Case Study-II Response

Section A: Facts In Brief

Based on the uploaded Case Study, the following key factual matrix is observed:

1. The Formula 1 competition is sanctioned by *Fédération Internationale de l'Automobile* ("**FIA**"). There are a limited number of licenses for competing teams. It is a prohibitively expensive sport involving significant costs. Since 2021, there is an annual budget cap of USD 135 million for the core costs of a team (although earlier annual budgets even exceeded USD 400 million). The key sources of revenue for the teams are sponsorships from individual sponsors, support from team owners and share of broadcasting revenue distributed by the FIA.

2. In 2014, Mr Maximov ("**Promoter**") set up a company under the laws of Texas called Efwon Investments Inc ("**Efwon Investments**"), in which he infused USD 100 million of his own along with USD 250 million borrowed by Efwon Investments from a syndicate of lenders; i.e., USD 100 million from 2 senior banks, USD 60 million from 2 mezzanine financial creditors and the balance from 5 junior financial creditors. The loans are required to be repaid in 10 years and have an interest rate of LIBOR+4%, and are secured by the following:

   (a) Certain homes owned by the Promoter collectively worth USD 75 million;
   (b) Pledge on projected revenue to flow back from the resulting investment and participation in sport;
   (c) Pledge over shares of Efwon Investments;
   (d) Positive pledge;
   (e) Negative pledge;
   (f) Pledge of shares of Efwon Trading (defined hereafter)

3. The Promoter set up a company under Dutch laws, Efwon Trading BV ("**Efwon Trading**"). Efwon Investments remitted USD 350 million as loan to Efwon Trading, which was secured against future revenue from the company's trading activities. In late 2014, Efwon Trading entered into a contract to acquire the business of an existing Romanian team and its inventory, which included several machines ready for racing, but which needed re-development and upgrading.

4. Efwon Trading entered into a contract to acquire the Romanian team and incorporated a wholly owned subsidiary Efwon Romania. Efwon Trading lent Efwon Romania USD 150 million - USD 50 million being the cost of acquisition of the Romanian team and USD 100 million being the projected budget for the first racing year; i.e., 2015. Loans were secured by broadcasting revenue to be received by Efwon Romania from participation. The contracts of the 2 existing drivers of the team were also taken over by Efwon Romania. Efwon Romania continued under trade name of 'Team Maximov'.

5. In 2015, revenue was only USD 30 million and was reinvested into the business and no repayment was made to Efwon Investments, which also consequentially could not make any repayment to its lenders. Syndicate lenders increased the rate of interest to 6% as a condition to waive the repayment obligations that year.

6. In 2016 and 2017, Efwon Trading advanced further amounts of USD 100 million each year. While revenue increased and some upstream repayments were made to Efwon Trading and onwards to Efwon Investments, but in order to find sponsorship opportunities, a wholly owned subsidiary was set up by Efwon Trading in Singapore

("**Efwon Singapore**"). Efwon Singapore entered into an exclusive sponsorship contract with Kretek, Indonesia ("**Kretek**") for an annual sponsorship fee of USD 100 million in 2018 for the period 2019-2023.

7. For the year 2018, Efwon Trading borrowed USD 100 million (for advancing to Efwon Romania) from a lender in Monaco ("**Monaco Loan**") at a high interest rate, which was secured by revenues of Efwon Trading, Efwon Romania and Efwon Singapore. Each of them also guaranteed the repayment of the Monaco Loan.

8. The team's performance improved, ultimately reaching 6th place in 2022, but substantial amounts continued to be required as re-investments in the team budget, in light of changes in technology and enhanced safety requirements.

9. Kretek did not agree to extend the sponsorship from 2024 onwards and Efwon Singapore located a potential new sponsor Kuasanas, which was a state company supplying alternative energy fuels based in Malaysia, which offered in excess of USD 100 million annually. The sponsorship however was conditional on majority stake of 51% in the team Team Maximov being granted to them and the team being moved to Malaysia. Kausanas offered that a deal could be secured to obtain the use of Sepang GP racetrack for training purposes. They also offered the possibility of engaging new drivers sufficiently qualified to be able to obtain super licenses.

10. Due to internal political developments in Malaysia, the sponsorship contract could not conclude until end of 2023. Meanwhile, the Romanian drivers were injured in the last race of 2023 and citing defects in safety and management, they brought claims before Romanian courts where, if they succeed, they could be awarded substantial compensation. As an interim measure, the drivers' lawyers filed for insolvency of Efwon Romania and secured freezing injunction orders over the assets and income of Efwon Romania.

11. This created a serious liquidity constraint and potential insolvency issues in the entire group, as Efwon Romania is the ultimate source for repayments by Efwon Trading to the Monaco Lender and by Efwon Investments to the syndicate lenders. In addition to the earlier conditions set out above, Kuasanas stipulated additional pre-condition to promptly deal with the insolvency issues in the group, so that Kuasanas' investment is safe from the existing turmoil. Kuasanas was willing to pay part of the total consideration of the deal directly on the closing itself, subject to the pre-conditions being satisfied.

12. One of the reports commissioned by the US syndicate lenders from a large consultancy firm at a considerable cost to the Promoter, concludes that (a) Efwon will need to improve operations to be more cost efficient, but (b) can never (service its debt and) be cash-positive without a sponsorship deal such as KuasaNas, and (c) time is up, and it is not realistic to timely expect to find another partner / investor.

13. Advice has been sought by the general counsel of the Promoter to protect his position, the position of Efwon Investments and his ownership of Team Maximov.

Section B: Lending and Shareholding Review

Based on the facts set out above, a schematic depiction of the present lending and shareholding position of the Efwon group of companies is set out in Annex A.

Section C: Key Concerns and Objectives to be met for the Restructuring

Concerns:

1. **Driver litigations leading to freezing injunctions on assets and income** – practically cripples the liquidity of the entire Efwon group, leading to immediate insolvency threat to not just Efwon Romania, but also other entities in the group, in view of the impending debt obligations of those entities which would be breached on account of the order.

2. **Monaco high interest loan** – In addition to the high interest burden, the Monaco Loan lender has recourse to both Efwon Singapore and Efwon Romania. A recovery or enforcement action by them could potentially lead to the entire Efwon group being under insolvency and the Promoter losing ownership of Team Maximov.

3. **Syndicate loans becoming due in 2024 –** The lenders of Efwon Investments have patiently awaited the repayments which are due in 2024 and if the issues at Efwon Romania remain, then Efwon Investments will default in its repayment obligations leading to recovery and enforcement action against them. Shares held by the Promoter with Efwon Trading are also pledged and if those pledged shares are sold by the pledgee lenders, then the Promoter will lose its ownership of Team Maximov.

4. **No existing sponsorships for 2024 onwards -** The sole sponsor Kretek had already communicated that it would not extend its sponsorship. Kuasanas was the sole sponsor who was identified for future sponsorship, but its sponsorship required dealing with the insolvency situation in the Efwon group immediately. One of the conditions for the sponsorship offer from Kuasanas was that it sought majority stake in Team Maximov. While there was inflow through broadcasting and other revenue, the same was inadequate to meet all costs.

5. **High costs and operational inefficiencies** – There were cost inefficiencies and the existing cars / machineries required upgrade to also address safety and operational issues. Running an F1 company is a high cost business and therefore, it is important to have a steady stream of revenue / sponsorship available to meet costs.

Section D: Stakeholders and Treatment

Given the concerns set out above, it is apparent that the entire Efwon group is facing the threat of imminent insolvency considering the inter-dependence of the group entities, especially on Efwon Romania. The key stakeholders and their positions in the beginning of 2024 are set out below:

- **Lenders of the Monaco Loan** – Efwon Trading had availed of the Monaco Loan in 2018 to meet the costs of the 2018 season. It was a high interest loan whose proceeds were advanced by Efwon Trading to Efwon Romania. Given the sudden developments in Romania where freezing injunction orders have been passed, the Monaco lender is considering its options. Having the benefit of the guarantees from Efwon Romania and Efwon Singapore, the lender of the Monaco Loan has recourse to them in addition to Efwon Trading. The resolution of the Monaco Loan is therefore critical to the overall resolution strategy of the group.

- **Syndicate lenders based in the USA** – The syndicate lenders based in the USA had lent USD 250 million to Efwon Investments for a period of 10 years. The syndicate lenders balance repayments are due to be made in 2024. Due to the sudden development of the sponsor Kretek not willing to continue its sponsorship, coupled with the freezing injunction orders in Romania, the repayments to the syndicate lenders are under jeopardy. In view of Kuasanas also not willing to commence its sponsorship

contract until the threat of insolvency in the group is resolved, there is no immediate source of repayments visible to the US syndicate lenders, causing serious concern. While the syndicate loan is also secured by the Promoter's homes, enforcement of the security over the same will still potentially not realize the entire dues. Considering these are homes in several jurisdictions, it is likely to have its own complications during enforcement, including costs and time, and challenges in remittances from certain jurisdictions.

It is also pertinent to highlight that as the entire proceeds of the syndicate loans have been utilized for on-lending to group companies and as no guarantees have been given by the group companies to secure the syndicate loans, there is no direct recourse to group companies available to the syndicate lenders. With the entire business proceeds being realized in the group companies, any resolution of the US syndicate lenders debt is dependent on the resolution of the debts in the group companies.

It is also important to note that 2 of the syndicate lenders are senior lenders, 2 are mezzanine debt holders and the balance 5 lenders are junior lenders. This is important to be considered during the formulation of the restructuring proposal.

- **Efwon Investments** – Efwon Investments is the US entity where equity investment has been made by the Promoter and debts have been availed from the US syndicate lenders. They are creditors to Efwon Trading, having lent an amount of USD 350 million. Any steps for restructuring the group debts will have to take into consideration the debts owed by Efwon Trading to Efwon Investments, as they are the highest creditors of Efwon Trading.

- **Efwon Trading** – The shareholding of Efwon Trading is held 100% by the Promoter**.** Efwon Trading is the holding company of Efwon Romania, the main entity holding the business of Team Maximov and is its biggest creditor, having lent an amount of about USD 450 million to it. Efwon Trading has 2 key financial creditors – Efwon Investments Inc and the lender of the Monaco Loan. Efwon Trading's key source of revenue is the amount upstreamed by Efwon Romania, out of the total revenues earned (including broadcasting and other revenue) and the sponsorship money realized out of sponsorship contract culminated between Efwon Singapore and Kretek, Indonesia. Given the freezing injunction orders passed in Romania, it directly impacts the ability of Efwon Romania to repay debts of Efwon Trading and consequentially impacts Efwon Trading's ability to meet its debt repayment obligations, leading to an imminent threat of insolvency and jeopardizing the Promoter's investment.

