) What impediments may exist to proceedings taking place;

(6) What advantages / disadvantages may exist in relation to proceedings being organised in the way I propose;

(7) The factors that will allow me to determine the above;

(8) Any further facts or information that may be needed to answer the questions / solve the situation;

(9) Where I envisage the application of the European Insolvency Regulation and/or UNCITRAL Model Law and/or other international instruments in achieving this;

(10) In particular, how the provisions of these texts may assist or impede the strategy I propose to implement;

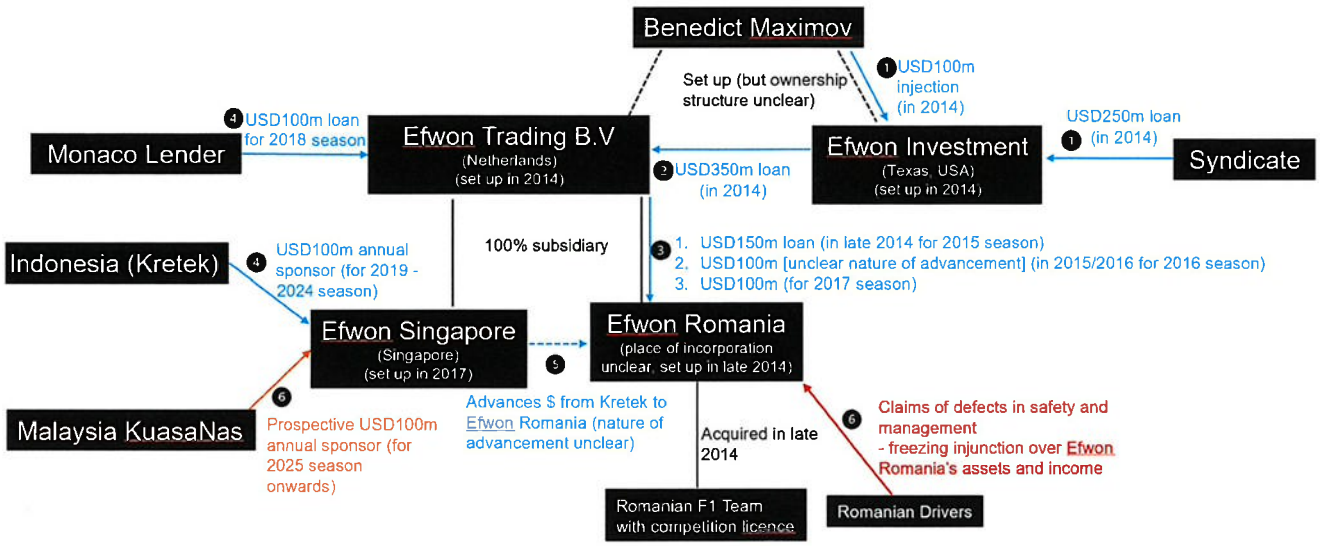
(11) Should Efwon (with hindsight) have structured through England rather than the Netherlands; and

(12) What will the outcome for each of the various stakeholders be, are they likely to accept the same and, in case they will not, can they be forced to accept them.

This advice will incorporate, as far as possible, the foregoing pointers requested by the General Counsel as I address Maximov's queries.

4. This legal opinion is given solely for the benefit of the addressee. Except with my express prior written consent, this legal opinion shall not be relied upon by any other persons and/or for any other purposes. For the purposes of this opinion, I have made the assumptions set out in the schedule hereto.

5. For ease of understanding, a relationship chart of the parties is as follows:-



B. The Deals with KuasaNas

6. As provided in the Information Pack, KuasaNas is a Malaysian state company who is likely to be able to offer funding in excess of USD100m annually from 2025 onwards, an ideal candidate in place of the Indonesian Kretek who indicated informally their doubts about renewing their current sponsorship.

7. There are two potential hurdles in considering the deal with KuasaNas. First, the intended contract must pass the Malaysia government review before it could be consummated. Second, the insolvency issue must be dealt with promptly before the deal with KuasaNas could be closed.

B1. The Malaysian Government Review

8. Whilst the Independent Business Review ("**IBR**") suggests that it is unrealistic for the Efwon Group to timely find another investor apart from KuasaNas, and thus KuasaNas' deal appears to be the only hope for Efwon Group to deal with the current insolvency situation, the intended contract with KuasaNas would need to pass the Malaysian government review because the new Malaysian government post mid-

2024 election has a priority to review actual or intended contracts with state companies due to the allegation of rampant corruption under the previous regime.

9. Referencing "Preventing Corruption in Public Procurement" published by the Organization for Economic Co-operation and Development ("**OECD**"), common corrupt acts include: embezzlement, undue influence in the needs assessment, bribery of public officials involved in the award process, or fraud in bid evaluations, invoices or contract obligations. However, viewing the facts carefully from the Information Pack would suggest it is unlikely that any of the aforementioned elements is involved in the Efwon Group's intended contract with KuasaNas.

