Mr Benedict Maximov
c/o Efwon Investments, Inc
Texas

BY EMAIL AND POST

Date	Our reference	Your reference
22 April 2024	UAXP/MAX123.U1	

Dear Mr Maximov

Efwon Investments Inc and subsidiaries (the "Efwon Group") – advice regarding proposed restructuring

1. Introduction

1.1 We set out at Appendix 1 our understanding of the structure of the Efwon Group. Please let us know if this does not reflect the current position.

1.2 Defined terms are set out in Appendix 3. Certain information will need to be completed following the provision of documentation and information as further described in paragraph 7 below.

1.3 We noted that the debt within the Efwon Group does not derive from the same finance documentation and does not sit within the same group entities. Funds advanced by the US Lenders have been on-lent down the group structure. Consequently, the lender(s) within each entity differ meaning different considerations will apply to each entity and it will not be possible to effect a restructuring by a single process alone.

1.4 You have asked us to advise on how to best facilitate the proposed deal with KuasaNas, stabilise the Efwon Group and safeguard your position. We set out our initial advice below. Please note that this may be subject to change dependent on a review of the additional information and documentation requested.

2. Proposed strategy – summary (question a)

2.1 The optimum route forward will depend on a combination of factors, primarily:

(a) legal analysis with regard to insolvency frameworks, jurisdictional matters and the specific finance documentation; and

(b) commercial factors including, in particular, the willingness of the various stakeholders to engage in a proposed restructuring and their desired outcome.

2.2 The first of these factors (legal analysis) is discussed in detail below. There are various matters that will need to be clarified in order for the advice, including the ultimate proposed strategy, to be finalised.

2.3 The second of these (commercial factors) is somewhat out of our (and your) control. The positions taken by stakeholders are likely to change through the course of negotiation. It cannot be assumed that responses / decision making will necessarily be rational and they make be driven by factors of which we are not aware and cannot predict.

2.4 However, as the most recent lender to the Efwon Group, we assume that the Monaco Lender has priority in respect of its debt as regards to Efwon Netherlands, Efwon Romania and Efwon Singapore.

2.5 We therefore assume that as a minimum, you will wish to obtain the input of the Monaco Lender when developing the proposed strategy and its consent to the terms that are being put to stakeholders.

2.6 **The strategy below therefore proceeds on the important assumption that the Monaco Lender (i) is "in the money" i.e. it would receive a return on the liquidation of the Efwon Group (ii) has priority as against the other lenders to the Efwon Group; and (iii) would vote in favour of the proposed strategy.**

2.7 At its heart, the overall proposed strategy (subject to the assumptions set out below) proceeds on the basis of:

(a) Chapter 11 Plan in respect of Efwon US;

(b) WHOA Plan in respect of Efwon Netherlands; and

(c) Consensual restructuring in respect of Efwon Romania.

2.8 We outline the high level proposed commercial terms below and then discuss the legal requirements for these processes in further detail at paragraph 4. A structure chart of the post-restructuring group can be found at Appendix 2.

Efwon US – Chapter 11

2.9 We have assumed that the US Mezzanine Lenders and US Junior Lenders would be unlikely to agree on a consensual basis to a restructuring that sees their position compromised.

2.10 On that basis, a consensual restructuring would not be possible. The proposal in respect of the Chapter 11 is therefore as follows:

(a) New money: Mr Maximov agrees to provide an additional $100m of new money (as equity) into Efwon US.

(b) This enables him to retain 50% of his current (100%) shareholding in Efwon US.

(c) Debt for equity: The US Lenders "swap" $150m of their $250m debt for 50% of the equity in Efwon US.

(d) Given the absolute priority rule under Chapter 11[1], and assuming value breaks in the US Mezzanine Lenders' debt, then the write off of the US Lenders debt would be borne entirely by the US Junior Lenders and the US Mezzanine Lenders.

(e) While the specific figures will depend on the valuation evidence with regard to returns to the US Lenders on a liquidation basis, we have assumed that:

(i) The US Junior Lenders would effectively be entirely disenfranchised as being "out of the money" and so their debt reduces from $90m to $0.[2]

(ii) The US Mezzanine Lenders debt would reduce from $60m to $0m

(iii) The US Senior Lenders debt would remain whole at $100m.

(iv) The US Senior Lenders and US Mezzanine Lenders would also obtain 50% of the equity in Efwon US between them.

(f) The Chapter 11 Plan would also entail:

(i) An extension of the maturity of the Efwon US Facility Agreement to 2028[3]; and

(ii) A waiver of any other existing breaches of covenant / undertaking under the Efwon US Facility Agreement such that the secured debt could not be accelerated.

(g) Assuming the Chapter 11 Plan is approved, the outcome for Efwon US is as follows:

(i) $100m of new money (from Mr Maximov);

(ii) $100m of secured debt owed to the US Senior Lenders;

(iii) Extended maturity to 2028 in respect of the Efwon US Facility Agreement (and no ongoing breaches) meaning cashflow solvency restored;

(iv) Ownership 50:50 as between the US Senior Lenders / US Mezzanine Lenders and Mr Maximov.

Efwon Netherlands

2.11 We have assumed that the US Lenders (or at least the US Mezzanine Lenders and US Junior Lenders) would not voluntarily consent to release their security over the shares in Efwon Netherlands and/or that they have a level of control over decisions taken by Efwon US such that Efwon US cannot voluntary consent to any proposal at Efwon Netherlands level without breaching the Efwon US Facility Agreement (because e.g. it would need a 66% or 75% lender majority decision which cannot be obtained by the US Senior Lenders alone).

2.12 On that basis, a consensual restructuring would not be possible. The proposal in respect of the WHOA Plan is therefore as follows:

[1] This assumes that under any Efwon US Facility Intercreditor Agreement, the US Lenders rank: firstly, the US Senior Lenders, secondly the US Mezzanine Lenders and thirdly the US Junior Lenders

[2] It may be that the US Junior Lenders or the US Mezzanine Lenders wish to provide additional funding to Efwon US as part of the process to retain a stake in the Efwon Group. This would be a matter for negotiation.