- **Efwon Romania** – Efwon Romania holds the Team Maximov and the business. All the revenue is ultimately generated here and significantly, it also requires significant costs to continue the business at Efwon Romania as a going concern. All the assets pertaining to the team, including the machines as well as the licenses required to participate in the races of FIA are all held by Efwon Romania. Its key financial creditors are Efwon Trading and the lender of Monaco Loan (on account of the guarantee). Additionally, it also has obligations to the race drivers engaged by it, who have raised claims before Romanian courts citing defects in safety and management, seeking substantial compensation. Further, there are freezing injunctions in place in respect of the assets and income of Efwon Romania as an interim measure in an insolvency proceeding filed by the drivers, which practically cripples the entire group and jeopardises the continuance of business as going concern. The immediate vacation of the freezing injunctions and the resolution of Efwon Romania is central to any resolution of the Efwon group's insolvency concerns. It has incurred debt to the tune of USD 450 million from Efwon Trading (subject to reduction by any repayments already made)

along with USD 100 million of contingent liability owed to the lender of the Monaco Loan.

- **Efwon Singapore** – Efwon Singapore is a wholly owned subsidiary of Efwon Trading, whose principal role is to procure sponsorship contract for the team Maximov. The only debt obligation indicated in the facts sheet is its guarantee and security obligations owed in respect of the Monaco Loan. In absence of the sponsorship contract and any other operations or business in Singapore, it is unlikely to meet the solvency test if the guarantee given for the Monaco Loan is called upon for payment.

- **Kuasanas** – Being the proposed new Malaysian sponsor, it is a government entity which has indicated its interest to sponsor the team subject to the satisfaction of the conditions set out above, including the resolution of insolvency issues in the group. In addition to the sponsorship through monetary contribution, it has also proposed to procure the availability of racing track in Malaysia along with qualified drivers in Malaysia, if the team moves to Malaysia. The fructification of the sponsorship contract with Kuasanas is critical for mitigating the immediate liquidity constraints in the company.

- **Drivers employed by Efwon Romania** – The drivers employed by Efwon Romania have had an injury due to an accident in the last race of 2023. They have raised claims before Romanian courts citing defects in safety and management, seeking substantial compensation and have also sought to initiate insolvency proceedings against Efwon Romania. As an interim measure, they have also obtained freezing injunction orders against assets and income of Efwon Romania.

- **Promoter –** Mr Benedict Maximov is the promoter of the Efwon group of companies. He has made an equity investment of USD 100 million into Efwon Investments and is also the shareholder of Efwon Trading. He seeks to maintain his position and ownership of the group which is in serious jeopardy, owing to the sudden liquidity constraint in Efwon Romania leading to a ripple effect of potential defaults in each of the Efwon group companies to their lenders[1].

Proposed Treatment

Having looked at the key stakeholders and their positions, we now proceed to propose the strategy for dealing with the treatment of the stakeholders. Prior to dealing with the proposed strategy for dealing with each of the stakeholders, it is important to highlight in brief the proposed legal action to be undertaken for giving effect to the stated objective of selling a stake in the Efwon group to Kuasanas by restructuring the insolvency issues observed within the group (with detailed analysis of the legal action covered in sections to follow).

The key legal measures to be undertaken are - (i) filing with the district court in Netherlands for a public *Wet homologatie onderhands akkoord* ("**WHOA**"), which is a pre-insolvency debtor-in-possession scheme proceeding, which will have automatic recognition in jurisdiction of Efwon Romania (being a EU member state), for a restructuring plan for the Dutch debtor Efwon Trading along with all the other Efwon group companies (ii) filing of an application seeking a cool-down period[2] and an order to lift all attachments, in the Dutch district court, and (iii) filing for protection under Chapter 11 of the US Bankruptcy Code, in respect of Efwon Investments and other Efwon group companies. The following strategy is proposed for dealing with the

[1] Including wherever applicable, the beneficiary of the guarantees; i.e., Monaco Loan lender.
[2] The cool-down period can last a maximum of 8 months (4 months extendable by another 4 months).

Efwon group and its stakeholders by way of business and financial restructuring measures as set out below:

Pre-Restructuring

1. **Vacation of the interim orders of freezing injunction:** By way of filing of an application seeking the initiation of a WHOA proceeding and an application seeking a cool-down order (including potentially an order for lifting any existing orders of attachments), Efwon Trading should seek protection for itself and seek third party release for the Efwon group companies which have also guaranteed the Monaco Loan. Such an order has the benefit of automatic recognition in Romania in terms of the applicable EIR Recast Regulations. An application should therefore be filed with the courts in Romania, based on the recognition of the initiation of the WHOA proceedings in Netherlands (being the 'first past the post' proceeding), to immediately vacate the interim freezing injunction orders. This will free up the existing cash available in Efwon Romania, which is critical and the key source for ultimate repayment within the group and will allow for continuance of business as a going concern during the formulation of the restructuring plan.

Restructuring Plan

2. **Incorporation of a new entity Efwon Malaysia and transfer of all the business of Efwon Romania to Efwon Malaysia** – In view of the sponsorship offer made by Kuasanas in terms of which they proposed to procure the availability of racing track in Malaysia along with qualified drivers in Malaysia, and given the absence of any other viable offer, it is proposed that a new entity be incorporated in Malaysia ("**Efwon Malaysia**"), which will be held by Efwon Trading, to which the entire business of Efwon Romania should be transferred in terms of the restructuring plan. The transfer should include all the assets and liabilities of Efwon Malaysia (other than those being extinguished / settled under the restructuring plan simultaneously), including the residual debts.
3. **Extinguishment of liabilities owed to race drivers and termination of their employment contracts –** The executory contracts can be amended under both the US Bankruptcy Code as well as the WHOA, and accordingly, the employment contracts of the drivers employed by Efwon Romania shall be terminated, with the potential damages as well as the compensation claimed by the drivers being included as a part of the debts being resolved under the restructuring plan. As both Chapter 11 proceedings under US Bankruptcy Code as well as the WHOA proceedings envisage adjustment of dues payable to creditors and possibility of cramdown of any class of creditors by court confirmation of restructuring plan, subject to at least one class of creditors approving the restructuring plan (and other tests such as the absolute priority rule and no worse off tests being satisfied), it is proposed that the drivers shall be paid a one-time settlement amount and the balance claimed amounts will be extinguished and waived in perpetuity.
4. **Execution of Sponsorship Contract between Kuasanas and Efwon Singapore –** A sponsorship contract shall be executed between Kuasanas and Efwon Singapore (along with Efwon Trading) for the sponsorship by Kuasanas, in lieu of equity shares of Efwon Malaysia (to the extent of 51%) being allotted to Kuasanas. Given the immediate requirement of liquidity, it is proposed that Kuasanas will infuse a higher upfront amount out of the total sponsorship obligation at the time of commencement of the sponsorship contract. The same shall be undertaken simultaneously with the implementation of the restructuring plan. Care must be taken to ensure that it is not an exclusive sponsorship.

5. **Repayment of the Monaco Loan:** Part of the sponsorship amount should be infused at the time of commencement of the sponsorship contract, into Efwon Singapore. The said amount should be utilized for paying off the balance amount of the Monaco Loan directly by Efwon Singapore. Being a high interest loan, it is expected that the repayment of the same will ease the insolvency risk of the Efwon group substantially (as the lender of Monaco Loan had recourse to multiple entities in the group), as well as ease the burden of interest payments in the regular course of business. Negotiations should be undertaken for a haircut on the basis that any repayment of Monaco Loan ultimately depends on resolution of stress in Efwon Romania. But it is pertinent to highlight that given the recourse to security over revenue of Efwon Romania as opposed to recourse of Efwon Trading only to broadcasting revenue[3], the Monaco Loan Lender is likely to be 'in the money' and may not agree to any significant discount.
6. **Restructuring of debt repayment obligations of Efwon Investments to US syndicate lenders, including in the order of repayment:** In view of the repayments to the syndicate lenders falling due in 2024, it is important to reschedule the amortization schedules of the said loans along with a reduction of rate of interest going forward. Some haircuts may be negotiated with the US lenders in view of them being 'out of the money' in the existing structure. The accrued interest obligations may be capitalized into a funded interest term loan, to be paid over 3-5 years, with the same security as the original debt facilities. In fixing up the amortization schedules and haircuts, due consideration must be given to the nature of each lending – senior, mezzanine and junior. The senior lender may be given an earlier exit than the mezzanine and junior creditor as well as a lower haircut. Further, the revised amortization schedule may be structured in a manner such that the burden of higher repayments falls later in time. An amortization schedule of about 5 years may have to be negotiated to ensure a comfortable tenor for making the repayments. With the approval of the US syndicate lenders, certain homes of the Promoter may be sold to generate some funds which will be utilized to repay to the US syndicate lenders a portion of the outstanding amounts in the year 2024-25.
7. **Back to back restructuring of debts owed to Efwon Trading by Efwon Malaysia (post business transfer) and Efwon Trading to Efwon Investments** – Since the ultimate repayments to lenders of Efwon Investments will depend on the repayment of the outstanding debt amounts by Efwon Malaysia to Efwon Trading and thereafter Efwon Trading to Efwon Investments, it is proposed that there will have to be a similar reschedulement of the amortization schedules in these loans as well. The initial amounts repaid shall be utilized for repayment to the US syndicate lenders and the Promoter shall not be paid off until the US syndicate lenders are fully repaid.
8. **Conversion of the subrogated debt into compulsorily convertible debentures issued by Efwon Malaysia to Efwon Singapore:** Upon the payment of the Monaco Loan by Efwon Singapore, it is subrogated and steps into the shoes of being a lender to Efwon Romania (and upon the transfer of all such liabilities of Efwon Romania to Efwon Malaysia, a lender to Efwon Malaysia). In order to reduce the debt burden of Efwon Malaysia, as well as to provide the Promoter with a tool to gain back ownership of the Team Maximov, the aforesaid subrogated debt obligation of Efwon Malaysia shall be converted into compulsorily convertible debentures (convertible after a lock-in period as mutually agreed with Kuasanas, in any event prior to the date of termination of the sponsorship contract) entitling Efwon Singapore (which is 100% owned by the Promoter indirectly through Efwon Trading) to gain back majority stake in the F1 team.

[3] Facts sheet is unclear on whether the further advances given by Efwon Trading after the initial tranche of USD 150 million had any security.

It is assumed that the restructuring plan will only progress if Kuasanas is agreeable to sponsor on these terms which will be negotiated upfront and suitable contractual arrangement will be executed with them. This structure ensures that while sponsor's initial demands are met, the Promoter does have the ability to get back majority stake.

