**STRATEGY MEMORANDUM FOR BENEDICT MAXIMOV**

This strategy memorandum has been prepared per your request for advice as to how to facilitate the deal with the KassaNas, save the Maximov F1 team and best safeguard your position in the light of the foregoing.

We look forward to discussing once you have had an opportunity to consider. Given the imminent risks and the time any plan will take to implement, we suggest that, if you would like to proceed, next steps should be taken imminently. As well as firming up the proposed course of action by reference to additional information that you provide, it will also be necessary for tax advice to be sought to understand the implications of the proposed restructuring (both for the Group and for you personally).

We use the term “Group” to refer collectively to Efwon Investments (Texas), Efwon Trading (Netherlands), Efwon Romania (Romania) and Efwon Singapore (Singapore).

**OVERVIEW**

**Your Goals:**

* Facilitate the deal with KuasaNas.
* Save the Maximov F1 team and best safeguard your position.

**Your Direct Exposure:**

* US$75 million properties provided as collateral.
* Your pledged shareholdings in the Group.

**Real and immediate risks:**

* The Syndicate enforces the security over your properties and your shareholdings.
* The Romanian entity goes into the insolvency proceedings and triggers the loss of the Super Licence.[[1]](#footnote-1)
* The Monaco lender takes steps to enforce its security.
* FIA withdraws the licence.
* Local directors take unilateral action.
* KuasaNas backs out of the deal.

**Based on the fact that the IBR indicates that making the KuasaNas deal work is the only viable option at this stage, our suggested solution is to:[[2]](#footnote-2)**

1. Agree standstill arrangements with stakeholders in the short term to ensure that a restructuring can be conducted in an orderly manner
2. Prepare a restructuring plan that will ideally enable:
	1. Ownership 49:51 between you and KuasaNas (while recognizing that it may be necessary for you to cede some of your ownership to creditors to facilitate the deal).
	2. A new operating entity to be formed, unsaddled by historic issues, which holds the Super Licence and benefits from the KasaNas sponsorship.
	3. The historic debt to be restructured (including repayment / discharge of the expensive debt).
	4. The operations to proceed more efficiently going forwards (as identified in the IBR).
3. Use the Dutch WHOA process, with ancilliary Chapter 15 protection in the US, to implement the restructuring plan of the Group so there is a new company (or group, if preferred), unencumbered by the historic issues, that operates the Super Licence going forwards with the business efficacies anticipated by the move to Malaysia.[[3]](#footnote-3) We currently recommend this process over other legal options because of (a) the necessity to deal with the Romanian proceedings (which are key because that entity holds the Licence);[[4]](#footnote-4) (b) its ability to deal with secured debt; (c) the location of the stakeholders and entities, and the (relative) ease of ensuring they are bound by the process; and, importantly (d) speed of the process.

**Key additional considerations before determining the course of action:**

To ensure the viability of the proposed WHOA / Chapter 15 strategy, we should conduct due diligence to confirm various key facts, including:

* The governing law of all debts and guarantees.
* Details about the operations of each Group company so that determinations can be made about ‘COMI’ (see Section C below for more details).
* The full extent of the assets and liabilities of each Group company, the security granted (including when it can be called and cross-default provisions)[[5]](#footnote-5) and anticipated revenue streams.
* A full list of creditors, shareholders, directors and employees for each Group Company.
* Whether FIA requires the licence to remain in a Romanian entity.

The plan is also contingent upon cooperation from a critical mass of the stakeholders. We have set out below some initial suggestions as to how negotiations could be undertaken. But it would nonetheless be helpful to understand whether you are aware of any factors or information that may enable legitimate and lawful pressure to be exerted against these parties to help in bringing them to the table and/or if there are any other factors that should be taken into consideration in dealing with them.

**Structure of this advice:**

1. The importance of early and clear communication with stakeholders.
2. Tentative conclusions on outcomes that might be acceptable to stakeholders.
3. Analysis of ‘COMI’.
4. High level overview of the regimes that we might utilize.
5. Possible step plan.