[3] Exact date to be confirmed depending on projected financial performance of the Efwon Group

(a) New money: the $100m equity from Mr Maximov to Efwon US is onward transferred as a secured loan from Efwon US to Efwon Netherlands;

(b) Debt for equity: Efwon US "swaps" $200m of its $350m secured debt in order to retain a 49% equity interest in Efwon Netherlands.

(c) 51% of the equity in Efwon Netherlands is transferred from Efwon US to KuasaNas;

(d) Security over the shares in Efwon Netherlands granted in favour of Efwon US and the US Lenders is released[4];

(e) KuasaNas pays $100m to Efwon Netherlands as advance on sponsorship deal.

(f) The WHOA Plan would also entail:

(i) An extension of the maturity of the Efwon Netherlands Facility Agreement and the Monaco Facility Agreement to 2028 (to align with the Efwon US Facility Agreement); and

(ii) A waiver of any other existing breaches of covenant / undertaking under the Efwon Netherlands Facility Agreement and the Monaco Facility Agreement such that the secured debt could not be accelerated.

(g) The Monaco Lender would rank pari passu to the debt under the Efwon US Facility Agreement.

2.13 Assuming the WHOA Plan is approved, the outcome for Efwon Netherlands is as follows:

(a) $100m of new money from KuasaNas as an advance under the sponsorship agreement;

(b) $250m secured debt owed to Efwon US (being $100m new money and $150m owed under the Efwon Netherlands Facility Agreement)

(c) $100m secured debt to Monaco Lender;

(d) Extended maturity to 2028 in respect of the Efwon Netherlands Facility Agreement (and no ongoing breaches) meaning cashflow solvency restored;

(e) Efwon Netherlands is owned 49:51 as between Efwon US and KuasaNas.

Efwon Romania

2.14 There are various options with regard to Efwon Romania which are touched on in further detail below. However, for the purpose of this advice we have assumed that, should the Chapter 11 Plan and the WHOA Plan be approved, it would be possible to deal with the solvency of Efwon Romania on a consensual basis. This would require both the Monaco Lender and Efwon Netherlands to consent to the proposal.

2.15 The consensual restructuring proposal is as follows:

(a) Settlement is negotiated with the Romanian drivers (the "**Romania Settlement**");

[4] It does not appear from the briefing note that share security over the shares in Efwon Netherlands was granted in favour of the Monaco Lender

(b) An amount sufficient to satisfy the Romanian Settlement is transferred by Efwon Netherlands to Efwon Romania from the monies advanced to Efwon Netherlands by Efwon US.

(c) The Romania Settlement includes the dismissal of the pending insolvency proceedings and the worldwide freezing order.

(d) The above steps are contingent on the approval of the Chapter 11 Plan and the WHOA Plan.

(e) Assuming completion of the above steps, the Romanian restructuring would entail:

(i) Debt for equity: Efwon Netherlands "swaps" $200m of its $350m secured debt.

(ii) An extension of the maturity of the Efwon Romania Facility Agreement to 2028 (to align with the Efwon US Facility Agreement, Efwon Netherlands Facility Agreement and the Monaco Lender Facility Agreement (the latter in respect of which Efwon Romania is guarantor)); and

(iii) A waiver of any other existing breaches of covenant / undertaking under the Efwon Romania Facility Agreement such that the secured debt could not be accelerated.

2.16 If a consensual restructuring were not possible it may be that, following the Romania Settlement (which would dismiss the pending insolvency proceedings in Romania), a WHOA could be proposed in respect of Efwon Romania which would mirror the terms in respect of Efwon Netherlands.

2.17 There is a separate commercial question with regard to the longer term plan in respect of Efwon Romania and whether, if the operational business is to be transferred to Malaysia as has been proposed by KuasaNas, Efwon Romania is still required or whether a proposal to effect a solvent wind down is required.

3. Insolvency / restructuring proceedings required to achieve selling stake in group to KuasaNas? Where and how will those proceedings take place (questions (b) and (c))

Overall approach

3.1 The sale of the stake in the Efwon group to KuasaNas requires the entire group to have stabilised. The briefing note provided makes clear that for the sponsorship contract to be entered into with KuasaNas, not only must they obtain a 51% stake in the group, but the insolvency issues affecting the companies in the Efwon group must be "dealt with promptly."

3.2 What isn't clear is at what level KuasaNas wishes to hold its 51% stake. We have proposed 51% of the shares in Efwon Netherlands being transferred to KuasaNas but whether this is commercially acceptable will need to be confirmed.

3.3 The above proposed approach, in particular the Dutch WHOA with parallel Chapter 11 benefits from successful judicial precedent. The Diebold Group adopted this approach in July/August 2023.

Efwon US - Chapter 11

3.4 A Chapter 11 Plan enables a debtor to reorganise under the control of the incumbent management team subject to the protection of an automatic stay.

3.5 A Chapter 11 is commenced by filing a petition with the relevant bankruptcy court together with information on the debtor's assets, liabilities and main creditors.

3.6 Any entity with domicile, place or business or property in the US falls within the definition of debtor[5]. That would be satisfied in the case of Efwon US which is incorporated in Texas.

3.7 A Chapter 11 can take many forms including trading through a Chapter 11 process. However, we suggest that Efwon US pursues a pre-negotiated Chapter 11 whereby it secures support of a critical mass of its stakeholders prior to proposing the plan.

3.8 That would entail Efwon US filing its proposed plan and disclosure statement[6] at the same time as the Chapter 11 petition and moving very quickly to obtain court approval to put the Plan to a vote of relevant stakeholders. This allows for a much quicker Chapter 11 process.

3.9 The Chapter 11 Plan will need to divide stakeholders into a series of classes for the purpose of voting. Each class must be treated equally under the Plan.

3.10 We anticipate the following classes:

(a) Mr Maximov as shareholder (but out of the money in liquidation so not an "in the money class");

(b) US Senior Lenders;

(c) US Mezzanine Lenders; and

(d) US Junior Lenders.

3.11 A Plan will be confirmed on a consensual basis if in each class of stakeholder, 66.6% of the value of the claims and 50% of the number of those holding a claim in a class vote in favour.