9. **Dissolution of Efwon Romania –** Finally, once the aforesaid steps are completed and all the business including the liabilities are transferred to Efwon Malaysia, Efwon Romania may be dissolved in accordance with Romanian laws.
10. Steps 2 to 8 should be given effect to simultaneously.

Post Restructuring Measures

11. **Board of Efwon Malaysia** – In the board of directors of Efwon Malaysia, representatives should be appointed by the Promoter. Additionally, professionals and key managerial personnel should appointed for managing the affairs of Efwon Malaysia and running the F1 team. There may also be a demand from Kuasanas given its majority stake and funding support, for representation on the board. While they must be given representation on the board, care should be taken to ensure that representation in the board of the Promoter is highest and Promoter retains certain veto rights on list of reserved matters (being matters of critical nature which could impact the interests of the Promoter).
12. **Cost Restructuring and improvement of safety and operational efficiencies for team Maximov** – Given the past issues of safety and operational efficiencies as well as equipment being dilapidated, suitable measures will have to be undertaken for a part of the business proceeds to be utilized for capital expenditure on improving the safety of the cars. Further, operational inefficiencies should be addressed including by way of certain cost-reduction / retrenchment measures. It is expected that access to the infrastructure in Malaysia will help reduce some of the cost burden.
13. **Working capital for Efwon Malaysia** – In order to meet the short-term liquidity requirements and operating capital requirements, a working capital facility may be availed by Efwon Malaysia or Efwon Trading (for advancing to Efwon Malaysia). The working capital funds will ensure that the operating requirements are adequately met.
14. **Fresh Sponsorship Opportunities and new fan-base** – In order to create multiple streams of inflow of money into Efwon Malaysia, given the huge population in Asia, efforts should be made towards marketing of Team Maximov and to capitalize on the popularity by attracting new sponsors. This will significantly ease liquidity constraints in the group going forward and reduce dependence on Kuasanas.

Section E: Insolvency / Restructuring Frameworks and their Interplay

In order to assess the insolvency proceedings / preventive restructuring frameworks required to achieve the goal of selling a stake in Team Maximov to Kuasanas, it is important to first take note of the key jurisdictions involved in the Efwon group; i.e. USA (Efwon Investments), Netherlands (Efwon Trading), Romania (Efwon Romania) and Singapore (Efwon Singapore). The risk of insolvency is imminent in each of the aforesaid jurisdictions, on account of the following reasons:

(a) Netherlands: There is no imminent source to pay the debts owed to the lender of Monaco Loan as well as to Efwon Investments[4] in view of the freezing injunction orders in Efwon Romania. It is therefore unable to continue to pay its debts.

[4] In view of the projected revenue being pledged to the US syndicate lenders, the US syndicate lenders could also potentially enforce their security rights and seek recovery of the same from Efwon Trading.

(b) Romania: In view of the freezing injunction order against its assets and income, there is no ability to pay off the debts owed to Efwon Trading. Furthermore, it is also a guarantor for the Monaco Loan and will not be able to fulfill its obligations under the guarantee in these circumstances. Moreover, the freezing order inhibits the ability to pay even the going concern costs.
(c) Singapore: In view of the sponsorship contract with Kretek having come to a closure, it does not have any further stream of income. It however is obliged under the guarantee for the Monaco Loan and can be called upon to pay the same, for which it is unlikely to have funds.
(d) USA: The repayment of the loans availed by Efwon Investments from the syndicate lenders in USA is due in 2024 and on account of the constraint on funds in Efwon Trading (due to the inability of Efwon Romania to make any repayments to Efwon Trading), there is a situation of imminent insolvency and inability to continue to pay debts.

It is noted that the entity which is central in the group, Efwon Trading, and Efwon Romania, which generates the revenue for the entire Efwon group, both are in Europe. Both being members of the European Union ("**EU**"), are bound by the EU Insolvency Regulations (Recast) ("**EIR Recast Regulations**")[5] and it is directly applicable in these member states. Any court-confirmed restructuring plan under an insolvency or pre-insolvency proceeding which is listed under Annex A to the EIR Recast Regulations will have automatic recognition in the other EU member states (except Denmark). Therefore, it is proposed that a proceeding should be initiated under the overall ambit of the EU regulations to have automatic recognition in the other member state, reducing the requirement to have multiple proceedings.

In pursuance of the Directive on Preventive Restructuring (2019/1023)[6] ("**Directive**"), Netherlands has incorporated the WHOA into the Dutch Bankruptcy Act. Public restructuring under the WHOA has been placed in Annex A to the EIR Recast Regulations. Therefore, a restructuring plan confirmed by court under WHOA has the benefit of automatic recognition in other European Union member states (other than Denmark). In the facts of the instant case, a WHOA proceeding in the Netherlands will have automatic recognition in Romania. It is pertinent to highlight that in pursuance of the Directive, Romania has incorporated a preventive insolvency framework as well, being Law 216 of 14 July 2022 ("**Law 216**").

Considering the fact that the case study does not indicate any prolonged insolvency in Efwon Trading (or the other group entities), it would be better to resort to an extrajudicial proceeding which can be fast-paced without formalities associated with an insolvency proceeding, while having the benefit of an extrajudicial restructuring plan with binding effect. The WHOA offers such an option and hence, it is proposed that the restructuring should be carried out in Netherlands, which is the COMI for Efwon Trading. While Law 216 also provides an option to consider for preventive restructuring, however given the recent positive track record under the Dutch WHOA especially in parallel proceedings of restructuring plans[7] and the recognition of a restructuring plan approved under WHOA in USA[8], and considering Law 216 is relatively new and untested, it is preferred to opt for WHOA.

[5] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (Recast).
[6] Directive (EU) 2019/1023 of European Parliament and of the Council of 20 June 2019
[7] In the restructuring of Steinhoff International and group entities located in Germany and South Africa, it was established that the Netherlands may be a suitable restructuring venue for international groups with Dutch holding companies, even if most of the business is located in other countries.
[8] Parallel proceedings for restructuring of Diebold Nixdorf, Incorporated and certain of its subsidiaries including Diebold Nixdorf Dutch Holding B.V.

For initiation of proceedings under the WHOA, key considerations are as follows:

(a) Being a pre-insolvency proceeding where the debtor is in possession, the Promoter would be in better control of the process and its outcome, as opposed to any judicial and/or creditor led insolvency resolution process.
(b) WHOA offers the benefit of automatic recognition in other EU member states (except Denmark) and therefore a restructuring plan passed in Netherlands will also be binding in Romania, without the requirement of any additional proceedings seeking recognition;
(c) WHOA has been designed to cater to not just individual debtors, but also deals with third party releases. Thus, not only the obligations of the debtor to which the WHOA relates directly, but also the obligations of its group entities towards the main debtor's creditors can be integrated into one restructuring plan.
(d) The 2 key requirements to be met for the Dutch court to assume jurisdiction over liabilities of non-Dutch companies are that the group companies also meet the pre-insolvency test and the Dutch court would have jurisdiction if those group companies could offer a restructuring plan under the Dutch Bankruptcy Act. With the Monaco Loan being guaranteed by Efwon Romania and Efwon Singapore, both those entities also meet the pre-insolvency test. Same is also the case in respect of Efwon Investments which is not in a position to pay off the debts owed to the US syndicate lenders (which are due in 2024).
(e) The Dutch WHOA proceeding allows the ability to amend the rights of the shareholders and creditors. Cross-class cramdown is also possible.
(f) Moreover, under the WHOA, a cool-down period can be ordered by the court (which can last for a maximum of 4 months, extendable by another 4 months) protecting against enforcement by any creditor or filing of proceedings to initiate insolvency, upon an application being filed seeking such protection. Unlike the 'suspension of payments', such a cool-down order does not just affect the ordinary creditors, but also provides protection against enforcement action by the secured creditors.
(g) A restructuring plan under WHOA may amend the rights of creditors against legal entities that form a group with the debtor, even if they are separate legal entities[9]. A restructuring plan may be formulated and approved under WHOA by the Dutch court dealing with the debts of the Dutch debtor (Efwon Trading), along with the other group entities and such a restructuring plan upon approval by the Dutch court, shall be binding on all creditors and stakeholders of Efwon Trading as well as the other group entities whose debts are dealt with under the restructuring plan. While such a restructuring plan will have automatic recognition in view of the EIR Recast Regulations in Romania (for Efwon Romania and its creditors / stakeholders), such an order can also be filed for recognition in both Singapore (for Efwon Singapore) and the USA (Efwon Investments) as a 'foreign main proceeding' under Chapter 15 of the U.S. Bankruptcy Code in USA and Insolvency, Restructuring and Dissolution Act 2018 in Singapore (both incorporating provisions adopting the UNCITRAL Model Law on Cross-Border Insolvency ("**MLCBI**")). With both those countries having adopted MLCBI, the court-confirmed restructuring plan under WHOA is expected to be recognized as foreign main proceedings expeditiously in these jurisdictions.

Chapter 11 and 15 under US Bankruptcy Code

Key considerations for making parallel filing under Chapter 11 for protection, and filing under Chapter 15 for the recognition of the Dutch court approved restructuring plan are:

[9] Article 372 of Dutch Bankruptcy Act.

(a) As the repayments for the US syndicate lenders becomes due in 2024, in the absence of repayments from Efwon Trading, the borrower Efwon Investments would not be in a position to make repayments and therefore, will run the risk of enforcement and recovery actions by the US syndicate lenders. Given the fact that under the US Bankruptcy Code, any entity having residence, domicile, place of business or property is entitled to seek relief under Chapter 11 of the US Bankruptcy Code[10], Efwon Investments having been incorporated under the laws of Texas, is entitled to file for relief under Chapter 11. Chapter 11 being a debtor in possession process, the Promoter would be in control of the process and be in a better position to retain its control and ownership.

(b) Commencement of a case under Chapter 11 triggers an automatic worldwide stay (with some exceptions) against all actions affecting the debtor or its property. Thus, filing of a pre-emptive petition under Chapter 11 provides the debtor with a calm period for the reorganization of business. Accordingly, it is advisable to file a parallel Chapter 11 proceeding simultaneously with the filing of the WHOA proceedings in a Dutch court. Another benefit of filing for Chapter 11 proceeding is the tested record to obtain recognition of the restructuring plans approved in the Chapter 11 proceedings in countries such as Singapore[11]. It is also important to highlight that under laws of Singapore, in *Re Tantleff, Alan*[12], the General Division of the High Court of Singapore granted recognition of United States Chapter 11 reorganisation plans of subsidiaries of Eagle Hospitality Group pursuant to the MLCBI. Therefore, in addition to the ability to seek recognition of the Dutch court approved restructuring plan, the Chapter 11 restructuring plan may also be filed in Singapore for recognition.