10. First of all, there are tangible benefits for KuasaNas in agreeing to grant a USD100m annual funding. The most obvious one is that KuasaNas would be able to acquire a majority stake (51%) in Efwon's racing team, which is ranked the 6th place, only behind dominant manufacturer teams such as Renault, BMW, Toyota, Honda and Ferrari. This in and of itself is a valuable asset, particularly when the F1 competition is stated to be very exclusive where only limited number of licences were in circulation at the first place and interested teams are required to earn their places for those licences.

11. Secondly, as a company supplying alternative energy fuels, acquiring Efwon's racing team could be an effective way to promote the KuasaNas branding to the international community, since the F1 competition is described as a prestigious event held at circuits all over the world. As mentioned in the Information Pack, sports car racing often depends on the 4 key items: electronics, aerodynamics, suspension and tyres. Even though providers for alternative energy fuels such as KuasaNas are not squarely specialists in the manufacture of sports car, it is reasonably understood that both fields involve high-level electronical and mechanical knowledge and technology. Changes in technology are explicitly stated in the Information Pack as an area where substantial amounts are required as re-investment in the team budget. In the event that KuasaNas could effectively utilise its technology in further

advancing Efwon's team ranking in the F1 competition, this would be a significant milestone for both the team and KuasaNas' brand name, thereby creating synergy effects such that business confidence in KuasaNas' expertise could be greatly enhanced.

12. Thirdly, the terms of the deal seem to be in favour of KuasaNas. The usual practice is that a more successful team will be able to charge more from their sponsors.[1] When Kretek first agreed to provide the sponsorship of USD100m in 2019, it had no equity stake in the team, and the team was only placed 10th in the rankings. Over the years, the team has risen in its rank to the 6th place, but KuasaNas is still only contributing the same amount of sponsorship in the sum of USD100m while obtaining the additional benefit of acquiring 51% stake in the team.

13. Last but not least, the intended contract with KuasaNas is unlikely to have been obtained via bribery and/or undue influence in the procurement process. Understandably, there was no bidding process at the first place since (1) the Information Pack provides that Efwon Singapore was the party who initiated the look out for a replacement sponsor, and (2) the F1 competition is such an exclusive sport that a bidding process may be unrealistic. The Information Pack also does not contain any information which would otherwise catch my attention on the possibility of any bribery.

B2. Insolvency Issue before Closing of the KuasaNas Deal

14. In the event that the intended contract with KuasaNas passes the Malaysian government review, one of the pre-conditions for closing the deal will be that the insolvency issues affecting the companies in the Efwon group are dealt with promptly.

---

[1]Paddock, 5 ways Formula 1 makes money, <Accessed on 17 April 2024: https://www.thepaddockmagazine.com/5-ways-formula-1-makes-money/>

15. The insolvency issues stem from the claim brought by the injured Romanian drivers, who cited defects in safety and management against Efwon Romania for "substantial compensation" in the Romanian Court. As part of the driver's "strategy and as an interim measure", their lawyers have filed for insolvency against Efwon Romania, and the Romanian courts have granted freezing injunctions over Efwon Romania's assets and income. This is expected to trigger a chain default effect within the Efwon group, as it places Efwon Romania in the position of defaulting on its payments to Efwon Trading, which in turn possibly causes the Efwon Trading to default its obligations to Efwon Investment and the Monaco Lender.

16. While Romania has adopted the UNCITRAL Model Law on Cross-Border Insolvency (the "**ML**"), which provides a uniform set of rules for the recognition and enforcement of foreign insolvency proceedings, the Romanian drivers' application seems to fall exclusively on the local Romanian civil procedure law (as it does not involve any cross-border elements) and thus would require Romanian counsel in properly identifying any loopholes in their application.

17. Subject to the Romanian legal advice, I understand that *"[Romanian] companies that are subject to insolvency/bankruptcy proceedings may not be subjected to interim measures. However, in specific cases under Romanian insolvency law, the insolvency judge may grant limited interim measures but only in relation to the assets of those directors of the company who allegedly caused the company's insolvency."*[2] However, the freezing injunction obtained by the drivers pertains to "the company's assets and income" instead of the directors'. Thus, it is unclear as to the legal basis for the drivers to file against Efwon Romania for both insolvency and freezing injunction as interim measure. If the above understanding on Romanian law is correct, Efwon Romania may consider applying to set aside the freezing injunction granted.