3.12 We assume for these purposes that the US Senior Lenders and Mr Maximov will vote in favour of the Chapter 11 Plan but that the US Mezzanine Lenders and the US Junior Lenders will vote against.

3.13 On that basis, Efwon US would have to request the US Bankruptcy Court to effect a cram down of the dissenting stakeholders under section 1129(b) of the Bankruptcy Code.

3.14 A key protection for any impaired stakeholder is the requirement for the debtor company to satisfy the "best interest of creditors" test[7] – in other words demonstrate that a stakeholder will receive more under the Chapter 11 Plan than it would if the debtor were liquidated.[8]

3.15 The additional requirements for cram down of a dissenting impaired class are that[9]:

(a) The Plan does not unfairly discriminate – in other words it does not provide greater value to one class of creditors as compared with another of equal rank (without reasonable justification); and

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[5] Bankruptcy Code section 109
[6] The disclosure statement must include the liquidation analysis which sets out the position for each stakeholder on a liquidation as compared to under the plan
[7] Bankruptcy Code section 1129(a)(7)
[8] Note the difference with other jurisdictions such as restructuring plans in the UK where the test is the "relevant alternative" which may be a process other than a liquidation e.g. an administration sale as a going concern
[9] Bankruptcy Code section 1129(b)

(b) The Plan is otherwise fair and equitable meaning, for secured creditor, it (relevant in this instance):

(i) receives payments totalling at least the amount of its allowed secured claim; or

(ii) receives the "indubitable equivalent" of its secured claim

3.16 Often the question of fair and equitable is subject to considerable objection / dispute. Valuation evidence will be key to demonstrate that the US Junior Lenders are entirely out of the money such that their "indubitable equivalent" is nil.

3.17 As a result of the "absolute priority" rule enshrined as part of the Chapter 11 process, no class of creditor can receive value in the Chapter 11 unless all creditors/stakeholders in higher ranking classes have been paid in full. The only exception to that rule is the "new value" exception which allows equity to retain its shareholding where it has provided new money into the debtor company / group.

WHOA – Efwon Netherlands

3.18 As of 1 January 2021, the Netherlands introduced a new preventive restructuring procedure called the *Wet homologatie onderhands akkord* and commonly referred to as the WHOA as part of the Dutch Bankruptcy Act (the "**DBA**").

3.19 The Dutch WHOA draws from both the US Chapter 11 and the English schemes of arrangement and is a debtor in possession proceeding.

3.20 For the purpose of a WHOA (and unlike a Chapter 11), a company needs to be experiencing financial difficulties (it needs to be reasonably assumed that the company will become unable to pay its debts)[10]. That will be met here.

3.21 The WHOA operates on a dual track and can be either public or private:

(a) Public: for a public WHOA, the COMI of the debtor entity must be in the Netherlands. Under the European Insolvency Regulation, any public WHOA will be automatically recognised throughout the EU

(b) Private: this is available to debtor companies who demonstrate a sufficient connection to the Netherlands. That can include debtors who hold shares in Dutch subsidiaries or non-Dutch debtors who are seeking to restructure Dutch debt

3.22 Any public WHOA will, as the name suggests, be a matter of public record.

3.23 Efwon Netherlands will need to put stakeholders into classes for the purpose of voting and at least one "in the money" class will need to vote in favour of the WHOA. Secured creditors are placed into two classes: (i) one class for the amount of their claim covered by their security and (ii) one class for the unsecured shortfall of their claim.

3.24 We anticipate the following classes:

(a) Efwon US as shareholder;

(b) Efwon US as secured lender for amount covered by its security;

[10] Articles 370(1) and 371(3) DBA

(c) Efwon US as secured lender for amounts not covered by its security;

(d) Monaco Lender; and

(e) US Lenders as holders of security over the shares in Efwon Netherlands (which we assume constitutes third party security and therefore includes a covenant to pay in favour of the US Lenders).

3.25 A WHOA will be confirmed on a consensual basis if in each class, stakeholders holding 66.6% of value of claims have voted in favour. There is no numerosity criteria.

3.26 We assume for these purposes that the Monaco Lender and Efwon US will vote in favour of the WHOA Plan but that the US Lenders will vote against it.

3.27 On that basis, Efwon Netherlands would have to request the Dutch court to confirm the WHOA despite dissenting classes i.e. seek a cross class cram down.

3.28 In such circumstances, the Dutch court must be satisfied of the following in order to confirm the plan:

(a) That the WHOA is in the best interests of creditors: In other words, it must demonstrate that a creditor is not being allocated, under the WHOA, less than it would receive in a liquidation/bankruptcy

(b) That the absolute priority rule is adhered to (although there are exceptions if deviation is approved by majority of creditors in the higher ranking classes or, under the WHOA, there is "reasonable justification").

(c) That a dissenting secured creditor who is offered a debt for equity swap has also been offered an alternative type of distribution.

3.29 Valuation evidence will be key in order to satisfy the court on each of the above. We assume (c) will not be relevant as Efwon US should vote in favour of the WHOA.

3.30 We note that it is possible for a WHOA to effect a transfer of shares in the debtor company as was seen in the 2023 WHOA for the Steinhoff Group, as part of which the shares in Steinhoff (following its delisting) were to be transferred to a new holding company.

Romania

3.31 it appears that the most straightforward route to restoring Efwon Romania to solvency would be reaching a consensual settlement with the Romanian drivers and, as part of that settlement, having the insolvency petition and freezing order simultaneously withdrawn.

3.32 If the Romania Settlement is possible, then we assume that the Monaco Lender and Efwon BV would consensually agree to the following:

(a) Debt for equity: Efwon Netherlands "swaps" $200m of its $350m secured debt in order to retain its equity in Efwon Romania.

(b) An extension of the maturity of the Efwon Romania Facility Agreement to 2028 (to align with the Efwon US Facility Agreement and the Monaco Facility Agreement in respect of which Efwon Romania is guarantor); and

(c) A waiver of any other existing breaches of covenant / undertaking under the Efwon Romania Facility Agreement such that the secured debt could not be accelerated.