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1. **The importance of early and clear communication with stakeholders**

Regardless of how you choose to proceed, a necessary first step will be to engage stakeholders, with a view to understanding fully their expectations and bottom-line positions. Based on the information currently available, we consider it will be necessary to engage with:

* The lenders
	+ The US syndicate banks
	+ The Monaco Lender
* The employees of each Group company
* The directors of each Group company
* The shareholders (which is potentially just you and the Group companies, but TBC)
* The FIA
* KuasaNas; and
* Potentially:
	+ Members of the Malaysian Government
	+ Kretek
	+ Any third party appointed over Efwon Romania by the Romanian court

Early negotiations will be necessary not only to help get them on a board with a consensual arrangement, but because persuading them not to take unilateral action for their own benefit will be key to the success of any plan.

We may have more difficulty negotiating with the secured creditors in this respect because they know that there are specific assets that they can enforce against. We will likely need to persuade them that notwithstanding their security, they stand to make better long-term returns by assisting with a restructuring.

We suggest negotiating a formal standstill agreement with at least the lenders (to include a stay on enforcing the security against you and the Group) and the employees (to stay the Romanian proceedings). An initial period of 3 months should be sufficient.

1. **Tentative conclusions on outcomes that might be acceptable to stakeholders**

|  |  |  |
| --- | --- | --- |
|  | **LIKELY GOALS / POINTS THAT NEED TO BE UNDERSTOOD** | **WHAT MIGHT BE ACCEPTABLE / POSSIBLE GOAL OF RESTRUCTURING** |
| **Lenders:** **US Syndicate Banks** | * Maximise returns
* If to have continued involvement, will want comfort that debt will be serviced

*250m loan due for imminent repayment** *2 senior banks (US$ 100m total)*
* *2 mezzanine financial creditors (US$ 60m total)*
* *5 junior financial creditors (US$ 90m total)*

*Interest accruing – last known to be LIBOR+6% (check these are the latest terms)**Security of at least:** *US$75m of BM’s properties*
* *Shares in Efwon Investments*
* *Shares in Efwon Trading*
 | \*\*\* KEY STAKEHOLDER \*\*\*Depending upon the extent that you are willing to provide further funding, it seems likely that some of this funding will still be required going forwards. Potential solutions with the lenders include:* ensuring all interest payments are paid, or paid with a haircut.
	+ As they have valuable security, it is likely that the senior banks will need to be paid in full; but you have more leverage against the mezzanine and junior financers.
* negotiating discharge of the junior financing at a significant discount given that they are likely to be out of the money even if they enforce unilaterally.
* negotiating discharge of the mezzanine debt at a smaller discount.

[Note:* If you seek compromised terms with any of the lenders, they will be eligible to vote on the proposed plan.
* By proposing different terms to the mezzanine and junior creditors they would likely need to be treated as different classes of creditors for the purpose of voting on any plan; and therefore you will need the support of more of them to get the plan over the line.]

Once you have updated budgets regarding anticipated operating costs going forward, you should consider what additional debt  |
| **Lender: Monaco Lender** | * Maximise returns
 | Likely worth trying to pay off this lender:* The debt is expensive (and potentially smaller than many of the other debts)
* No obvious need for them to remain as part of the future operations
* May be able to obtain a haircut on the repayment, if to be paid at the time of closing. But if this approach is taken, it will be necessary to get them to vote as part of the court approvals.