(c) Chapter 15 of the US Bankruptcy Code was introduced to incorporate the provisions of cross-border insolvency under the MLCBI (with certain modifications) to give recognition to judgments passed in other nations. Upon passing of the WHOA restructuring plan, the Dutch court approved restructuring plan may be brought into the USA and will be entitled to receive recognition in terms of Chapter 15, which will help in faster implementation.

(d) The strategy of parallel proceedings and approval of the restructuring plan by the respective courts in USA and Netherlands would be necessary to achieve the binding effects of the restructuring plan, in view of the Efwon group's entities and creditors being located in the Netherlands, other EU member states, the United States and Singapore. Further, given the extensive options available for group debt restructuring within both WHOA and US Bankruptcy Code, the combination of both of them would be most ideally suited to find the best resolution in the facts of the present case. The restructuring plan for all the Efwon group companies should be a joint plan, which can then be considered by the US bankruptcy judge and passed.

Public or Private WHOA

There are two types of restructurings under WHOA – a public restructuring process and an undisclosed restructuring process.[13] The key difference between the two processes is that one is a public process with publication requirement[14] and is only available for initiation to debtors

[10] With some exceptions such as stockbrokers and commodity brokers, banking and insurance institutions and government units not being municipalities.
[11] A recent example would be the Eagle Hospitality group, where the Chapter 11 restructuring plan was approved by the High Court of Singapore [2022] SGHC 147.
[12] 2023] 3 SLR 250.
[13] Article 369(6), WHOA.
[14] Article 370(4), WHOA.

having COMI[15] in Netherlands[16], with the benefit of automatic recognition in the European Union member states (other than Denmark), being a part of Annex A to the EIR Recast Regulations.[17] The undisclosed restructuring process under WHOA stays out of the public eye[18], preventing loss due to the negative publicity, and can be initiated by a debtor having 'sufficient connection' to the Netherlands.[19] Examples of sufficient connection include (a) the debtor has significant assets in the Netherlands; (b) a substantial portion of the debt that is to be restructured is governed by Dutch law or includes the choice of the Dutch courts; (c) the debtor is part of a group of companies, a substantial part of which are companies established in the Netherlands; or (d) the debtor is liable for the debts of another debtor (most likely a group company) in respect of which the Dutch courts have jurisdiction.

In the facts of the present case, both public as well as private WHOA are possible to be initiated. However, in view of the benefits of automatic recognition available under a public restructuring process in other EU member states (with the exception of Romania), it is preferred in the facts of the instant case to file with the Dutch courts for a public WHOA. Further, considering the stakeholders will in any case be informed as a part of the Chapter 11 proceedings in the USA as it is a public process, there is not much merit in opting for an undisclosed process. The filing for public WHOA can be done by the debtor, creditors, shareholders or employees' representative in Dutch courts in respect of the Dutch company Efwon Trading for a joint restructuring plan including the other Efwon group entities. It is proposed in the instant case that the debtor; i.e., Efwon Trading files for initiation of the process.

Upon the initiation of the proceedings under the WHOA and obtention of the cool-down order from the Dutch court (including for the listing of any attachments), the same should be presented to the courts in Efwon Romania and as the order in the Netherlands is the 'first out of the post', the court in Romania would not proceed further on the insolvency application filed by the race drivers. Further, in view of the WHOA proceedings and the cool-down order, an application may be filed in the Romanian insolvency proceedings seeking immediate vacation of the freezing injunction orders on account of the 'cool-down' order of the Dutch court, which is likely to be granted as the Romanian court in recognition of the opening of the proceedings in Netherlands.

Coordinated Proceedings under Chapter 11 of US Bankruptcy Code and WHOA

Parallel proceedings before the Chapter 11 of the US Bankruptcy Code in USA and under WHOA in Netherlands will have to be pursued in the following manner:

(a) Public WHOA proceedings should be initiated in the jurisdictional district court in Netherlands in respect of Efwon Trading along with its group entities (including the foreign entities, both upstream and downstream). Along with the same, a cool-down order should also be sought from the Dutch court in respect of Efwon Trading and the other group entities (located in other countries);
(b) Simultaneously, a voluntary petition should be filed before the United States Bankruptcy Court (in the jurisdictional court in Texas) seeking relief under Chapter 11 of the US Bankruptcy Code by Efwon Investments, which will among other

[15] Article 3(1) of EU Regulation 2015/848 of 20 May 2015 on insolvency proceedings.
[16] Article 369(7), WHOA.
[17] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.
[18] Article 369(9), WHOA.
[19] Article 369(7), WHOA read with Article 3 of the Dutch Code of Civil Procedure.

consequences, also lead to an immediate automatic worldwide stay on any enforcement / recovery action against Efwon Investments;

(c) Based on the opening of the WHOA proceedings and the cool-down order passed by the Dutch court in the WHOA proceedings, the same may be presented to the Romanian court seeking vacation of the freezing orders;

(d) Non-main proceedings should also be initiated in Singapore for recognition of the orders passed by the Dutch court[20];

(e) Restructuring plans will be required to be drafted and negotiated with the creditors of the Efwon group under Dutch scheme (WHOA) and the US Chapter 11 proceedings. The plans must have a close interconnection and be inextricably linked in a manner that the binding nature of each of the restructuring plans must be conditional on the court approval in the respective country of the other restructuring plan. This condition must be a part of the restructuring proposals.

(f) Both the restructuring plans must ensure following the absolute priority rule; i.e., creditors with lower-ranking claims should not be entitled to any payment of their claims unless each higher-ranking class of creditors has received a full recovery, unless otherwise voted and agreed to by the majority within the higher-ranking classes[21].

(g) Both the courts in Netherlands and in the USA are required to be well coordinated and aligned in their approach. The opening of the proceedings as well as the approvals of the restructuring plans under both legal frameworks should ordinarily be timed close to each other. Further, it would be advisable to appoint an observer. The appointment of an observer is one of the positive elements of the WHOA proceedings, particularly in cross-border reorganization matters due to the complexity of such cases. The observer brings an objective view to the restructuring, which can facilitate court approval. Appointment of an observer at an early stage of cross-border cases is of paramount importance.[22] Endeavour should be made to have a common observer / insolvency representative representing in all the jurisdictions, as legally feasible[23].

(h) Subsequent to the voting on the restructuring plans, the creditor approved resolution plans shall be presented to the Dutch court and US bankruptcy judge for their approval / confirmation.

(i) Upon the Dutch court approving a restructuring plan, it will be automatically recognized in Romania being a member European member state. The decision under WHOA shall be filed in the USA for recognition under Chapter 15 of the US Bankruptcy Code as a foreign main proceeding. Similarly, the court confirmed restructuring plan approved under WHOA will be filed in Singapore on the basis of principle of comity and provisions of the Insolvency, Restructuring and Dissolution Act 2018 for recognition, basis the WHOA proceedings being the foreign main proceeding (in view of Netherlands being the COMI).

Section F: Potential Impediments to Proceedings

Some of the key impediments which may be encountered in the proceedings as proposed taking place are:

1. **Possibility of different results in parallel proceedings** – The successful restructuring of the Efwon group is dependent on approvals to the restructuring plans

[20] Singapore has adopted the MLCBI and considering that there is no requirement of reciprocity thereunder, even if Netherlands has not adopted MLCBI, it will not constrain the ability of courts in Singapore to grant recognition.
[21] This is subject however to any deviations where there is a 'reasonable justification'.
[22] https://www.nortonrosefulbright.com/en/knowledge/publications/e50286d9/the-cross-border-restructuring-of-diebold-nixdorf#:~:text=Unlike%20Chapter%2011%2C%20the%20Dutch,a%20limited%20period%20of%20time.
[23] In terms of the UNCITRAL Model Law on Cross Border Insolvency, a foreign representative also has access and accordingly, such a representative may represent in the parallel proceedings in USA and Singapore.

in both the WHOA as well as the US Chapter 11 proceedings. Inter-conditionality of the approval by both the Dutch district court under WHOA and the US bankruptcy court under Chapter 11, is often a delicate issue to navigate which requires coordination and cooperation, to ensure timely and aligned results. If the outcomes are different in each of the proceedings, then it could completely defeat the restructuring efforts.

2. **Gibbs Rule issues in case of English law governed documents** – While the facts set out in the case study are silent on the governing law of the documents executed, but if the documents executed with the lenders (especially with the Monaco Loan lender) are governed by English law, then it throws open the possibility of a challenge by an aggrieved stakeholder of absence of discharge under English laws, in view of the restrictions due to the Gibbs rule[24]. The Gibbs Rule has come to be recognized even in relation to cross-border insolvency and it has been held that special rules do not apply in the context of cross-border insolvency[25]. In such an eventuality, a restructuring will also have to be undertaken under English laws to obtain a valid discharge of the English laws governed claims.
3. **Absence of automatic relief in Romania and potential challenge by drivers in Romanian Courts –** While the EIR Recast Regulations does create the ability to seek automatic recognition of the WHOA proceedings and court-confirmed restructuring plan in Romania by operation of law, however, given the existing freezing orders issued by the courts in Romania, it is of utmost importance that the freezing injunction orders are vacated on an immediate basis, failing which the going concern status of Efwon Romania cannot be preserved and the steps for restructuring cannot be effectuated. While a cool-down order issued by the Dutch court in Netherlands is likely to be a good basis for seeking such a vacation of the existing freezing injunction order, however, given the existence of the freezing injunction orders, one would have to seek a vacation of the existing orders in Romania which exposes the process to exercise of discretion by the Romanian court and time taken in obtaining the order.
4. **Challenges in the timing of both the parallel proceedings** – Ordinarily, it is observed that the WHOA proceedings are more expeditious than the Chapter 11 proceedings. Considering both the restructuring plans are inextricably linked, if the Chapter 11 plan undergoes any alterations on account of any objections by parties or rulings by the US bankruptcy judge, it is unclear whether and to what extent Dutch court administering the WHOA process would permit amendments to a sanctioned restructuring plan.
5. **Possibility of Kuasanas backing off** – The whole restructuring plan proposed in the instant case, is dependent on the funds being infused against sponsorship by Kuasanas. In the event a commercial agreement is not reached with Kuasanas regarding the timing of the infusion or the terms of the restructuring set out above (including the terms of proposed issuance of compulsorily convertible debentures), then the entire restructuring proposal will have to be re-worked. Further, if at an advanced stage of the proceedings, Kuasanas backs off due to any reasons, then the liquidity required for effectuating the restructuring plan will be in jeopardy. In such an eventuality, it will be critical to seek another investor – debt or equity, to be able to revive the Efwon group. It is worthwhile to point out that in view of MLCBI not having been adopted in Malaysia, there is no proposal to enforce or seek recognition of the restructuring plan in Malaysia. Terms of the plan requiring cooperation from Kuasanas are a matter of contractual arrangement, as they in any case are neither a debtor or a creditor or shareholder at the time of the restructuring.