---

[2] CMS, Interim Measures in Romania, §3.2.2 <Accessed on 17 Apr 2024: https://cms.law/en/int/expert-guides/cms-expert-guide-to-interim-measures/romania>

18. Further, even if interim measures were available to the drivers despite insolvency proceedings had been filed, it appears to be a common practice that the Romanian court will order the applicant to pay security in an amount set by the court of up to 20% of the value of the asset that is subject of the freezing application.[3] However, on the facts, the drivers seemed to have bypassed this step, and it is unclear whether Efwon Romania had made such an application for security, or was it a case where such application had been made but had been unsuccessful. If no such application for security has ever been made against the drivers, and Romanian law still permits making such an application after the interim measure had been ordered, it is advisable that Efwon Romania explores this option as it would expectedly exert pressure on the drivers, potentially forcing them to retreat from their insolvency and/or freezing application; or at least cultivate a more favorable environment for Efwon Romania to conduct negotiations with them.

19. Alternatively, if an application for security against the drivers is not feasible, one way out of this situation is to either (1) settle with the Romanian drivers, or (2) engage Romanian counsel to explore giving an undertaking / payment into court a certain sum of money in order to unfreeze the injunction as soon as possible while the proceedings with the drivers are still pending, so as to allow Efwon Romania to satisfy its payment obligation to Efwon Trading in time, which would allow Efwon Trading to fulfil its payment obligations towards the upper layers of the Efwon Group and the Monaco Lender, thereby restoring stability at all levels in the Efwon Group.

20. On the facts, this may be done by utilising the funds to be provided by KuasaNas, since the Information Pack indicates that KuasaNas would be willing to pay part of the total consideration for the deal directly on the closing.

C. <u>Save the Maximov F1 team</u>

21. Once the immediate insolvency issue mentioned in Section B stops lingering on

[3] *ibid*, §3.2.4

Efwon Romania (and hence the Efwon Group as it would eliminate the chain default effect), the Efwon Group would be in a more ready position to consider strategising forward to save the Maximov F1 team for the long term.

22. In this regard, the IBR concluded that Efwon Group will need to improve operations to be more cost efficient. It is recommended that Efwon Group considers reorganisation, which consists of (1) business restructuring and (2) financial restructuring.

C1. Business Restructuring

23. Business restructuring comprises "concrete strategic, operational, and financial plans to reach a level of healthy and sound management."[4] It is observed that the main costs for the F1 competition are "machines and drivers", "particularly in light of changes in the technology and enhanced safety requirements". However, cutting costs in these areas does not seem to be wise for the long term — lack of continuous technological improvements will most likely hinder the Maximov F1 team's rankings and as such its broadcasting revenue and ability to attract sponsorships; non-compliance with safety requirements will most likely give rise to penalty and/or suspension in the race by the F1 organisation, and/or substantial employee compensations claims.

24. The Information Pack states that Maximov F1 team was "not quite able to break the dominance of the manufacturer teams: Renault, BMW, Toyota, Honda, and Ferrari". However, in view of the fact that there has been a budget cap at USD135m for the core costs of a team since 2021, theoretically Maximov F1 team only requires extra fundings of USD35m per year in addition to the USD100m already provided by its sponsor to be in a position to financially rival (which allows Maximov F1 team to invest as much as other top tier teams in more advanced machineries and better

[4] Adriaanse and Kuijl, Resolving Financial Distress: Informal Reorganizations in the Netherlands as a Beacon for Policy Makers in the CIS and CEE/SEE Regions? P.140

drivers etc). With this in mind, it is advised that Maximov explains this position to KuasaNas in order to align both stakeholders' objective.

C2. Financial Restructuring

25. Business reorganisation aside, this advice will focus on the evaluation on the prospect, as well as means to execute a financial restructuring, which is the key to clear away the burden from the past. Financial restructuring will involve gathering the creditors to commit to revised terms with regard to the fundings they made available, and to make available the new debt and equity providers (i.e. new funders and shareholders).

Types of Financial Restructuring

26. Financial restructuring may be done informally (i.e. taking place outside the statutory framework), or formally (i.e. in accordance with statutes).

27. It is advised that the Efwon Group first explores the option of informal financial restructuring as it offers benefits such as flexibility, confidentiality and control compared to most formal reorganisation.[5] For example, while Netherlands and the USA's statutory restructuring regimes both permit debtor-in-possession (i.e. former management to continue to run a company subject to restructuring)[6][7], Romania would require a "judicial administrator" to manage the debtor company soon after insolvency proceedings are initiated [8] – which means that Maximov and/or KuasaNas might have the risk of losing their control over their management in Efwon Romania if formal restructuring procedures are sought locally. It should be noted

---

[5] Adriaanse and Kuijl, Resolving Financial Distress: Informal Reorganizations in the Netherlands as a Beacon for Policy Makers in the CIS and CEE/SEE Regions? P.146
[6] Clifford Chance, Clifford Chance, 2022, The Dutch Scheme of Arrangement Information Memorandum
[7] United States Court, Chapter 11 – Bankruptcy Basics <Accessed on 18 April 2024: https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics#:~:text=This%20chapter%20of%20the%20Bankruptcy,seek%20relief%20in%20chapter%2011. >
[8] CMS, Restructuring and Insolvency Law in Romania <Accessed on 18 April 2024: https://cms.law/en/int/expert-guides/cms-expert-guide-to-restructuring-and-insolvency-law/romania>

though, that under both the ML and European Insolvency Regulation ("**EIR**"), debtor in possession restructuring is available.