[Note: The decision on which restructuring mechanism is used will affect when this lender can be paid. For example under Chapter 15, a first day motion could be made for immediate repayment; but under the WHOA it’s likely that the payment would need to be made as part of the approved plan] |
| **Employees (seems most likely these are within the Romanian entity)** | It will be necessary to understand what their goals are – in particular, whether they have any desired outcomes beyond financial compensation | \*\*\* KEY STAKEHOLDER \*\*\*Given the Romanian filing, and the inability to cram down employee claims in WHOAs, it is important to get the employees onside.Try to find a settlement figure that is acceptable to them and potentially use KuasaNas’s funding available on completion to pay, at least part, of any settlement (bearing in mind that they are individuals who do not need large amounts of funds imminently, so a staged payment of any settlement is likely to be acceptable). |
| **The Directors of each company** | * To avoid personal liability
 | It will be important to keep the directors onside to ensure that they do not take any independent actions that jeopardise the proposed process and so that they will provide Board approval to file the necessary proceedings.It may be sufficient to simply keep them in the loop; but if any directors are proving particularly difficult you could consider providing a form of guarantee/indemnity in respect of any perceived potential civil liabilities they are concerned about. |
| **The Shareholders** | We are proceeding on the basis that you are the only individual with a shareholding (but please advise if this is not correct).We are working on the basis that you would ideally retain a 49% interest in the group, with your shareholding unencumbered, but that you would be willing to pledge your shares as security as necessary to ensure the future of the re-structured Group.You should also consider the extent to which you are willing to inject further equity into the Group – either to fund the restructuring process and/or to help with the discharge of existing debts. The more you can offer, the easier (and potentially quicker) the process is likely to be. |
| **FIA** | * Ensure stability in the corporate structure that holds the Super Licence
* Ensure that those associated with the corporate structure are suitable individuals / corporations and
 | * Need to ensure that the FIA is on board with the proposed package so that there is no risk of the Super Licence being withdrawn or suspended.
* Will likely require some negotiations to enable operations to be moved to Malaysia (and part of these discussions would involve whether the licence needs to remain in a Romanian entity). However, there may be opportunities in this for FIA:
	+ Potential opportunities to expand their own TV audiences in Malaysia (and Asia more broadly)
 |
| **KuasaNas****(Malaysian state company supplying alternative energy fuels)** | * 51% of Team
* Team moved to Malaysia
* Insolvency issues affecting the Group dealt with

It will be worth understanding how much money might be available at completion, as this will affect the deals that can be offered. | * Consummation of the arrangement seems predicated on the plan being a success, and being completed in as short a time as possible (another reason why the WHOA may be preferable to Chapter 11).
* Will likely prefer that the new group is as unencumbered as possible.
 |
| **Members of the Malaysian Government** | Ensure that the Maximov team is an organization that the government isn’t concerned or embarrassed about being affiliated with. |
| **Kretek** | Assuming that the Kretek arrangement has been fulfilled by both parties, Kretek is unlikely to be a relevant party. However, there is an outside risk that they may make a claim for breach of contract, or similar, that could interfere with any proposed plan. It is therefore important to ensure that good relations are maintained with Kretek and that the arrangement is brought to an end in an orderly manner. |
| **Proposed new drivers** | Arrangements with them need to be secured to ensure the success of the team going forwards. |
| **Any third parties appointed by a court (e.g. liquidators or the “coordinator”)** | [Note – the coordinator (per the EIR needs to be a different person to any insolvency practitioner appointed in respect of any Group company – see EIR Article 71(2)] |

Current “key stakeholders” have been noted above. But it is worth bearing in mind that the importance and significance of stakeholders can vary throughout the process, and as dynamics change. So it is important to ensure that all stakeholders are engaged in a timely and fair manner to ensure the best chance of successfully implementing any plan.

Further, one other important point to bear in mind is that unless the stakeholders are involved in the court process and/or that process is in a country that is properly deemed to have jursidiction over that stakeholder for relevant purposes, then it can be difficult to ensure that those creditors are bound by a court decision. So there are definite benefits to ensuring that all creditors are involved in the court process. This is particularly so if they can be brought onside. But even if they are adverse, assuming that the relevant mechanisms enable their dissent to be “crammed down”, there are still significant benefits to ensuring that they are bound by a court approved plan.

1. **Analysis of ‘COMI’**

The concept of “centre of main interest” (**COMI**) is an important concept in cross-border restructurings, as in many regimes this concept is used to determine which country’s courts and laws will primarily govern the insolvency proceedings. It is a particularly important concept in the European Union and other regions where cross-border legal frameworks apply. It is also highly relevant in the countries where the UNCITRAL Model Law on Cross-Border Insolvency (the **Model Law**) has been adopted and/or adapted in accordance with national legislation. The US, Singapore and Romania (as well as England) have all adopted forms of the Model Law. The Netherlands has not.

It is not always straightforward to determine COMI and it can become a contentious issue, especially when a debtor has moved its operations or when its business activities are spread across various jurisdictions (which seems likely to be the case here). Further, there is not one global definition of COMI, so the test can vary depending upon where it is being applied. That said, in most regimes, including Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), known colloquially as the European Insolvency Regulation (**EIR**), there is a rebuttable presumption that COMI is the country of the debtor company’s registered office (albeit this only applies if the registered office has not been moved in the 3 months prior to the commencement of the insolvency proceedings) (Article 3(1)).