[24] English law-governed debt cannot be discharged or compromised by foreign insolvency proceedings.
[25] Rubin & Anr v Eurofinance SA [2012] UKSC 46.

Section G: Advantages of the manner in which proceedings are organized

1. **Benefits of EU level recognition** – The most important advantage of the manner in which the proceedings are organized is that, as soon as the proceedings under WHOA are opened in Netherlands, they are automatically recognized in another EU member states (other than Denmark) by operation of law. Similarly, the court confirmed restructuring plan approved under the WHOA proceedings is also automatically recognized under the EU member states. This is especially significant in view of the importance of having such automatic recognition in Romania, considering the interim freezing injunction orders passed in Romania and all assets and sources of revenue being located in Romania.
2. **Avoids undermining of restructuring efforts by US lenders enforcing debts against Efwon Investments –** The initiation of parallel proceedings in the US under Chapter 11 of the US Bankruptcy Code ensures the immediate worldwide stay against actions seeking to (i) commence or continue any judicial, administrative or other proceeding against Efwon Investments, (ii) recover any pre-petition claim against Efwon Investments (iii) take any action to collect, assess or recover a pre-petition claim against Efwon Investments, and (iv) acting to obtain possession of, or exercise control over, property of Efwon Investments. This ensures that there is adequate protection available during the proceedings for finalization of the restructuring plans for the Efwon group.
3. **Ability under WHOA to extend the scope of the restructuring plan to cover non-Dutch group entities basis the COMI of Efwon Trading in Netherlands -** The WHOA provides for the possibility of a stay for group companies of the Dutch debtor that are not formally debtors under the WHOA proceeding. Under Section 2:24(b) of the Dutch Civil Code (**DCC**), a 'group' has been defined to mean an economic unit in which legal persons and partnerships are organizationally interconnected. Considering that the Efwon group is practically functioning as one economic unit, it is likely that the Dutch Court will grant the request to impose a group-wide stay. Similar group restructurings have been observed in the cases of Vroon[26] group as well as Diebold Nixdorf, Incorporated where a parallel Dutch WHOA proceeding and English scheme of arrangement / US Chapter 11 proceedings were used simultaneously.
4. **Ability to cram down creditors** – Both the WHOA as well as the Chapter 11 proceedings provide the ability to cram down certain sets of impaired creditors if they are becoming a stumbling block to the approval of the restructuring plans, so long as at least one of the impaired classes has approved the restructuring plan. Under both the Chapter 11 of the US Bankruptcy Code as well as WHOA proceedings, if all the voting classes of creditors do not vote in favour of the restructuring plan, then also such a plan may be approved by the court if it meets all other criteria. Such a court confirmed plan shall have the benefit of being able to cram down any non-consenting classes of creditors as well.
5. **Third party release** – Since the tool of third-party releases has been incorporated in the WHOA, under which a restructuring plan may amend the rights of creditors against legal entities that form a group with the debtor, the third party release is possible under a common restructuring plan approved by the Dutch court under WHOA. WHOA sets out certain conditions which are required to be satisfied for effecting third party release[27]. First, claims against third parties should be ancillary to the obligations of the primary debtor. Second, all third parties subject to a release must be in a state of financial distress. Third, the group entities concerned need to consent to the release.

[26] [2023] EWHC 1558(Ch).
[27] Article 372 of the Dutch Bankruptcy Code.

Fourth, the court should have jurisdiction over third parties in a situation where these legal entities would themselves offer a restructuring plan. Additionally, the WHOA stipulates that when hearing the request for court confirmation, the court *ex officio* or on request assesses if the proposed plan "in respect of the third parties" complies with the general confirmation criteria. Given the facts of the instant case, all the above conditions are satisfied, therefore the plan is likely to be approved in respect of third parties. This is however subject to meeting the other conditions such as absolute priority rule, no worse off test, etc.

Section H: Disadvantages of the manner in which proceedings are organized

1. **Consequence of public disclosed proceedings under WHOA:** The Dutch Bankruptcy Act provides for two types of restructuring – public and undisclosed restructuring processes. While in the instant case, a choice has been made to prefer the public restructuring process under WHOA given the inherent advantage of automatic recognition provided by it across the EU member states, especially Romania, however, the publicity of the restructuring proceedings could lead to reputational harm on account of the negative perception associated with restructurings (especially when it occurs due to insolvency related concerns). Given the nature of business of Efwon group, it could lead to reputational harm among the fans of the F1 team as well as possibility of concerns being raised by FIA.
2. **Absence of a Group insolvency framework** – Chapter 11 of the US Bankruptcy Code does not provide for a group insolvency framework. While the EIR Recast Regulations and WHOA do provide certain provisions aiding group insolvency proceedings, but they do not contemplate provisions for substantive consolidation of group companies in these processes and largely, the provisions are to aid procedural consolidation. The Directive recognises that greater coherence of preventive procedures should facilitate "restructuring of groups of companies irrespective of where the members of the group are located in the Union"[28]. Provisions pertaining to third party release[29] become critical to be able to extend the scope of the restructuring plan to the group entities.
3. **Absence of automatic moratorium and dependence on discretionary reliefs:** There is no provision for an automatic moratorium under the WHOA, unlike the protection of worldwide automatic stay available under Chapter 11 of the US Bankruptcy Code. Considering the freezing injunction order in Romania, it may have been more useful if there was an automatic moratorium and lifting of existing attachment / injunction orders in Romania basis the Dutch court opening the WHOA proceedings in Netherlands. However, for obtaining such a relief, fresh application will have to be filed in Romania seeking reliefs and therefore, any delay or failure in obtaining such order could jeopardise the process.
4. **Costly and Time-Consuming process**: Running parallel proceedings would typically be a more costly affair, with costs being incurred in both jurisdictions. Further, the time taken in both proceedings is usually different. For instance, the time taken in a WHOA proceeding is usually less than a Chapter 11 proceeding. In such a situation, the time that is required also increases due to the parallel proceedings. Moreover, if there is any different outcome in one of the parallel proceedings, it could lead to further application being necessitated in the other jurisdiction to align the outcomes, which could further delay the process of approval of the restructuring plans. Usually, having an observer

[28] Recital 15 of the Directive.
[29] Article 372 of Dutch Bankruptcy Code.

and a common foreign representative are helpful tools to try and mitigate these disadvantages of having parallel processes.

Section I: Further facts and information which would have assisted to solve the insolvency situation

While based on the information available in the case study, a proposed framework is set out above; however, if the following missing information would have been provided, a more precise solution could have been offered to resolve the insolvency situation.

1. Valuation report of the individual entities especially of Efwon Romania – In the absence of the valuation details of the individual entities, it is very difficult to establish who are the creditors 'in the money' and 'out of the money' for each of the entities in the Efwon group. Absence of valuation details of Efwon Investments makes it difficult to make a determination regarding the conversion of mezzanine debt and its impact on the shareholding. It is also pertinent to highlight that no details are shared regarding the value of the trademark of Team Maximov, which may have been a significant asset given the overall improved standing of the team in recent years. In absence of the valuation data, it is also not possible to calculate the actual amount required to be infused to acquire 51% of the share capital of the company holding the Team Maximov. Further, no details have been shared even regarding the reorganization value.
2. Manner of infusion of the sponsorship money from Singapore to Romania – No details are shared in respect of the manner in which the sponsorship money received from Kretek has been infused into Efwon Romania. Those details would have been helpful to understand the intra-group position among the different entities, which would be helpful in structuring future payments within the group in a tax-efficient structure. Considering Efwon Singapore is held by Efwon Trading and the money is actually utilized in Efwon Romania, how the intra-group flow of money has happened would have been a very helpful information.
3. Amount already repaid and current outstanding position – No details have been shared regarding the actual amounts which have been repaid to lenders of each of the entities in the Efwon group, although the case study does state that certain repayments were made. Full details of the actual amounts paid off would have helped in ascertaining the magnitude of the insolvency situation and the amounts required to be infused to repay the creditors fully.
4. Actual costs incurred towards business annually- The facts in the case study also do not indicate the costs required to be incurred by each of the entities in the Efwon group. It is especially important to ascertain the actual costs required to be incurred by Efwon Romania for running of the business, costs required for upgrading existing machineries and cars (including to meet safety concerns) and the amounts out of the debts / sponsorship amount infused in Efwon Romania.
5. Actual amount offered by Kuasanas annually and the period of sponsorship – No details are shared about the actual amount proposed to be sponsored each year and no details are shared about the period upto which the sponsorship shall continue. In absence of the same, it is difficult to assess with precision the breakup of amounts to be utilized for stabilizing and improving the business and operations, and the amounts to be utilized for repayments. Absence of this data also impacts ability to prepare an appropriate business plan.
6. Quantum of broadcast and other revenues in Efwon Romania – Another missing data point is the quantum of broadcast and other revenues in Efwon Romania. If such amounts are significant, it would help in utilizing a significant portion of the sponsorship amount towards the repayments. Absence of this data also impacts ability to prepare an appropriate business plan.
7. Details of employees, statutory and other operational dues – The details set out in the case study principally focus only on the financial creditors and does not throw much

light on the dues payable to the employees, government dues, any other important trade creditors and even the FIA. These details are critical to classify the creditors into different classes, provide suitable treatment to provide them a fair and reasonable solution and obtain their voting on the restructuring plan. The details of the amounts payable to the drivers as well as the compensation sought by them is also missing.

8. Governing law of contracts, to assess if any of the contracts are impacted by Gibbs Rule, requiring discharge in England – In the absence of any details regarding the governing laws of the executed documents, it is not possible to ascertain if jurisdiction specific issues such as the Gibbs Rule would actually apply. The existence of this information would have helped in structuring the transaction in a manner where the requirement of Gibbs Rule could have been taken into consideration and if required, necessary restructuring steps such as change of governing law in the documents could have been proposed.
9. Security against which loans were granted by Efwon Trading to Efwon Romania: No details are shared regarding whether the tranches of advances made by Efwon Trading to Efwon Romania, subject to the first tranche of USD 150 million were secured or not. This would have been helpful to understand the inter-se position between Efwon Trading and Monaco Loan lender as creditors of Efwon Romania.