28. Further, since the companies in the Efwon Group are incorporated in different jurisdictions (namely, Texas, Netherlands, Romania and Singapore), formal reorganisation in the current scenario would involve the interplay of cross-border insolvency laws (US, Romania and Singapore are signatories to the ML, whereas Netherlands and Romania adopt the EIR), thereby greatly increasing the complexity involved.

29. On the other hand, formal restructuring procedures would be recommended in the event that creditors of the Efwon Group are unable to reach a consensus as to the informal restructuring proposal, so that features such as cross-class cram-down (available in the US via Chapter 11, in the Netherlands via WHOA[9]) may be engaged, meaning that dissenting creditors who are unwilling to agree to the restructuring would be compelled to do so.

30. Further, in the case where there is imminent risk of default, formal restructuring procedures may be helpful as all relevant jurisdictions of the present case (the USA, Netherlands[10] and Romania[11], as well as their adopted ML and EIR) have made available moratoriums, thereby offering some breathing space for the Efwon Group to resolve its payment liabilities.

The Efwon Group's financial position

31. The Maximov F1 team is structurally held by Efwon Romania. The total amount of debt of Efwon Romania is approximately USD950m, which arose from the following creditors:-

---

[9] Clifford Chance, 2022, The Dutch Scheme of Arrangement Information Memorandum
[10] Clifford Chance, 2022, The Dutch Scheme of Arrangement Information Memorandum
[11] Deloitte Legal, July 2023, A guide to pre-insolvency and insolvency proceedings across Europe, p.51

(1) Efwon Trading for:-

(a) lending Efwon Romania USD150m for the 2015 racing season, which were secured on the team's share of broadcasting revenue;

(b) funding (assuming by way of loan) Efwon Romania a further USD100m for the 2016 racing season; and

(c) funding (assuming by way of loan) Efwon Romania a further USD100m for the 2017 racing season;

(2) Monaco Lender for USD100m loan with high interest rate to Efwon Trading, but since the loan was secured with (a) "secured revenues of Efwon Romania"; and (b) corporate guarantee of Efwon Romania, the Monaco Lender would be regarded as a creditor of Efwon Romania;

(3) Potentially Efwon Singapore for advancing a total of USD500m of Kretek's sponsorship for the 2019-2024 racing seasons (such advancements were presumably by way of loans, rather than capital injection, as there is no shareholding relationship between Efwon Romania and Efwon Singapore).

32. Efwon Trading's total amount of debt is USD450m, which arose from the following creditors:-

(1) Monaco Lender for USD100m (as mentioned in paragraph 31(2) above); and

(2) Efwon Investment for USD350m in 2014.

33. Efwon Investment's total amount of debt is in turn USD350m, which arose from the following creditors:-

(1) Syndicate for providing USD250m loan to Efwon Investment in 2014. At the same time, this loan is secured by various securities — including pledges on the projected revenue, pledges over the shares of Efwon Investment etc, but not a guarantee from Efwon Romania; and

(2) (Potentially) Maximov since he "put" USD100m of his own money into Efwon Investment in 2014 (though it is unclear whether this was a capital investment or a loan).

34. All in all, the total debt incurred by the Efwon Group (namely, Efwon Romania, Efwon Trading, and Efwon Investment) are around USD950m (with USD250m owing to the Syndicate; USD100m owing to Monaco Lender, USD500m potentially owing to Efwon Singapore, and USD100m potentially owing to Maximov personally). This has not taken into account the potential monetary claim from the drivers since they have yet to be awarded a judgment for their claims.

35. On the other hand, it is unclear how much revenue and profits Maximov F1 team is able to generate per racing year based on its current ranking — the only available information is that when Maximov F1 team ranked 17th in 2015 season, the return of Efwon Romania was USD30m; and when Maximov F1 team's ranking rose to 10th in 2016, the return was USD60m. This would be a crucial factor in determining the strength of bargaining power for the Efwon Group in trying to persuade its creditors to voluntarily agree to a restructuring proposal, as well as how the restructuring plan should be designed at the first place.