For the purpose of the EIR, COMI is the location where the debtor conducts the administration of their interests on a regular basis and is ascertainable by third parties (Article 3(1)). If a debtor has an establishment in another member state, secondary proceedings can be opened there, which are limited to the assets located in that state. Secondary proceedings are intended to protect the interest of local creditors and are typically restricted to assets located in that state. The EIR encourages coordination between main and secondary proceedings to minimize conflicts and inefficiencies.

The EIR is helpful because it ensures that any insolvency proceedings in one member state (i.e. the members of the European Union, save for Denmark) are automatically recognized in all other member states. Notwithstanding that England is no longer in the EU, parts of the EIR effectively remain applicable, including the concept of COMI, by virtue of legislation enacted in England. This is potentially helpful for groups with operations across Europe because the English “scheme of arrangement” is a popular restructuring regime, particularly where some or all of the debt to be compromised is governed by English law. The Group could therefore take advantage of English processes if one of the companies has its COMI in England, or COMI is in an EU member state (save for Denmark) and it has an establishment in England. However, insofar as we are aware, this option is not available on the relevant facts.

That said, despite the many benefits to the EIR, in the current case, it may also prove somewhat problematic because, if Efwon Romania’s COMI is in Romania, it essentially gives primacy to the existing insolvency proceedings. However, Chapter V of the EIR has provisions to enable cooperation between different courts for the purpose of group coordination proceedings. We would therefore suggest seeking to utilize the provisions in Article 66 to gain control over which court is considered the appropriate court for the purpose of group coordination proceedings, and making the Netherlands the appropriate court for the group coordination. In order to get this over the line, practically, it will be helpful to ensure that everything in the WHOA plan conforms with the requirements of Romanian insolvency law.

1. **High level overview of the regimes that we might utilize**
2. **US: Chapter 11: A restructuring regime**

While on the facts as presented to date, we are not currently recommending to pursue Chapter 11 as a primary option, it is worth understanding the mechanism as it is a good comparator for the other models and, is arguably, the most expansive and developed.

**Purpose of Chapter 11:** Chapter 11 refers to a reorganization proceeding commenced under Title 11 of the United States Code (the “**Bankruptcy Code**”). In a nutshell, Chapter 11 allows either an individual or company to file for bankruptcy protection (the “**debtor**”) and seek to reorganize their financial obligations. The objective of Chapter 11 is to allow the debtor to obtain breathing room from enforcement actions, work out a plan that will ultimately provide creditors with a greater recovery than what they would receive in a liquidation, and ultimately get a “fresh start”.

**Eligibility Requirements for Chapter 11:** The eligibility requirements for Chapter 11 are broad. In general, a company can file a Chapter 11 bankruptcy, regardless of its place of incorporation, provided it has a domicile, principle place of business, or property in the U.S. (see 11 U.S.C. §109(a)). The debtor does not need to be insolvent to file for Chapter 11. It is however necessary for each debtor to file their own application. After (or concurrently) with filing, a group of companies can ask the Court to jointly administer their applications.

We appreciate that given your status you are unlikely to want to be personally the subject of Chapter 11 proceedings, but it is worth being aware that this is an option – particularly if the lenders are uncooperative and you want to stop enforcement against your properties and shareholdings.

**Benefits of Chapter 11**

A Chapter 11 debtor is afforded the following benefits:

* **Debtor in Possession.**Chapter 11 allows the debtor to remain “in possession” of its assets during the proceeding. Section 1107 of the Bankruptcy Code places the debtor in possession in the position of a fiduciary, with the rights and powers of a chapter 11 trustee, and it requires the debtor to perform of all but the investigative functions and duties of a trustee.
* **Automatic Stay.**Upon the filing of a Chapter 11 petition, the debtor is afforded with the protection of an “automatic stay” that is designed to provide breathing room while the debtor seeks to reorganize its finance (11 U.S.C. § 362(a) – albeit, per 11 U.S.C. § 362(b) certain types of actions are carved out). The automatic stay is a broad-sweeping injunction against creditor collection and enforcement actions that is triggered upon the bankruptcy filing without further need to seek relief from the court. The stay applies to most enforcement actions worldwide, including any efforts to foreclose, take discovery, or seek turnover of assets. Creditors (in particular, sophisticated institutions) usually respect the automatic stay; any willful violation of the automatic stay would result in damages. In order for a creditor to pursue its action against the debtor, it would need to file a motion and has the burden of showing compelling circumstances to justify relief from the automatic stay. A secured creditor can seek an order of the court lifting the stay to permit foreclosure on the property and sell it if it is not necessary for the effective reorganization (11 U.S.C. § 362(d)). Therefore, even under this regime (and assuming we are able to extend the stay to prima facie protect against enforcement against your assets, there is still a reasonable enforcement risk unless we can show that those assets are still needed for the effective restructuring.