Section J: Application of EU Insolvency Regulations and MLCBI – Emphasis on how these texts assist and impede the resolution strategy

EU Insolvency Regulations

The key legal instrument regulating insolvency proceedings across the European Union member states (with the exception of Denmark) is the EIR Recast Regulations. It is also pertinent to highlight that in order to deal with the financial crisis of the late 2000s, the European Commission sought to bring about new policy initiatives to support a more business-friendly environment for debtors in financial distress through rescue of viable companies. In November 2016, the European Commission issued its Proposal for an Insolvency Directive[30], which came into existence in June 2019. In June 2019, the European Union adopted the Directive, which aims to promote the development of a new culture of preventive restructuring with viable companies experiencing financial difficulties being offered early access to restructuring procedures and creating a harmonised restructuring framework throughout the EU member states[31].

The WHOA process in Netherlands closely ties in with the preventive restructuring framework as laid down in the Directive. The proposal for the WHOA was submitted to the Dutch House of Representatives ten days after the European Parliament and the Council published the text of the Directive in 2019. Netherlands took the first shot at implementation of the Directive. Subsequently, by way of a separate legislative act (effective as of 1 January 2023), the Act for the Implementation of the Restructuring Directive implemented the remaining parts of the Directive into Dutch law, in order for it to fully comply with the Directive.

Article 1 sets out that the EIR Recast Regulations apply to public collective proceedings, which are set out in Annex 1. Further, under Recital 9 of the EIR Recast Regulations, it is clarified that for the national procedures set out in Annex A, EIR Recast Regulations should automatically apply without further examination by courts of other member states on whether the EIR Recast Regulations are met or not. The public procedure under WHOA has been included in Annex A of the EIR Recast Regulations. Consequentially, confirmed restructuring plans following a public procedure under WHOA are likely to be more easily recognised and enforced in the Member States of the EU.

[30] COM (2016) 723 final.
[31] The Directives set out the minimum standards for preventive restructuring mechanisms.

The resolution strategy set out above for this case study relies heavily on the WHOA process and the automatic recognition it enjoys in Romania pursuant to the EIR Recast Regulations.

Further, in terms of Article 3(1) of the EIR Recast Regulations, it stipulates that courts of the EU Member State within the territory of which the COMI lies; i.e., the place where the debtor conducts administration of its interests on a regular basis and which is ascertainable by third parties, should be the place where the insolvency proceedings should be opened. Since Efwon Trading is facing immediate insolvency risk in connection with the Monaco Loan, and its COMI is in Netherlands, the filing is undertaken in Dutch courts. It is pertinent to highlight that the EIR Recast Regulations provides for an entity by entity approach to determine COMI and there is no provision for group level COMI. Therefore, a group level determination of COMI for the Efwon Group is not undertaken.

Article 19 of the EIR Recast Regulations provides for the immediate and automatic recognition of any judgment opening insolvency proceedings delivered by a court of an EU member state which has jurisdiction pursuant to Article 3. Accordingly, the proceedings under WHOA and the restructuring plan approved under the same, shall be entitled for automatic recognition in Romania. It is pertinent to highlight that this recognition is in stark contrast to MLCBI, which requires filing of an application seeking recognition in the other country. For instance, in the instant case, similar applications will have to be filed in USA and Singapore (which are countries which have adopted MLCBI).

Recital 65 makes it clear that where the courts of two member states both claim competence to open the main insolvency proceedings, the decision of the first court to open proceedings should be recognised in the other member states without those member states having the power to scrutinise that court's decision. EIR Recast adheres to the framework of modified universalism with one main and plurality of secondary proceedings[32]. This is the bulwark on basis of which the structure has been developed of proceeding with the WHOA process in Netherlands, basis the COMI of Efwon Trading.

Recital 54 as well as Article 20 make it clear that the effects in the jurisdiction where the insolvency proceedings are opened, will also apply to the proceedings where the secondary proceedings are opened in the member-state. Unlike MLCBI, in the EIR Recast Regulations, the same effects as the member state where proceedings are opened, are applicable in other EU member states[33]. Therefore, while a separate Chapter 11 petition is proposed to be filed for opening proceedings in USA which will be subject to reliefs granted thereunder, no separate proceedings are proposed to be filed in Romania in view of automatic recognition and same effects as granted in Netherlands. Article 32 further makes it clear that the course and closure of insolvency proceedings, and compositions approved by the court where insolvency proceedings are opened, shall also be recognised with no further formalities or declaration of enforceability being required[34].

Recital 48 and Articles 41 to 43 provide for cooperation and communication between insolvency practitioners and the courts, between courts and between insolvency practitioners. Further, Articles 56 to 59 provides for cooperation and communication in case of proceedings of groups of companies. The key to success for the resolution strategy of the Efwon group is appropriate cooperation and communication between courts as well as between the restructuring expert / observer and courts.

Article 61 to 77 provides for group coordination proceedings, including the possible appointment of a group coordinator. In the instant case, it is proposed that at the stage of initiation of the proceedings, an application may be filed seeking appointment of an observer. The observer could assist in better coordination.

[32] Article 19(2).
[33] With the exception of Denmark.
[34] The sole exception is where the effects of such recognition.

The key impediment of usage of EIR Recast Regulations in the resolution strategy is that it does not apply to non-EU member states and hence, for Efwon Singapore and Efwon Investments, sole reliance on the EIR Recast Regulations would not suffice. The dependence on MLCBI (and the different approach under the same) means that separate proceedings has to be undertaken for ensuring recognition in Singapore and USA, as well as protection where required (for instance, the petition being filed under Chapter 11 of US Bankruptcy Code to ensure stay against any coercive actions against Efwon Investments). Further, the definition of the term 'group of companies' includes only the holding company and its subsidiaries. It does not directly touch upon the group entities; for instance, Efwon Singapore is a sister concern and not a subsidiary of Efwon Trading. Further, because of this issue, Efwon Investments is outside the ambit of the definition (assuming the debtor to be Efwon Trading). Accordingly, for those entities, the EIR Recast Regulations would not be of much assistance. Further, had there been provisions for substantive consolidation related mechanics set out in the EIR Recast Regulations, it could have aided in better resolution; however the EIR Recast Regulations while recognizing group insolvency do not further provide for possibility of substantive consolidation. But unlike MLCBI, at least EIR Recast Regulations recognize and provide for procedural aids for group insolvency matters.

MLCBI

The MLCBI, which came into advent in 1997, is a global soft instrument which seeks to provide legislative guidance for states on cross-border insolvency. The MLCBI seeks to provide a broad framework which may be adopted by states for providing a solution for resolving cross-border insolvency issues. Earlier, the two distinct approaches followed in most states were either territorial (local courts separately administer and distribute assets and determine creditors' rights in every jurisdiction in which those assets and creditors are located according to the priorities provided for under local laws) or universalist (favours the operation of a single insolvency proceeding extending on a worldwide basis). MLCBI seeks to provide a coherent international recognition and cooperation framework built on the principle of 'modified universalism'. A unique feature of the MLCBI is that it allows for the flexibility for states to adopt MLCBI with modifications. MLCBI has been adopted (with modifications) in more than 50 countries and is the most universally accepted framework for resolving cross border insolvency issues.

The MLCBI principally has 4 key elements - access, recognition, relief and cooperation. It essentially provides for:

(a) **Access**: Permitting the ability of a local insolvency practitioner to apply to courts of foreign jurisdictions to obtain recognition of an insolvency process being undertaken in the local jurisdiction[35];
(b) **Recognition**: Creates framework for recognition of proceedings if an insolvency proceeding is either a 'foreign main proceeding' (in cases where an insolvency process is taking place in a state where the debtor has its 'centre of main interests') or a 'foreign non-main proceeding' (in cases where the insolvency process is taking place in a state where the debtor has an 'establishment')[36];
(c) **Reliefs**: Allows for different consequences and entitlements to ancillary relief depending on the type of proceeding recognised (with a mandatory automatic stay on enforcement and execution and a suspension on the right to transfer, encumber or dispose of assets of the debtor only upon recognition as a foreign main proceeding), as well as discretionary interim relief, including by way of an interim enforcement

[35] Articles 9 to 13 of MLCBI.
[36] Articles 15 to 17 of MLCBI.

moratorium and a stay of execution orders pending the determination of an application for recognition[37];

(d) **Cooperation and Coordination**: Provides a framework for cooperation and communication between courts / insolvency practitioners and coordination in concurrent proceedings[38].

For deciding on which of the foreign proceedings is a main proceeding, the determination has to be made of the COMI, which is usually the debtor's registered office or habitual residence in case of an individual[39]. It is however important to highlight that in the case of MLCBI, there is no framework for insolvency of a group of companies together. There is no group wide COMI even under MLCBI. Accordingly, in the facts of the present case, there is no determination made of a group-wide COMI.

Proceedings shall be initiated under Chapter 15 of US Bankruptcy Code (which is the chapter adopted from MLCBI) and under the Insolvency, Restructuring and Dissolution Act 2018 in Singapore (which adopts the MLCBI) for the recognition of the approved restructuring plan affecting the entities in USA and Singapore respectively.

In terms of the MLCBI as adopted in both USA (Chapter 15 of US Bankruptcy Code), the foreign representative appointed by the Dutch courts will have access to make requisite representations before the courts in USA in the parallel proceedings. Further, in the proceedings seeking recognition of the Dutch court approved restructuring plan in Singapore, the Insolvency, Restructuring and Dissolution Act 2018 allows for access to foreign representative.

Further, in terms of Article 32 of the MLCBI, the 'hotchpot' principle is applied and a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign state, may not receive a payment for the same claim in a proceeding under the local jurisdiction regarding the same debtor, so long as payment to other creditors of the same class is proportionately less than the payment the creditor has already received. In the instant case, the Monaco Loan lender is proposed to be paid by Efwon Singapore. Even if the Monaco Loan lender is not fully paid under the Dutch court approved restructuring plan and has to suffer some haircut, on account of the above principle, it cannot seek payment of any balance portion from Efwon Singapore in the Chapter 11 restructuring plan proceedings.

The principles of MLCBI are extensively utilised in the instant case for ensuring the recognition of the WHOA process approved restructuring plan in USA and Singapore (both of whom have adopted the MLCBI), in absence of which the process of recognition would have been far more cumbersome. The principles and effects of recognition set out in the MLCBI are critical to ensure that the restructuring plan has a universal effect in the jurisdictions where the automatic effect of recognition, as otherwise available for Efwon Romania under EIR Recast Regulations, is not available. Accordingly, it has been proposed to file the restructuring plan post approval in the Dutch court to US bankruptcy court under Chapter 15 of US Bankruptcy Code and in courts in Singapore, for recognition in terms of MLCBI.