The legal framework of the restructuring

36. In a case of group companies, due to the involvement of companies incorporated in multiple jurisdictions, unless restructuring proceedings can be coordinated across all the relevant jurisdictions, it is unlikely that the group as a whole can be reorganised. A classic case which demonstrates the promising outcome of a well-executed restructuring plan can be exemplified by the case of Re Collins & Aikman Europe SA and other companies [2006] EWHC 1343 (CH).[12]

[12] The Collins & Aikman Group was a leading supplier of automative components that was headquartered in Michigan USA. In addition to its operations in the US, it had 24 companies spread over 10 countries in Europe, including 6 in England and one in Spain. The group fell into financial straits, and administration proceedings were commenced in England in relation to the 24 European companies. The English court concluded that England was the COMI for these companies. the English administration proceedings were therefore the main proceedings. However, there was

37. In the present context, in the event of defaults of the Efwon Group in its repayment obligation, the Monaco Lender may commence insolvency proceedings against both Efwon Trading and/or Efwon Romania, and the Syndicate may commence insolvency proceedings against Efwon Investment and/or enforce its share pledges over Efwon Investment and/or Efwon Trading. Accordingly, the Efwon Group must initiate the right actions in the right jurisdictions to ensure that enforcement actions of the Monaco Lender and the Syndicate could be handled.

38. In view of the above, this advice recommends coordinating the restructuring efforts between Efwon Trading and Efwon Romania through Chapter V of the EIR, then making use of ML to seek assistance / cooperation from Texas Court on the restructuring plan from an early stage and before application for recognition is made so as to ensure that the enforcement actions could be restrained.[13]

39. Chapter V of the EIR titled "Insolvency Proceedings of Members of a Group of Companies" (articles 56 to 77), which is applicable to both Romania and Netherlands as they are both EU Member States, would be helpful to coordinate insolvency proceedings, which include "debt settlement arrangements"[14], with regards to Efwon Trading and Efwon Romania. For clarity, article 76 specifically provides that any provisions applicable to the "insolvency practitioner" under Chapter V shall also apply to the debtor in possession, meaning that Efwon Trading and Efwon Romania have the option to seek for debtor in possession restructuring. To this end, Maximov and/or KuasaNas might still retain the control of the

---

inevitable risk of non-main or secondary proceedings being commenced by local creditors. For example, Spanish insolvency law contained equitable subordination provisions which would accord the Spanish trade creditors more favourable treatment than they would receive under English insolvency law, and these creditors therefore threatened to open secondary proceedings in Spain. Recognizing this, administrators assured all foreign trade creditors that their claims would be dealt with in accordance with the relevant foreign insolvency law of their debts, thus safeguarding any favourable rights they might be able to assert but without the need for any actual secondary proceedings to be opened. After completion of asset realisation exercise, the administrators sought provisional approval from the English Court to distribute the assets in accordance with the assurances they had given the foreign creditors, which was very much readily supported by the English Court. Eventually, virtually all jobs were saved and the business was sold as a going concern and continues successfully today as a major employer in Europe. (2nd Annual GRR Live New York, Keynote Address, Synthesising Synthetics: Lessons learnt from Collins & Aikman, 26 September 2018)

[13] UNCITRAL Model Law On Cross-Border Insolvency With Guide to Enactment and Interpretation, p.30 & 31

[14] Annex A of the EIR

management of Efwon Trading and Efwon Romania notwithstanding the commencement of Chapter V proceedings.

40. To establish the applicability of Chapter V of EIR, applicant must show that the centre of main interests ("**COMI**") of the debtor is located within the European Union. I do not anticipate this to be problematic as the place of registered office is presumed to be the COMI in the absence of proof to the contrary.[15] Thus, the Netherlands Court and the Romanian Court shall have the jurisdiction for Efwon Trading and Efwon Romania respectively.

41. In relation to how Chapter V of the EIR could specifically assist in the present case, Article 57(1) of the EIR provides "where insolvency proceedings relate to two or more members of a group of companies, a court which has opened such proceedings shall cooperate with any other court…". Such cooperation includes the coordination in the appointment of insolvency practitioners (which may be a single insolvency practitioner for several insolvency proceedings concerning different members of a group[16]), coordination of the conduct of hearings, and coordination in the approval of protocols where necessary etc.[17] Such protocols may be specific or generic.[18]

42. Further, the EIR provides for the commencement of "group coordination proceedings" in which a coordinator may be appointed for group insolvency proceedings (the coordinator cannot be one of the insolvency practitioners of the group companies, since he or she represents the interests of the group as a whole). The coordinator's mandate is to coordinate the insolvency proceedings of the group companies and to propose an integrated approach to the resolution of the group

---

[15] Art3(1) of the EIR
[16] §50 of Official Journal of the European Union, Regulation (EU) 2015/848 of the European Parliament and Of the Council of 20 May 2015 on insolvency proceedings
[17] Article 57(3) of the EIR
[18] Simple generic agreements may emphasise the need for close cooperation between the parties, while specific agreements may establish a framework of principles to govern multiple insolvency proceedings and may be approved by the courts involved, where the national law so requires (§49 of Official Journal of the European Union, Regulation (EU) 2015/848 of the European Parliament and Of the Council of 20 May 2015 on insolvency proceedings)

members' insolvencies (e.g. a restructuring plan).[19]