That said, strictly the extraterritorial stay does not have teeth in a foreign territory unless the foreign court chooses to give it effect. However, the US courts clearly do have the power to deal with any entity and any assets located with the territory of the US.

* **Centralized Forum for Litigation.**As a result of the automatic stay, the Bankruptcy Court typically becomes the central forum for litigation (which may be brought by the debtor or creditors in an adversary proceeding).  This may provide a benefit to a debtor fighting enforcement campaigns in multiple jurisdictions as it can consolidate its legal battles.
* **Plan Confirmation / Discharge of Debt.**Chapter 11 allows a debtor to negotiate a plan that releases it from liability for debts provided for by the plan.  In other words, the debtor will no longer be legally required to pay the debts that are discharged.  Debtors can propose a plan of reorganization that restructure their debt obligations. That said, there are strict plan confirmation requirements that must be satisfied, including with respect to the ability to confirm a plan without the consent of all impaired classes of creditors (known as a “cram down” plan).
* **More Favorable Forum for Negotiation.** The bankruptcy proceedings can provide a more favorable forum for debtors to negotiate a settlement with its creditor, who may be more inclined to accept a plan that pays them less than the value of the debt but gives them more value than pursuing their legal rights. The debtor is likely to have more leverage in a Chapter 11 bankruptcy while (1) the automatic stay is in effect, and (2) the debtor may ultimately propose a plan that could potentially “cram down” the creditor’s claim. In addition, Chapter 11 affords the debtor a 120-day period during which it has exclusive right to file a plan, which can be extended. If the creditor fails to obtain acceptance of the plan before the exclusivity period expires, creditors may file a competing plan though it is less common for creditors to attempt to do so in individual chapter 11 cases.

**Drawbacks and Practical Considerations**

While Chapter 11 provides advantages to a debtor, there are also drawbacks and practical considerations that may weigh against it:

* **Reputational Risk.**Filling potentially includes reputational risks from a social and business perspective because the bankruptcy filing will be publicly available (and filings are frequently reported in the media.  In addition, the filings will need to publicly disclose financial information that could draw unwanted attention or pose reputational risk. In the current circumstances it will likely be necessary to be particularly sensitive to the needs and wants of (a) KuasaNas / the Malaysian government; and (b) the FIA; in respect of any public filings. The publicity that comes with the Chapter 11 process and filings is one of the key reasons why Chapter 11 is not a preferred strategy at this time given your personal reputational goals.
* **Disclosure and Reporting Obligations.**During the bankruptcy, financial matters of the debtors will be closely overseen by the Bankruptcy Court and the U.S. Trustee (a sub-division of the U.S. Department of Justice). A debtor will be required to, among other things:
	+ file a “Schedule of Assets of Liabilities” and “Statement of Financial Affairs” that disclose detailed financial information about a debtor’s assets, liabilities, transfers, and other financial activity prior to the bankruptcy case; disclosures need to be complete and accurate; otherwise, the debtor may be subject to fines and/or criminal liability.
	+ submit a budget to the United States Trustee and file monthly operating reports detailing their financial activities; the debtor may be restricted from using certain property outside the ordinary course of their regular financial activity (e.g., large transactions or transfers).
	+ attend initial case conference with the bankruptcy judge and discuss nature of the filing, the debtor’s financial conditions, material litigation, the bankruptcy case’s deadlines, etc.
	+ attend “341 Meeting” with the U.S. Trustee and creditors to answer questions about its assets and financial affairs under penalty of perjury.
	+ open new “debtor-in-possession” bank accounts and get new checks.
* **Costs.**Filing for Chapter 11 can be expensive.  As detailed above, a Chapter 11 proceeding will require attendance by counsel on numerous tasks such as court filings and disclosure, regular appearances before the bankruptcy court or/and U.S. Trustee, formulation and confirmation a reorganization plan. Other costs involved include filing fees and periodic U.S. Trustee fees.
* **Financing Options.**In some circumstances, it may be worth exploring “debtor-in-possession” financing to fund the expenses of the case. This type of financing is usually available to distressed companies or individuals who would normally not be able to obtain further access to financing outside of Chapter 11. The financing arrangement is likely to be subject to pledging collateral, usually in the form of a senior first-priority lien on assets of the debtor. Therefore, it would be important to explore what unencumbered assets or other guarantors (e.g., affiliated entities of the debtor) could be used as security to procure the loan.
* **Creditors’ Committees**: Creditors’ committees (which ordinarily consist of unsecured creditors who hold the seven largest unsecured claims against the debtor) can play a major role in Chapter 11 cases. They consults with the debtor in possession on the administration of the case, investigate the debtor’s conduct and operation of the business, and participate in the formulation of the plan. All of this takes time and money.
* **Timeline.**Filing for Chapter 11 will require lead time to identify and retain counsel, develop and define a strategy for the bankruptcy, prepare the required documents for filing, consider financing options, etc.
1. **Netherlands: The Wet Homologatie Onderhands Akkoord (WHOA): A restructuring regime**