Further, the principles set out under the MLCBI for cooperation and coordination are of utmost importance in the instant case, given the proposal to have parallel proceedings in USA and Dutch courts. The observer appointed under the WHOA process will also have to communicate with the US bankruptcy court.

One of the impediments in usage of the MLCBI in the instant case is that the MLCBI does not provide for a framework for group insolvency. As is often the case, as well as in the case study, international trade usually involves groups of companies instead of the same debtor having

[37] Articles 19 to 24 of MLCBI.
[38] Articles 25 to 27 cover cooperation and communication, and Articles 28 to 30 cover coordination of concurrent proceedings.
[39] Article 16(3).

cross border operations under a single entity structure. In such circumstances, the MLCBI is not very helpful. While the UNCITRAL has adopted the Model Law on Enterprise Group Insolvency which focuses on insolvency proceedings relating to multiple debtors that are members of the same enterprise group to equip states with modern legislation addressing the domestic and cross-border insolvency of enterprise groups, complementing the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI), but it is yet to be adopted by states[40].

Further, the MLCBI is only a soft law instrument providing a proposed framework for adoption by states and is not a binding instrument such as the EIR Recast Regulations. Given the ability to adopt and implement the MLCBI with own amendments, several states have adopted the same with their own modifications. There is therefore no universally applicable set of rules (the way the EIR Recast Regulations prescribes) basis the MLCBI and each jurisdiction has its own peculiarities.

There is no automatic recognition under MLCBI (in the manner prescribed under EIR Recast Regulations) and therefore, some time has to be provisioned to ensure recognition in both Singapore and USA of the Dutch court approved restructuring plan.

In addition to the aforesaid provisions of the EIR Recast Regulations (read together with the Directive) and the MLCBI, considering the parallel proceedings expected under Chapter 11 of the US Bankruptcy Code and in the Dutch court under WHOA, as well as potential secondary proceedings in Singapore and Romania, for the purpose of better cooperation and communication, guidelines such as European Communication and Cooperation Guidelines for Cross Border Insolvency[41], the EU Cross-Border Insolvency Court to Court Communications Principles and Guidelines (JudgeCo Principles and Guidelines), Judicial Insolvency Network Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency (JIN Guidelines), ALI-III Global Principles for Cooperation in International Insolvency Cases (ALI-III Global Principles) and the UNCITRAL Practical Guide on Cross-Border Insolvency Cooperation, 2009 may be used for ensuring appropriate communication between the two forums as well as the insolvency practitioner appointed as observer / restructuring expert. A protocol-based approach may also be followed, similar to the Maxwell case[42].

Section K: Potential Structuring through England instead of Netherlands

In order to assess if Efwon group (with hindsight) should have structured through England rather than the Netherlands, it is important to first understand certain critical aspects pertaining to restructuring under English laws.

1. **Flexible Approach**: English law restructuring tools have been one of the most well tested and popular tools for global restructuring of insolvency companies. The UK Corporate Insolvency and Governance Act 2020 (colloquially known as the "**Restructuring Plan**" or "**RP**") came into force on 26 June 2020, through insertion of a new Part 26A in the Companies Act 2006 entitled "Arrangements and reconstructions for companies in financial difficulty". The RP builds upon the existing concept of the scheme of arrangement under Part 26 of the UK Companies Act, 2006 and provides for a company to enter into a restructuring plan with the approval of its creditors or members. RP is applicable to companies, both English and foreign (as long as they can satisfy the sufficient connection test laid down in respect of the Schemes of Arrangement in the UK). English schemes are marked by their flexible approach. Companies are free to use schemes for a wide variety of debt-reduction strategies affecting debt and/or equity. Such strategies may include debt-to-equity swaps, modification (e.g. extension of maturity dates) or reduction of creditors' claims.

[40] UK had announced in July 2023 that it is considering to adopt the Model Law on Enterprise Group Insolvency.
[41] CoCo Guidelines.
[42] Maxwell Communications Corp.,[1992] B.C.L.C 465; 170 B.R.800 (Bankr. S.D.N.Y. 1994); Aff'd B.R. 807 (Bankr. S.D.N.Y. 1995); 593 F. 3rd 1036 (2nd Cir., 1996).

2. **Not restricted to insolvency event for restructuring**: Schemes of arrangement are available to both solvent and insolvent debtors. Under the RP, the test for initiation is a pre-insolvency 'financial difficulty' test, i.e., if the company has encountered or is likely to encounter financial difficulty that is affecting, or will or may affect, its ability to carry on business as a going concern and the proposed compromise or arrangement between the company and its creditors and/or members or any of them, is proposed for the purpose of eliminating, reducing, preventing or mitigating the effect of such 'financial difficulty'. Therefore, the company need not be insolvent to take recourse to the RP and only a financial difficulty is adequate to take recourse to restructuring under RP. This is in addition to the existing practice of restructuring schemes under Section 26 of the Companies Act, in which even solvent entities could be restructured. UK offers more flexibility in respect of the entities which can undergo restructuring, as compared to other jurisdictions in Europe.

3. **Moratorium:** Prior to the 2020 amendment introducing the RP, the UK was criticized as being one of the few jurisdictions to not provide for moratorium as part of its restructuring tools (other than the ones where creditor-in-control regime was observed, such as administration). The concept of standalone moratorium coupled with the debtor-in-possession model of the RP was only introduced vide the 2020 amendment.[43] Therefore, similar to the WHOA, the protection of moratorium is also available now in UK.

4. **No requirement of COMI, sufficient connection would suffice -** To the extent that schemes are not bound by COMI considerations, they provide a gateway for foreign-registered companies to restructure their debts in English courts, generally based on the "sufficient connection" test, which appears to be more lenient than the COMI-test. Since a scheme of arrangement is not considered an insolvency procedure, it does not fall under the EIR Recast Regulations and its strict rules for determining international insolvency jurisdiction, guided by the concept of COMI. To the extent that schemes are not bound by COMI considerations, they provide a gateway for foreign-registered companies to restructure their debts in English courts, generally based on the "sufficient connection" test, which appears to be more lenient than the COMI test. This welcoming yardstick to access jurisdiction is of particular practical value for multinational enterprise groups, wishing to restructure their debt in a single forum. Another reason why schemes of arrangement are popular among international corporate groups is the availability of third-party releases.

5. **Executory Contracts:** Unlike the US Bankruptcy Code and the WHOA, there is no express right of assumption or rejection of executory contracts or unexpired leases in any of the UK's restructuring procedures and the company cannot unilaterally 'reject' (or, in UK parlance, surrender) an unexpired lease because a lease is a property right.[44] This effectively means that under the UK schemes, the executory contracts with the drivers cannot be terminated without the consent of the drivers.

6. **Gibbs Rule:** The 19th century authority[45], which (subject to certain exceptions) prevents the discharge or variation of English law-governed claims by a foreign insolvency or restructuring process, is a unique feature of the English law governed contracts. It is the anti-thesis to modified universalism. If the structuring were to happen through England, then it would be certain that any restructuring would necessarily have to happen in UK.

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[43] Insolvency Act 1986, Part A1.

[44] *Re Instant Cash Loans Ltd* [2019] EWHC 2795 (Ch); Sarah Paterson and Adrian Walters, Selective Corporate Restructuring Strategy, 86(2) Modern Law Review (2023) 436.

[45] Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métau (1890) 25 Q.B.D 399

7. **Limitations due to Brexit -** UK restructuring plan proceedings under the RP or under a Scheme of Arrangement are no longer automatically recognised in the remaining EU Member States (whether or not the debtor's COMI is in the UK), because the UK is no longer a "Member State" for the purposes of the EIR Recast Regulations. There is uncertainty on recognition in EU member states and in each case, determination will have to be made on the facts including the governing law / jurisdiction clauses of the debt to be compromised, and whether the procedure seeks to affect non-consenting shareholders in an EU company. Different member states may take different views regarding recognition basis the applicable position in their respective jurisdiction, including whether or not the location of COMI is relevant and the conflict of law rules in the relevant jurisdiction. If the structuring of the group would have been through UK, then the material challenge would have been seeking recognition of the UK court approved restructuring plans in Romania, especially considering the applications filed by drivers seeking initiation of insolvency proceedings in Romania.

8. **Voting threshold**: In a UK RP process, the voting threshold required is 75% in value of each class of creditors to approve it[46]. The dissenting class can be crammed down if such class is not 'worse off' than it would have been in the case of the 'relevant alternative' scenario and has been agreed (by 75% value) by another class who would receive a payment or have genuine economic interest in the company in case of the 'relevant alternative' scenario[47]. Since the RP process does not follow absolute priority rule, the corollary is that this approval threshold can lead to a 'cram up' situation where an approval by a junior creditor class could bind a senior creditor class. This could have a material implication, had the structuring of the Efwon group been done through UK instead of Netherlands in view of the ability of Efwon Investments potentially cramming up lender of the Monaco loan.

In view of the aforesaid position prevailing in England, if the Efwon group would have been structured through England, the restructuring would have to be undertaken in England. While English restructuring schemes provide the benefit of greater flexibility compared to other EU jurisdictions, but in the post-Brexit era, the key issue which would have impacted the possibility of effective restructuring would have been the lack of automatic recognition of any orders passed in England, in Romania (EU member state). Considering the absence of automatic recognition of English scheme or restructuring plan orders in EU member states such as Romania, and given the criticality of recognition of Efwon Romania in the group, including the urgent necessity of vacating the freezing injunction orders in Romania, restructuring through England may not have been as expedient as WHOA in Netherlands.

Further, WHOA offers a far more flexible approach in terms of ability to reject existing executory contracts, such as those with drivers, while in England, there is no express right of assumption or rejection of executory contracts in any of the UK's restructuring procedures.

While prior to 2020, England did not offer the relief of a moratorium, however, post the 2020 amendment, the benefit of moratorium is available in England as well. Ability to cram-up senior class of creditors is another significant benefit available in England. Considering Netherlands has not yet adopted the UNCITRAL Model Law on Cross Border Insolvency, there is no automatic recognition of foreign proceedings in the manner as available under the Cross-Border Insolvency Regulations, 2006 (CBIR) in England, which implemented the UNCITRAL Model Law on Cross Border Insolvency in the United Kingdom. If the main proceedings would

[46] Companies Act 2006 (UK), Sections 901F(1).
[47] Companies Act 2006 (UK), Sections 901G.

have been in a non-EU country, then England would have been a preferred location in comparison to Netherlands for the structure.