3.33 Insofar as the application for insolvency proceedings with regard to Efwon Romania remains live, it would not be possible to propose a WHOA (or other process within the EU) with regard to Efwon Romania. That is the case even if steps were taken to shift Efwon Romania's COMI to the Netherlands.

3.34 This is because the Court of Justice of the European Union made clear in its decision dated 24 March 2022 (case C-723/20) in relation to Galapagos S.A. that any insolvency petition filed with a court of a Member State (here Romania) prevents the courts of any other Member State (here Netherlands) from opening main insolvency proceedings unless/until the court of the first Member State refuses to open insolvency proceedings.

3.35 Consequently, if the Romania Settlement is not viable, Efwon Romania may wish to consider opposing the proposed opening of the Romanian insolvency proceedings. Creditors are only entitled to petition a court for the opening of insolvency proceedings where its claim is certain, liquid and due. Based on the information in the briefing note, the claims of the Romanian drivers do not satisfy any of those criteria as they require a court determination to establish whether they have any claim whatsoever against Efwon Romania.

3.36 If Efwon Romania is able to successfully oppose the opening of insolvency proceedings, it may the instead propose a preventive restructuring plan under Romanian law. Romania implemented the EU Preventive Restructuring Directive (EU) 2019/1023 through Law no. 216/2022 which amended Law no. 85/2014 on the procedures for the prevention of insolvency and insolvency.

3.37 While this introduces two preventive restructuring procedures: restructuring agreement and arrangement with creditors, neither has seen much of a take up and therefore it is difficult to predict with any certainty the boundaries of what can be achieved and the approach the courts will take to proposed arrangements.

3.38 An alternative may be to propose a Dutch WHOA in respect of Efwon Romania. However:

(a) As set out above, only a "private" WHOA is available where a company does not have its COMI in the Netherlands.

(b) A sufficient connection would be likely be satisfied if the Efwon Romania Facility Agreement were governed by Dutch law or, if as a matter of fact, Efwon Romania has assets or part of its operations in the Netherlands.

(c) However, there would not be automatic recognition of the Dutch WHOA for Efwon Romania if it were conducted on a "private" basis.

(d) Even if there were such recognition, a Dutch WHOA cannot compromise the position of employees and neither would the European Insolvency Regulation and so consensual resolution with the Romanian drivers would be required in any event.[11]

3.39 As noted above, the preferred route with regard to Efwon Romania will depend on what the longer term strategy for this entity is. Given KuasaNas wishes to move the Efwon Group's operations to Malaysia, it may be that there is no ongoing requirement for Efwon Romania in which case it may be that the company implements a solvent wind down.

3.40 Whether this is possible or desirable will depend on whether there are other assets within Efwon Romania and what the longer term business plan is for the entity.

[11] See Article 13 of the European Insolvency Regulation

4. How proceedings may interact or influence each other (question d)

4.1 We would want to ensure that the terms of the Chapter 11 Plan and the WHOA Plan reflected, to a large extent, the terms of the other to ensure consistency across the Efwon Group with regard to debt profile, repayment dates etc.

4.2 It will also be critical that both Plans are approved (and the consensual restructuring with regard to Efwon Romania is implemented including the Romania Settlement). This is because the debt profile across the whole Efwon Group needs to be restructured in order for Efwon Group to be able to continue and so one Plan would not be substantively effective without the other also being confirmed.

4.3 To the extent that one Plan were approved by the relevant court and the other Plan were not, it is likely that the Efwon Group would ultimately end up in formal insolvency proceedings across various jurisdictions.

4.4 The extent to which either of the Plans requires recognition in another jurisdiction is also relevant – to which, see below.

5. Impediments to proceedings taking place (question e)

5.1 The primary impediment to the proceedings taking place as proposed is the commercial position of the stakeholders. As noted above, what they are willing to accept by way of compromise and on what basis is currently unknown and will undoubtedly shape whether and to what extent the proposed Plans can be implemented.

5.2 The most likely ground for dispute will relate to the valuation of the Efwon Group and each entity within the Group. In particular the US Mezzanine Lenders and US Junior Lenders may seek to adduce their own valuation evidence with regard to Efwon US to challenge Efwon US's request for the court to effect a non-consensual confirmation of the Chapter 11 Plan (arguing, for example, that they are not being provided with the "indubitable equivalent" of its secured claim).

5.3 Governing law of the various secured facility agreements will also be relevant. Primarily to the extent that the governing law is English law or any other law which recognises the Rule in Gibbs, namely a rule that states that the proper law of a debt governs how it may be discharged (meaning that a foreign restructuring process could not discharge that debt). In such instance, consideration would need to be given to whether an additional parallel plan was necessary.

6. Advantages / disadvantages to proposals (question f)

Advantages

6.1 Debtor in possession: Both a Chapter 11 and WHOA re debtor in possession proceedings meaning that management will stay in control of the entities.

6.2 Cram down: Both the Chapter 11 Plan and the WHOA Plan permit a debt restructuring without requiring unanimity of stakeholders. They can not only bind dissenting stakeholders within a class but also dissenting stakeholders across classes (i.e. a cross class cram down).

6.3 Consent thresholds: both have a class consent threshold of 66.6% (which is lower than some jurisdictions such as England) although a Chapter 11 also requires a numerosity test to be met (50% of those voting in any given class must vote in favour).

6.4 Stay: a Chapter 11 Plan triggers an automatic stay meaning creditors cannot take action against the debtor entity. Under article 376 DBA, a debtor can request a stay in respect of a WHOA.

6.5 Judicial precedent: Chapter 11 is a very well established process with a significant body of judicial precedent. While a WHOA is a much more recently introduced process, there have been a fair number of decisions handed down by the Dutch courts and the WHOA is based on both Chapter 11 and an English scheme of arrangement so concepts are familiar (although how the Dutch courts are to interpret the WHOA provisions is not as well developed).

6.6 Timing – WHOA in particular is designed to be a quick and efficient process. While a Chapter 11 has a reputation for being a drawn out procedure, to the extent Efwon Group can agree a pre-negotiated Chapter 11 (with sufficient support from creditors/stakeholders secured before filing), the timing will be significantly reduced.