The WHOA is a Dutch process somewhat akin to the US Chapter 11 process described above (which also imports some features of the UK Scheme of Arrangement).

A company can avail itself of the process, with Board approval, if it is reasonable plausible that the debtor will not be able to continue to pay its debts.

The benefits of the WHOA process include that:

* Secured creditors can be included in the process, and it binds dissenting creditors (assuming requisite support is obtained).
* The debtor can choose whether the EIR applies if their COMI is Netherlands.
	+ If so, the final restructuring plan will benefit from automatic recognition in courts of all the EU members states (except for Denmark).
	+ If the EIR is not applied, then the WHOA can take place in private.
* The debtor is free to determine the content and structure of the restructuring plan, save as in relation to claims of employees stemming from their employment contracts.
* Theoretically can provide the partial release of payment obligations, amendments to debt instruments (even under other laws), termination of burdensome contracts with minimal contracts and exchange of debt instruments (even debt-for-equity swaps).
* Voting is limited to those creditors whose interests are affected.
* It is designed to be relatively quick. And our current assessment is that this process could be completed significantly more quickly than any process in the US, Singapore or Romania.

Points of caution:

* There is no automatic stay of proceedings against the debtor, but a request can be made to the Court for such relief (and we understand that such relief has frequently been given under this new regime).
* It will not be possible to cram down the employee claims, so it will be important to deal with those issues.
* The creditors or employees can request the appointment of a restructuring expert.
1. **Romania**

In Romania, the primary legislation governing insolvency and restructuring proceedings is represented by the Law 85/2014 on preventing insolvency proceedings and insolvency and European Regulation 2015/848 on Insolvency Proceedings.[[6]](#footnote-6)

If the debtor is insolvent (see point 3 above, conditions for “insolvency status”), Romanian criminal law provides that non-submission or late submission of an insolvency petition by the legal representative of the debtor for more than 6 months from the time period provided by the law for acting in this respect is punished by imprisonment between 3 months and 1 year or by a criminal fine.

Regarding imminent insolvency (i.e. the scenario when the debtor estimates it will not be able to pay its debts in the future), the law does not impose an obligation to submit such a  request.

As a result, a secured creditor’s rights over his insolvent debtor’s encumbered assets, remain, in most cases, governed by the law applicable to the creation of the security.

Romania has taken and adapted the UNCITRAL Model Law.

1. **Singapore**

In 2017, Singapore incorporated man changes to the Singapore Companies Act which in part incorporate into Singapore law certain features of the US Chapter 11.