While both WHOA and the English Restructuring Plan are advanced pre-insolvency frameworks and promise a flexible debtor in possession model, but given the distinct benefit of orders under WHOA having automatic recognition in EU member states such as Romania, there does not appear to be any significant merit to changing the structure to having an entity in England instead of Netherlands. The views above are however subject to the assumption that the contracts pertaining to the arrangements are not governed by English laws, in which case, there would have been the requirement to undertake an English restructuring for the discharge of the English law governed debt, in addition to the proceedings in Netherlands, leading to multiplicity of proceedings.

Section L: Outcome for Stakeholders

In view of the resolution strategy set out above, the final outcome for each stakeholder upon implementation of the resolution strategy will be:

1. **Promoter** - The Promoter in the short term loses the majority shareholding control of Team Maximov, in order to ensure that the sponsorship opportunity is not lost out. In the meanwhile, it has been provided majority control on the board of directors to ensure its control in running of the business, so that business can be turned around faster. Also, there is a proposal to have a list of reserved matters where the Promoter will have veto rights. Further, by way of structuring the payment of the Monaco Loan through Singapore and conversion of the intra-group subrogated debt into compulsorily convertible debentures, the structure has been created for the Promoter to get back the majority shareholding of the Team Maximov as well.
2. **Monaco Lender** – The Monaco Loan lender being a high interest loan and having recourse to multiple entities within the group, has been decided to be paid off by way of a one-time final settlement. A significant discounting of the same is not envisaged. Upon the resolution strategy being implemented, the Monaco Loan lender is repaid and exits its exposure to the group.
3. **US syndicate lenders** – The US syndicate lenders accrued interest obligations have been capitalized into a funded interest term loan to be repaid over time. While the US syndicate lenders are having to agree to a delay in repayment, however, they are still securing a better position than what would have been available to them, had Efwon Investment and Efwon gone into insolvency / liquidation. So they are certainly no worse off than they would have been if the Efwon group companies went into liquidation, especially considering the value of their securities may not have been adequate to repay the entire debt amount. They are incentivised further due to the past interest obligations being secured and carrying additional interest.
4. **Individual Efwon entities** – Efwon Trading now only has the debt owed to Efwon Investments in view of the payment to Monaco Loan lender. It continues to have receivables in respect of the debts advanced earlier (although the debtor has now moved from Efwon Romania to Efwon Malaysia) and has a better prospect of returns. Efwo Romania stands dissolved. Efwon Singapore continues with its existing standing, with the closure of its guarantee obligations and is now debt free.
5. **Drivers** – The drivers who were engaged by Efwon Romania had sought a substantial compensation and filed seeking insolvency of Efwon Romania. Under the restructuring process in WHOA, their executory contracts will stand terminated and the entire amounts claimed by them will stand settled in terms of payments contemplated under the restructuring plan. Since there are new qualified drivers made available by

Kuasanas, such new drivers will be directly engaged by Efwon Malaysia and there is therefore no compelling requirement for continuance of earlier drivers.

6. **Kuasanas** – Kuasanas are the new sponsors who will become the majority shareholder in Efwon Malaysia. They shall take upon themselves the obligation to fund in excess of USD 100 million annually, with payment for a significant part being upfronted. While they obtain representation on the board of Efwon Malaysia, they do not have majority control. This should not however be a material concern for them, and may be in their best interest as they do not have prior experience of running an F1 company, while the Promoter has run Team Maximov for almost 10 years. With representation on the board, they will be able to provide due guidance and block any unwieldy decisions by the board of Efwon Malaysia which may impinge on business interests.

Under the WHOA process, a restructuring plan shall be binding if 2/3rd in total value of each class of creditors and shareholders affected by the plan vote in favour.[48] If any of the classes such as the drivers does not vote in favour, then assuming any of the other classes votes in favour, the restructuring plan can be crammed down and forced upon them. As indicated earlier, the treatment proposed to the stakeholders has been done following basis principles of absolute priority and no worse off than liquidation scenario and hence, it is expected that at the very least, one class of voters will certainly vote in favour.

Under US Bankruptcy Code, creditors or shareholders having claims or equity interests that are impaired under the plan are entitled to vote on the plan and approval of a restructuring plan requires voting by 2/3rd in amount and majority in number of the class of creditors or shareholders.[49] Even if some of the classes do not vote in favour of the restructuring plan, it can be crammed down if at least one of the impaired classes has voted in favour of the restructuring plan and the restructuring plan passes the 'fair and equitable test'. To ensure that this test is met, it must be ensured that similar claims are dealt with in a similar manner under the restructuring plan.[50] Further, the 'best interest of creditors test' must be satisfied for the restructuring plan to be confirmed, which basically means that dissenting creditors or shareholders are receiving under the plan at least as much in present value terms as they would receive if the debtor were instead liquidated under Chapter 7 of the US Bankruptcy Code.[51] Lastly, the absolute priority should be respected that junior classes cannot receive anything unless and until senior classes are paid in full, or voluntarily agree to different treatment as part of consensual plan.[52]

The resolution strategy has been formulated in a manner that each of the stakeholders (creditors as well as shareholders) stands to receive the best possible outcome by agreeing to the restructuring plan, as opposed to a potential insolvency or liquidation of the company and should be expected to therefore agree to the plan. The absolute priority rule has been respected and accordingly, the senior US syndicate lenders are being paid in priority over the junior syndicate lenders. It is critical to ensure that Kuasanas agrees contractually to the proposal, as there is no provision to cram down any restructuring proposal on them, as they are neither shareholders nor creditors. For the rest of the stakeholders, even if a particular stakeholder (such as potentially the drivers) at any level is not willing to accept the restructuring plan, the principles of cram down available under US Bankruptcy Code and WHOA will assist in imposing the restructuring plan and making it binding for all creditors and shareholders. Thus, the outcome envisaged above can be forced even to any dissenting class.

[48] Article 381(7) and 381(8) read with Article 383, WHOA.
[49] Section 1126 of the US Bankruptcy Code.
[50] Section 1129(a)(10) read with 1129(b) of the US Bankruptcy Code.
[51] Section 1129(a)(7) of the US Bankruptcy Code.
[52] Section 1129(b)(2)(B) of the US Bankruptcy Code.

In response to the specific queries raised by the general counsel of Mr Maximov, the advice above covers responses to the queries raised. For ease of reference, it may be noted that the specific queries raised are addressed in the following sections above:

Query (a): Section D

Queries (b) to (d): Section E

Query (e): Section F

Query (f): Section G and H

Query (g): Sections D to H

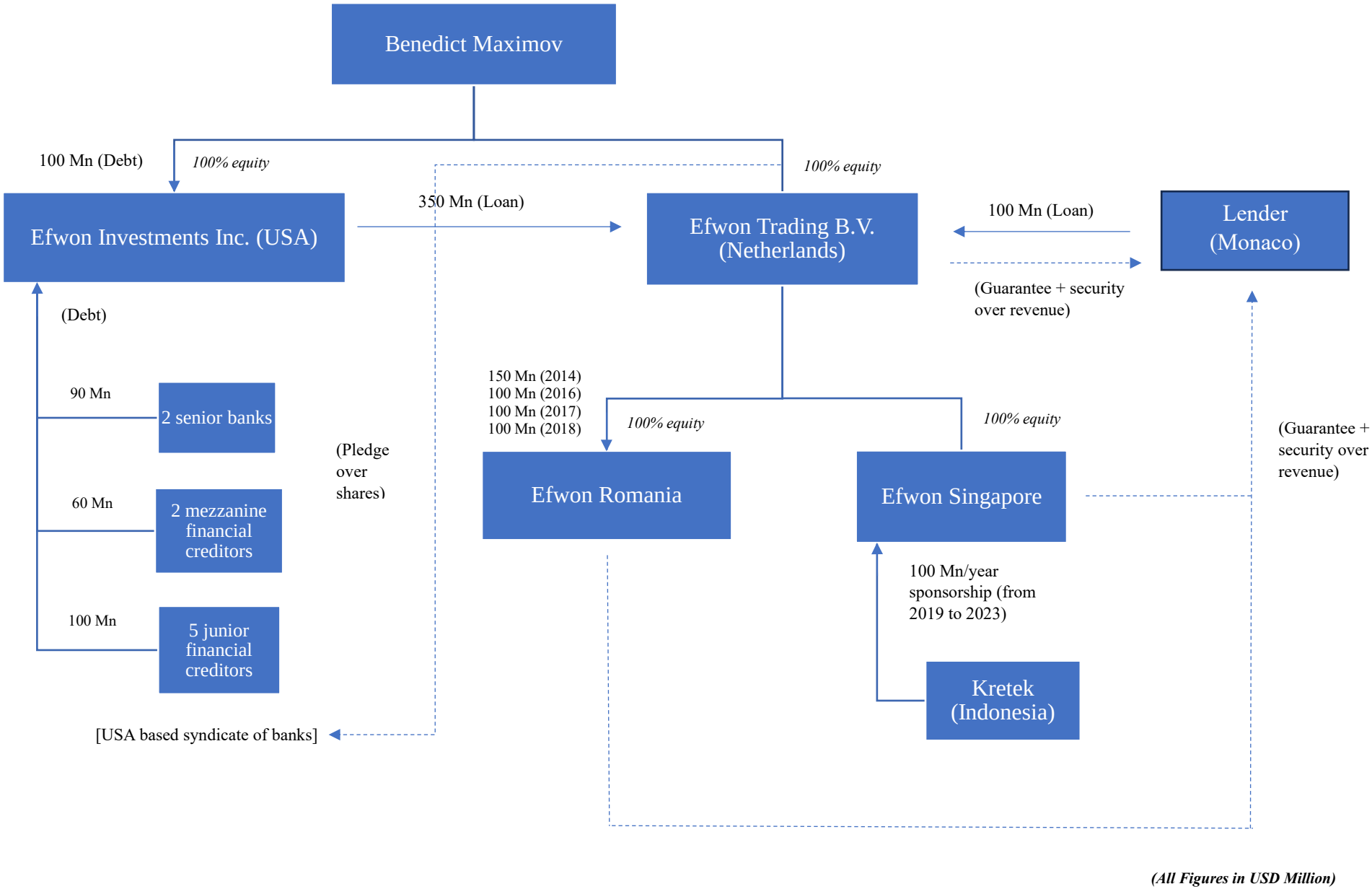
Query (h): Section I

Query (i) and (j): Section J

Query (k): Section K

Query (l): Section L

ANNEX A (Appended on the next page)



(All Figures in USD Million)