6.7 DIP financing: both a Chapter 11 and a WHOA permit DIP financing to the extent such is required.

Disadvantages

6.8 Publicity: Chapter 11 Plan is a public process. Therefore even though the WHOA can be initiated on a private basis, the benefit of that privacy is lost by virtue of the Chapter 11. The consequence of this is that the outside world is made aware of the financial difficulties of the Efwon Group in a way that would not be the case with an out of court restructuring (where stakeholders would most likely be bound by confidentiality and no court hearings would be required).

6.9 Cost: there is inevitably a cost implication of a court based restructuring plan. Chapter 11 plans in particular are known to be cost intensive and, depending on the current cash position of the Efwon Group, it is likely that funds will need to be injected by Mr Maximov to enable the Plans to be proposed without certainty that they will be approved by the respective courts.

6.10 Multiple proceedings: under the current proposed strategy, at least two different regimes need to be considered and two different court applications made (as opposed to, for example, proposing a Chapter 11 in respect of both Efwon US and Efwon Netherlands and (if required) Efwon Romania) Have fractured proceedings.

7. Factors that will allow you to determine the above / further facts or information needed to answer the questions (questions g and h)

7.1 In order to fully advise there is a significant amount of further information we would need to be provided with. This is set out below.

Financial position of the Group

7.2 Critical question that will shape the specific commercial terms of the Plans relate to the financial position of the Efwon Group. This will impact what type of restructuring can potentially be imposed upon stakeholders to the extent they do not agree to the proposal made to them.

7.3 In particular, in relation to each entity:

(a) What is the most recent valuation? On what basis has that valuation been prepared?

(b) Where does value break?

(c) what would each stakeholder group receive in the alternative of a liquidation scenario?

(d) Is each stakeholder group treated at least as well as that under the relevant Plan?

7.4 What is the current cash position of the Efwon Group? Does it have resources to enable court based restructuring procedures or is additional funding required to enable the Plans to be carried through?

7.5 What are the prospects of the Efwon Group on a look forward basis?

7.6 What has to happen to the debt profile to make the Efwon Group viable? How much debt can it sustainably bear?

7.7 Does the group require funding beyond the monies that will be made available by KuasaNas and Mr Maximov (assuming he is willing to provide additional funds)?

Commercial position of stakeholders

7.8 Mr Maximov:

(a) To what extent is he willing to inject new money into the Efwon Group?

(b) How much and on what terms?

7.9 US Secured Lenders:

(a) Are they generally supportive of a financial restructuring?

(b) Have any discussions been had with them to date with regard to extension of maturities, reduction of overall debt burden?

(c) What they would they require as the quid pro quo to any concessions?

What are the differing positions as between the US Senior Lenders, US Mezzanine Lenders and US Junior Lenders?

7.10 Monacco Lender:

(a) Same questions as above apply although we assume their commercial position will be more rigid given they are likely to have priority of their debt across the Efwon Group (other than Efwon US).

7.11 Any other key stakeholders such as tax authorities? What about trade creditors?

7.12 Romanian drivers:

(a) What is the strength of their legal case?

(b) What is the likelihood of settlement?

(c) What is the anticipated quantum of settlement?

(d) How quickly can the injunction and insolvency application be withdrawn? What are the legal / practical requirements?

COMI/establishment of group entities

7.13 What assets does each entity own?

(a) Leasehold or freehold properties?

(b) Bank accounts?

(c) Intellectual property?

7.14 Where are the employees based?

7.15 What does the Efwon Group website say with regard to contact details / addresses?

7.16 Where are the directors based and decisions taken?

7.17 What other factors exist that are objective and ascertainable by third parties

7.18 What is the proposal with regard to Efwon Romania on a longer term basis? Is the entity required or can it be wound down?

Finance and security documentation

7.19 We would need to be provided with a full suite of finance and security documents as well as corporate documents including articles of association, any investment agreements, board minutes and resolutions approving those arrangements.

7.20 We would suggest that in the first instance we carry out a security review of the lending arrangements to ensure that the position is as understood by Efwon. A security review will also highlight any vulnerabilities in the lending and security documentation which may assist with commercial negotiation.

7.21 In respect of the Efwon US Facility Agreement:

(a) What is the governing law?

(b) What is the positive pledge taken by the US Lenders?

(c) Do the US Lenders have security over the shares in the subsidiaries in Netherlands, Romania and Singapore? Assume not (other than security over shares in Efwon Netherlands which is stated in the information)

(d) On what basis are decisions made / instructions given to the security trustee[12] What is the threshold for instructions?

7.22 What are the repayment terms of the Monaco Facility Agreement, Efwon Netherlands Facility Agreement and Efwon Romania Facility agreement?

7.23 Of particular importance will be an intercreditor arrangements between the US Lenders and as between the Monaco Lender and Efwon US (in relation to lending to Efwon Netherlands).

[12] We assume a security trustee is holding the security on trust for all of the US Lenders

8. Application of European Insolvency Regulation and/or UNCITRAL Model Law on Cross Border Insolvency (question i)

European Insolvency Regulation

8.1 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (the "European Insolvency Regulation") applies to insolvency proceedings in respect of a debtor with its COMI in a Member State and which are opened on or after 26 June 2017.

8.2 It determines within the EU, amongst other things, jurisdiction, applicable law, recognition and assistance in one Member State with regard to insolvency proceedings opened in another.

8.3 Both the Netherlands and Romania are Member States of the European Union. Consequently, the European Insolvency Regulation has direct effect in those jurisdictions.

8.4 To the extent that main insolvency proceedings listed in Annex A to the European Insolvency Regulation are opened in either of those jurisdictions, they will be automatically recognised in the other, together with other automatic consequences.

*UNCITRAL Model Law on Cross Border Insolvency (the "**Model Law**")*

8.5 The Model Law is an international framework designed to assist enacting States *"equip their insolvency laws with a modern legal framework to more effectively address cross-border insolvency proceedings."*

8.6 The Model Law does not seek to harmonise the substantive provisions with regard to insolvency laws but rather focuses on access, recognition, relief and cooperation.