43. Concurrently, the insolvency practitioner appointed by the Dutch court and/or the Romanian court may apply for direct access to the Singaporean and/or Texas courts in the capacity of foreign representative[20], and to commence local proceedings under Article 11 of the ML pursuant to Singapore's Insolvency Restructuring and Dissolution Act and US' Chapter 11[21], thereby potentially applying for a moratorium against enforcement actions of the Syndicate against Efwon Investment; and if necessary, apply for recognition of the Dutch and/or Romanian proceedings in which the insolvency practitioner was appointed.[22] Since there is an absence of requirement for reciprocity in the ML[23], this means even though the Netherlands is not a signatory to the ML, Netherlands Courts may still seek assistance from the US Courts.

44. Further, enforcement actions by the Monaco Lender against Efwon Trading and/or Efwon Romania, and enforcement actions by the Syndicate over the share pledge of Efwon Trading may be stayed on the application of insolvency practitioner in the relevant jurisdictions provided that requirements under article 60(1)(b) of EIR are met.[24] The coordinator may also request a stay of insolvency proceedings commenced for any of the group companies for a period up to 6 months in the Netherlands and/or Romania, provided that he or she has proposed a group coordination plan and that a stay is required to ensure its implementation.[25] Of

---

[19] Jones Day, Group Insolvency Proceedings Under the Revised EU Insolvency Regulation https://www.jonesday.com/en/insights/2017/05/group-insolvency-proceedings-under-the-revised-eu-insolvency-regulation

[20] Article 9 of the ML

[21] UNCITRAL Model Law On Cross-Border Insolvency With Guide to Enactment and Interpretation, p.57

[22] Article 15 of the ML

[23] INSOL International, Cross-Border Insolvency II, A Guide to Recognition and Enforcement, October 2012, p.iv

[24] The requirements are:-
"(i) a restructuring plan for all or some members of the group for which insolvency proceedings have been opened has been proposed under point (c) of Article 56(2) and presents a reasonable chance of success;
(ii) such a stay is necessary in order to ensure the proper implementation of the restructuring plan;
(iii) the restructuring plan would be to the benefit of the creditors in the proceedings for which the stay is requested; and
(iv) neither the insolvency proceedings in which the insolvency practitioner preferred to in paragraph 1 of this Article has been appointed nor the proceedings in respect of which the stay is requested are subject to coordination under Section 2 of this Chapter"

[25] Article 72(2)(e) of EIR

course, in the most ideal scenario where insolvency practitioner could handle the concerns of Efwon Group's creditors elegantly, such application for stay might not be necessary at the first place.

45. At last, if the stakeholders of the Efwon Group are able to agree on a restructuring plan, the insolvency practitioner can then proceed to seek sanction of the same in the Netherlands and Romania, and thereafter seek a recognition and assistance of such plan in Singapore and/or Texas. Upon recognition, the insolvency practitioner (being named as foreign representative in Singapore and/or Texas) would be entitled to participate in insolvency-related proceedings conducted in Singapore and/or Texas[26], to initiate in Singapore and/or Texas an action to avoid or otherwise render ineffective acts detrimental to creditors[27], and to intervene in Singaporean and/or Texas proceedings in which debtor is a party.[28]

46. To conclude for this section, the steps necessary would be as follows:-

(1) Start an EIR Chapter V coordinated restructuring proceedings in the Netherlands and Romania regarding Efwon Trading and Efwon Romania;

(2) Once EIR Chapter V proceedings are commenced, its insolvency practitioner appointed by the relevant court may, in its capacity as "foreign representative", commence insolvency proceedings in Singapore and/or Texas under Article 11 of the ML. That way, the insolvency practitioner may apply for stay of enforcement proceedings against the Syndicate from enforcing their share pledge over Efwon Investment;

(3) At the same time, the insolvency practitioner may apply for a stay of enforcement actions against the Monaco Lender and the Syndicate with regards to Efwon Trading and Efwon Romania under Article 60(1)(b) of EIR;

(4) The insolvency practitioner (which is in charge of Efwon Trading, Efwon Romania, and Efwon Investment at this point) may then commence "group

[26] Article 12 of the ML
[27] Article 23 of the ML
[28] Article 24 of the ML

coordination proceedings", where restructuring plan which sufficiently take into account of all creditors' interest of the Efwon Group may be drawn up; and

(5) After the restructuring plan is agreed by sufficient creditors, to apply for such plan to be sanctioned by the EIR proceedings, and thereafter the insolvency practitioner may apply for its recognition and assistance in Texas and Singapore.