Benefits of the current regime include:

* An automatic moratorium for up to 30 days upon the filing of an application proposing, or intending to propose a scheme of arrangement; and the court has the power to order the moratorium with *in personam* worldwide effect; and/or in respect of a subsidiary or holding company.
* Rescue financing can be given super priority over statutorily preferred creditors.
* There are “cram down” provisions providing approval of at least one class of creditors have voted in favour of the scheme provided that 75% by value and 50% in number of all creditors in aggregate (ie combining all classes for this purpose) have voted in favour of the scheme and the court is satisfied that the scheme does not unfairly discriminate between classes and is fair and equitable to each dissenting class.
* There is also a fast track provision that enables the court to approve a scheme without a creditors’ meeting.

All of that said, while in theory using Singapore for the main restructuring proceedings looks quite beneficial, we are concerned that because operations to date and the stakeholders are predominantly in Europe and the US the theoretical benefits may not follow through in the event that there are dissenters to the proposed plan. And while the implementation of the Model Law would permit recognition to be obtained in the key jurisdictions in Europe, it would likely be a timely and costly process that would undermine the current goals of getting the team back operating without distractions before the next season.

1. **Possible step plan in the Netherlands**
2. **Begin the process – including initial stakeholder engagement / Standstill arrangements**

Concurrently:

* 1. Reach out to commence negotiations with all of the above parties, and to put in place standstill arrangements. For your personal protection, it’s particularly important to get the banks onside and to ensure that the standstill arrangements include protection from enforcement proceedings against you under the security arrangements. Success of the plan will likely also depend upon restraining the bankruptcy proceedings currently ongoing in Romania.
	2. Retaining attorneys and advisors for each debtor, and put together plan that accords with each entities strict legal requirements so that it can be supported and approved by their respective boards of directors.
1. **Each Group company to complete the necessary internal processes to enable the legal proceedings to be commenced**

Special attention will need to be given to how this process can be completed in respect of Efwon Romania.

1. **The initiation request is filed**

Including the request for a stay; ideally avoiding the appointment of a restructuring expert (although this would not be fatal assuming that a “friendly” could be identified)

1. **File the draft restructuring plan and disclosure**

The plan should detail the proposed measures to restructure the debt and the operations of the group, ensuring that the interests of all stakeholders are considered. It will be crucial for this plan to include information on how the intercompany claims and guarantees are to be handled.

1. **Vote on the Restructuring Plan**

Before the court can confirm the restructuring plan, it must be voted on by the creditors and shareholders in defined classes (such classes to be confirmed once the details of the debts have been provided). Each class must vote separately, and the results of these votes must be filed with the court. The process may involve multiple voting procedures across the Group depending on the details of the arrangements between the companies.

1. **Request for court confirmation**

Once the restructuring plan is approved by the requisite majority of creditors, a request for confirmation (homologation) of the plan must be filed with the court. This request should argue that the plan meets all legal requirements and should be confirmed, even potentially overriding dissenting classes of creditors (cross-class cram-down).

The court reviews the filings and conducts a hearing to determine whether the restructuring plan should be confirmed. The court checks if the plan is feasible, fair, and equitable, and complies with all statutory requirements, including the protection of dissenting creditors’ rights.

1. **Final Decree**

If the court approves the restructuring plan, it issues a final decree confirming the plan, which becomes binding on all creditors, including dissenters. The decree and any related orders must be implemented across the group of companies.

1. Subject to the terms of the relevant arrangements, it is possible that the filing of the Romanian insolvency proceedings has already triggered cross-default provisions in the guarantees or is a breach of the Super Licence. [↑](#footnote-ref-1)
2. Subject to further fact finding and discussions with you. [↑](#footnote-ref-2)
3. Depending upon certain factors and/or the conduct of the stakeholders, this may not be a viable option. In which case, we could consider using either the US Chapter 11 process to restructure the debt of all of the Group Companies (seeking to make the Romanian proceedings ancilliary); or the Singapore restructuring regime (with cross border recognition under the adopted terms of the Model Law in Romania and the US as deemed necessary to support that plan and prevent stakeholder interference in other jurisdictions). [↑](#footnote-ref-3)
4. We are assuming that the issue of a new super licence by the FIA is not going to be possible. If, however, you think this can be negotatied, please let us know as this will likely change the viable options. [↑](#footnote-ref-4)
5. The commencement of the insolvency proceedings in Romania may mean that all of the security can now be called. [↑](#footnote-ref-5)
6. Law 246/2015 on recovery and dissolution of insurers is also key, but not applicable in the current circumstances. [↑](#footnote-ref-6)