8.7 The following jurisdictions relevant to the Efwon Group have implemented the Model Law:

(a) The U.S.: by virtue of Chapter 15 of the US Bankruptcy Code introduced by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

(b) Romania: by virtue of Law No 637 of 7 December 2002 on regulating private international law relations in the field of insolvency;

(c) Singapore: as part of the Insolvency, Dissolution and Restructuring Act 2018.

8.8 To the extent that a foreign insolvency proceeding is recognised as a "foreign main proceeding" (i.e. one taking place in the state where the debtor has its COMI), certain automatic relief is granted including the imposition of a stay on creditor action.

8.9 To the extent that a foreign insolvency proceeding is recognised as a "foreign non-main proceeding" (i.e. one taking place in the state where the debtor has an establishment), relief is at the discretion of the recognising court.

9. How provisions of those texts may assist or impede strategy proposed (question j)

EIR / Romania

9.1 Given the Romanian drivers have filed for the insolvency of Efwon Romania, following the decision of the CJEU in *Galapagos* C-723-20, the Member State of the court in which an

application for proceedings to be opened has been filed retains jurisdiction to open main/COMI proceedings unless / until it declines to do so.

9.2 Consequently, any WHOA proceedings initiated in respect of Efwon Romania could *not* constitute main proceedings and would not benefit from automatic recognition under the EIR.

9.3 Whether this has a significant impact or not depends on the extent to which (a) a WHOA proceeding is required in respect of Efwon Romania and (b) that WHOA proceeding requires automatic recognition a main proceeding.

9.4 For the reasons outlined above, our working assumption is that the position with regard to Efwon Romania can be regulated on a consensual basis.

UNCITRAL Model Law on Cross Border Insolvency

9.5 To the extent that Efwon US / the US Lenders do not consent / vote in favour of the WHOA Plan, it may be necessary for Efwon Netherlands to seek recognition of the WHOA Plan in the US to ensure that Efwon US / the US Lenders are bound by the WHOA and cannot take steps to frustrate its terms.

9.6 The question on whether the Group will need to seek recognition elsewhere wlll depend on where assets are located and where creditors are located and the extent to which creditors seek to take steps against those assets out of the jurisdiction.

9.7 A key question, as identified earlier, is the governing law of the loan from the Monaco lender and whether, courts in that jurisdiction would recognise and enforce a compromise of the debt.

9.8 In terms of US law governed debt, the decision of the US Bankruptcy Court from 2022 in *Modern Land (China) Co Limited* made clear that a Chapter 15 order of a foreign restructuring plan / procedure **could** effect the compromise of US law governed debt (in this instance a Cayman restructuring of New York law governed debt).

9.9 There is also recent precedent of the US Bankruptcy Court recognising a Dutch WHOA under Chapter 15 including in:

(a) the Diebold Group restructuring (which entailed a Chapter 11 and a WHOA and the subsequent recognition of the WHOA under Chapter 15); and

(b) The McDermott restructuring (which entailed, amongst other things, an English restructuring plan and Dutch WHOA, both of which were recognised under Chapter 15).

10. Should Efwon have structured through England rather than the Netherlands? (question k)

10.1 You have asked whether it would have been more beneficial to the group to have structured through England.

10.2 To the extent there is any English law governed debt and the relevant creditor does not participate / voluntarily consent to the proposed restructuring then an English law restructuring plan or scheme of arrangement may be required in any event.

10.3 While there are many similarities between an English restructuring plan and a Chapter 11 or a WHOA there are some advantages to an English restructuring plan that are worth noting:

(a) there is no requirement to adhere to the absolute priority rule (which is required for a Chapter 11 or WHOA);

(b) shareholders can retain their equity within providing "new value" (albeit that is not a given and requires support of those creditors who are in the money);

(c) the process is less court driven (and therefore less expensive) than a Chapter 11;

(d) given that a restructuring plan is based on the scheme of arrangement, there is a significant body of settled case law meaning many (but not all) of the issues are "tried and tested".

10.4 On the other hand:

(a) there is no automatic (or discretionary) stay and any debtor company would be required to apply for a "standalone" Part A1 moratorium should it require moratorium protection;

(b) the voting threshold within classes is higher (at 75%);

(c) post-Brexit there is no automatic recognition of restructuring plans which require recognition in accordance with the private international law rules of the relevant jurisdictions

(d) the best interest of creditors test (referred to as the "relevant alternative" test) requires a comparison not simply of what creditors would receive on a liquidation but what they would receive in the most likely alternative if the restructuring plan were not approved – which could be a trading administration / sale as a going concern.

11. Outcome for each of the stakeholders (question l)

11.1 By virtue of both the Chapter 11 and the WHOA regime, each stakeholder should be no worse off under the restructurings than they would be in the alternative of liquidation. This is a critical factor and will require robust financial / valuation evidence to verify.

11.2 If the Plans are approved on the basis outlined above, the position of stakeholders would be as follows:

Benedict Maximov

11.3 Mr Maximov will have retained 50% of his ownership interest in Efwon US. On any immediate liquidation of the Efwon Group, it is likely he would not have received any value in respect of his shareholding.

11.4 Consequently, under the Plans Mr Maximov will retain possible future upside in the restructured Efwon Group.

11.5 By virtue of extending the maturity dates under the Efwon US Facility Agreement and waiving any existing covenant / other breaches, he will also have prevented the US Lenders from taking enforcement action against his wider property portfolio.

US Senior Lenders

11.6 The US Senior Lenders' debt has been kept whole.

11.7 They have however:

(a) extended the maturity under the Efwon US Facility Agreement to 2028; and

(b) waived any existing covenant breaches or other defaults.

11.8 As consideration for those concessions, they have been given an equity interest in Efwon US (50% held between the US Senior Lenders and the US Mezzanine Lenders).

US Mezzanine Lenders

11.9 The US Mezzanine Lenders' debt has reduced from $60m to $0m in Efwon US.

11.10 They have "swapped" that debt for an equity interest in Efwon US (50% held between the US Senior Lenders and the US Mezzanine Lenders).