Particulars of the restructuring plan

47. Particulars of the restructuring plan often involve the input of professional financial advisors, and ultimately come down to commercial considerations between the relevant stakeholders, including the debtor companies, the ultimate shareholders, and the creditors.

48. On this note, it would be difficult for any advisors to (1) understand Efwon Group's position holistically (particularly on its "liquidation value" and "reorganisation value", concepts known under US Chapter 11 procedure and European Directive on Preventive Restructuring Frameworks[29]), (2) suggest a comprehensive and tailor-made restructuring proposal, and (3) assess the feasibility of the restructuring proposal, unless and until the following information are provided:

(1) The nature of advancement regarding the USD100m which Maximov "put" into Efwon Investment;
(2) The nature of advancement regarding the USD500m of Kretek's sponsorship which Efwon Singapore "fund"ed towards Efwon Romania;
(3) The repayment schedule in relation to the loans from the Monaco Lender;
(4) The amount of repayment that are already repaid to each respective creditors; and the outstanding indebtedness as of now (given that the Information Pack

[29] Under the European Directive on Preventive Restructuring Framework, the restructuring plan can only be confirmed if the going-concern value of the company exceeds its liquidation value proving that the underlying business is viable.

states that some of the revenues have begun the upstream flow of repayments to Efwon Trading and Efwon Investment);

(5) Whether any event of defaults has already taken place as per the loan agreements;

(6) Whether the interest rates prescribed in respect to the loan from the Syndicate and the Monaco Lender respectively would surge upon an event of default occurs;

(7) The Syndicate and the Monaco Lender's attitude towards negotiating restructurings with the Efwon Group; and

(8) The form and deal structure of which KuasaNas would effect its acquisition in 51% stake in the Maximov F1 team (i.e. whether through acquiring the shareholding in Efwon Investment, Efwon Trading, or Efwon Romania).

49. However, what is clear is that the syndicated loan granted in 2014 is about to fall due (since the Information Pack states that "syndicate loan is to be repaid in 10 years" i.e. in around 2024). It is strongly advised that the restructuring plan would involve deferral in repayments to the Syndicate, otherwise once an event of default occurs, "proceedings to foreclose on the security provided to [the Syndicate]" may become more imminent.

50. Realistically, banks would often require additional securities and/or new circumstances to agree on deferral. On the facts, given that (1) Maximov F1 team has a proven track record of advancing through the rankings over the years, (2) the additional resources to be afforded by KuasaNas with regards to the use of Sepang GP racetrack and drivers sufficiently qualified to be able to obtain Super Licenses, (3) KuasaNas' proposed acquisition of the majority stake in the Maximov F1 team, which entails change in both ownership and management of the Maximov F1 team (subject to the actual particulars of the relevant contract), Efwon Investment may stand a chance at persuading the Syndicate to extend the repayment deadline.

51. Further, it is highlighted that the interest rate of the loan advanced by the Monaco

Lender is "high" (though the specific rate is not provided), whereas the loan advanced by the Syndicate was not given such a description. In light of this, from a cost saving point of view, we recommend the Efwon Group to explore first prioritising repayment towards the Monaco Lender, and afterwards deal with its repayments towards the Syndicate. Alternatively, to bargain for reducing interest obligations with the Monaco Lender (and/or even better, with the Syndicate as well).

Whether Efwon Trading should have been structured through England rather than the Netherlands in hindsight

52. Apart from Romania, the ML is adopted by Singapore, UK, as well as the US, but not the Netherlands. UK is not part of the European Union and as such, the EIR is not applicable. This means that had Efwon Trading been structured through England rather than the Netherlands, any cross-border insolvency recognition, relief, and cooperation between Efwon Singapore, Efwon Investment, Efwon Trading and Efwon Romania would have been based on an uniform approach to cross-border insolvency by using the ML, rather than involving the mix of both EIR and ML as recommended above.

53. While this might seem to be more streamlined, it is important to remember that the EIR and ML have completely different roles. In summary, the EIR determines jurisdiction to commence proceedings and the applicable law for conduct of proceedings commenced in the relevant member states of the European Union, so the EIR essentially replaces certain national rules of private international law[30]; whereas the ML is a post-commencement resource to aid realisation of assets in foreign proceedings.[31]

54. What this means is that ML essentially only unifies cross-border insolvency techniques and notions such as (1) doctrine of comity by courts in common-law

[30] §66 of Official Journal of the European Union, Regulation (EU) 2015/848 of the European Parliament and Of the Council of 20 May 2015 on insolvency proceedings
[31] INSOL International, Cross-Border Insolvency II, A Guide to Recognition and Enforcement, October 2012, p.iv

jurisdictions such as in the US, UK, Singapore and (2) issuance for equivalent purposes of enabling orders (exequatur) in civil law jurisdictions such as in the Netherlands and Romania[32], but is not intended to create substantive rights.[33] In this case, local restructuring proceedings will have to be first filed at the COMI of the Efwon Group, which is likely Romania, as the Maximov F1 team is structurally held thereunder, and afterwards have the judicial administrator recognised in each of Singapore, England, and Texas.