11.11 They have also:

(a) extended the maturity under the Efwon US Facility Agreement to 2028; and

(b) waived any existing covenant breaches or other defaults.

US Junior Lenders

11.12 The US Junior Lenders have been disenfranchised. Assuming value breaks in the US Mezzanine Lender debt, they have no economic interest in Efwon US and can be "zeroed" as part of the Chapter 11 Plan.

Monaco Lender

11.13 The Monaco Lender has been kept whole with regard to its secured position in Efwon Netherlands, Efwon Romania and Efwon Singapore on the assumption that it would be repaid in full on any liquidation.

11.14 It has however agreed to:

(a) extend the maturity under the Monaco Facility Agreement

(b) waive any existing covenant breaches or other defaults;

(c) rank pari passu with Efwon US in relation to Efwon Netherlands.

Efwon US (as lender to and shareholder of Efwon Netherlands)

11.15 Efwon US' secured debt has reduced from $350m to $200m (being a total of $100m of the existing amounts due under the Efwon US Facility Agreement plus the $100m new money loan).

11.16 It has "swapped" that debt in order to retain 49% equity interest in Efwon Netherlands.

11.17 It has also:

(a) extended the maturity under the Efwon Netherlands Facility Agreement to 2028; and

(b) waived any existing covenant breaches or other defaults.

Efwon Netherlands (as lender to and shareholder of Efwon Romania)

11.18 Efwon Netherlands' secured debt has reduced from $350m to $100m plus whatever new money amount is required to ensure the Romania Settlement can be completed.

11.19 It has "swapped" that debt in order to retain its equity interest in Efwon Romania.

11.20 It has also:

(a) extended the maturity under the Efwon Romania Facility Agreement to 2028; and

(b) waived any existing covenant breaches or other defaults.

KuasaNas

KuasaNas will have obtained 51% equity interest in Efwon BV. It will have advanced $100m to (we assume) Efwon Netherlands and entered into a sponsorship agreement.

We hope the above is of assistance. Please contact Amy Patterson should you wish to discuss any of the above in further detail.