55. On the flip side, creditors' enforcement actions (i.e. filing of insolvency) would be easier to be recognised across the four jurisdictions, thereby potentially decreasing the incentive for the creditors to participate in any restructuring proposals, as it removes the legal hurdles in insolvency proceedings.

D. Maximov's position

56. It is observed that with regards to Maximov's position, he has not given any personal guarantee to any loans granted by the Syndicate nor the Monaco Lender. This is a positive sign as Maximov is unlikely to be subject to any bankruptcy application (assuming that his provision of security in relation to his homes are limited to the properties only, but would not impose personal obligations to repay the shortfall of the debt).

57. At the same time, the followings are at stake for Maximov:-

    (1) His own money of USD100m which was "put" in Efwon Investment;
    (2) A number of his homes across the world worth some USD75m as security for the loan from the Syndicate; and
    (3) His ownership of Maximov F1 Team.

[32] UNICTRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, p.21
[33] UNICTRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, p.32

58. If Maximov's own money of USD100m is advanced as loans in Efwon Investment, then Maximov might still have a chance to recover the sum should Efwon Investment be declared bankrupt (however, if the loan is advanced without any security, such loan would still rank below that of the Syndicate's and the Monaco Lender's in terms of Efwon Group's repayment priorities).

59. On the other hand, if Maximov's USD100m was advanced by way of capital injection, based on the current financial outlook of the Efwon Group, Maximov is unlikely to be able to recover such investment.

60. As to Maximov's security in relation to his houses, the key here would be to push for the success for the proposed restructuring plan. If the restructuring negotiations fail, on the facts provided as of now, presumably his houses would be subject to enforcement by the creditors.

61. As to Maximov's ownership in the F1 team, given the opinion given by IBR, which specifically states that it is unrealistic to timely expect to find another partner / investor apart from KuasaNas, it is unlikely that Maximov would be able to maintain his full ownership in the F1 team. Nonetheless, in the intended contract between Maximov and KuasaNas, clauses granting special voting rights to Maximov might be attempted such that even though KuasaNas has obtained the majority stakes, Maximov still maintains a certain degree of decision-making powers within the F1 team.

E. Conclusion

62. The Efwon Group is now encountering financial difficulties. The freezing injunction obtained by the drivers in the Romanian Court is likely to trigger cross-default in multiple levels of the group companies, which would in turn create an imminent risk of bankruptcy to those companies. The fact that group companies under the Efwon Group are incorporated in different jurisdictions has rendered any restructuring

efforts to be more difficult.

63. However, this advice sets out the relevant legal frameworks of the restructuring regimes under EIR and ML, which offer a possible way out for Efwon Group to commence a holistic restructuring of its debts in multiple jurisdictions while possibly maintaining the debtor in possession – i.e. with Maximov retains its control over the management. The interest of KuasaNas in investing in the Efwon Group together with the roadmap set out in paragraph 46 above may be able to tender a solution to both the Efwon Group and the creditors.

64. In view of the above, it is advisable for Maximov and the Efwon Group to approach the financial advisors and legal counsel in the Netherlands, Romania, Singapore and Texas to design the restructuring plan, and thereafter appoint the insolvency practitioner and coordinator to approach the creditors of the Efwon Group, so that the restructuring plan could be implemented in time.

Schedule – Assumptions

(1) I am qualified to give legal advice under the laws of Hong Kong only and I express no opinion on the laws of other jurisdictions. While I strive to provide accurate and up-to-date information within the scope of the relevant legal framework, it is essential to acknowledge that my advice may not encompass the laws and regulations of other jurisdictions. Mr. Maximov should be aware that seeking legal opinions from professionals qualified in the relevant jurisdictions may be necessary when dealing with cross-border matters or situations that involve laws. I encourage Mr. Maximov to consult with experts familiar with the specific legal requirements of the jurisdictions in question to ensure comprehensive and reliable guidance;

(2) The authenticity and completeness and (where copies are provided) conformity with the original of the relevant documents;

(3) The relevant documents have not been terminated or amended, subsequent to its execution or implementation, orally by the parties, by conduct or by a course of dealing without us being aware;

(4) All of the information supplied was accurate, complete and not misleading when given, and continues to be so;

(5) Apart from the matters set out in this legal opinion, there is no other event, document, record, related data or information which may be relevant and not have been made available for the purpose of issuance of this advice; and

(6) I have not taken any steps to verify the assumptions stated above and assume, with respect to the addressee of this opinion, that the addressee do not know or suspect that any of those assumptions is incorrect.