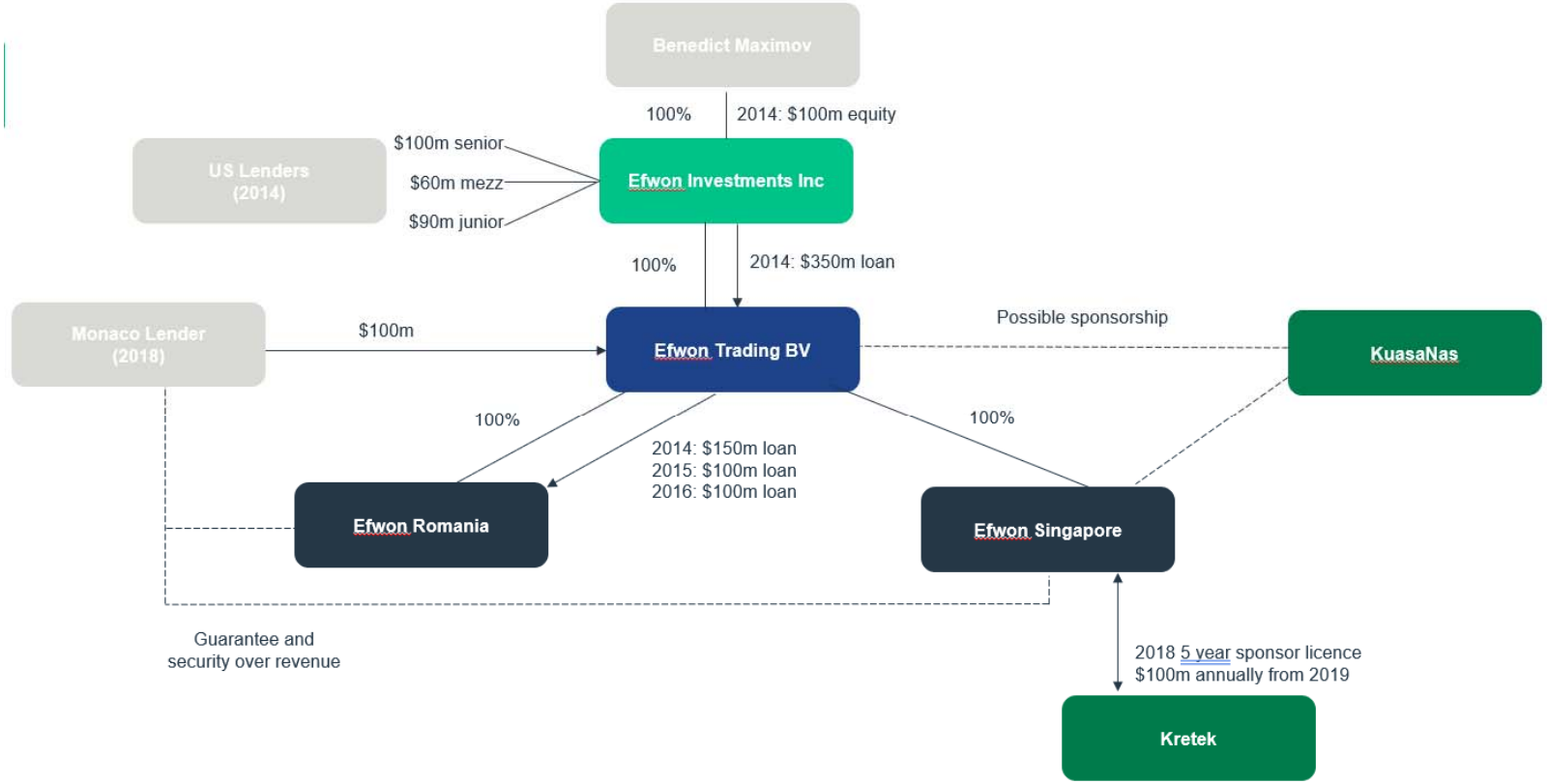
Yours faithfully

Sent electronically on behalf of Amy Patterson

Amy Patterson

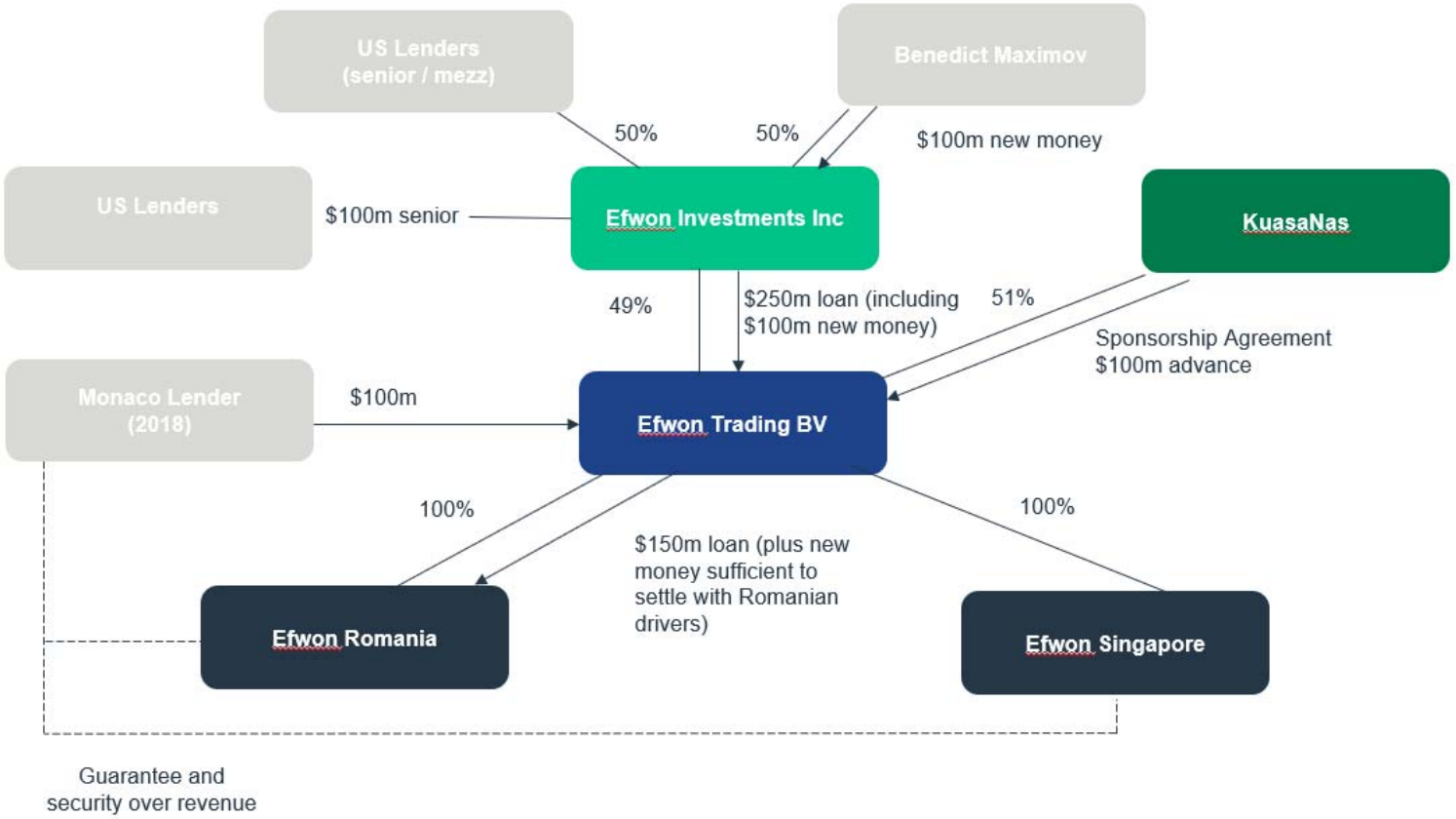
APPENDIX 1

STRUCTURE CHART



APPENDIX 2

POST COMPLETION STRUCTURE CHART



APPENDIX 3

DEFINITIONS

"**Chapter 11**" means sections 1101 – 1195 of Title 11 of the United States Code;

"**Chapter 11 Plan**" means the restructuring plan in respect of Efwon US promulgated pursuant to Chapter 11;

"**Chapter 15**" means the US implementation of the UNCITRAL Model Law on Cross Border Insolvency pursuant to sections 1501 – 1532 if Tittle 11 of the United States Code.

"**Efwon Netherlands**" means Efwon Trading BV;

"**Efwon Netherlands Facility Agreement**" means the $350m facility agreement dated [*client to confirm*] 2014 and entered into between Efwon US (as Lender) and Efwon Netherlands (as Borrower);[13]

"**Efwon Romania Facility Agreement**" means the $350m facility agreement dated [*client to confirm*] 2014 and entered into between Efwon Netherlands (as Lender) and Efwon Romania (as Borrower);

"**Efwon US**" means Efwon Investments, Inc;

"**Efwon US Facility Agreement**" means the $250m facility agreement dated [*client to confirm*] 2014 and entered into between the US Lenders (as Lenders) and Efwon US (as Borrower);[14]

"**Efwon US Intercreditor Agreement**" means the intercreditor agreement dated [*client to confirm*] and entered into between the US Senior Lenders, the US Mezzanine Lenders and the US Junior Lenders;[15]

"**Efwon US / Monaco Lender Intercreditor Agreement**" means the intercreditor agreement dated [*client to confirm*] 2018 and entered into between the Monaco Lender and Efwon US to regulate the position as regard the secured lending to Efwon Netherlands;

"**Monaco Facility Agreement**" means the $100m facility agreement dated [*client to confirm*] 2018 and entered into between the Monaco Lender (as Lender), Efwon Netherlands (as Borrower) and Efwon Romania and Efwon Singapore (as Guarantors);

"**Monaco Lender**" means [*client to confirm*];

"**Plans**" means the Chapter 11 Plan and the WHOA Plan;

"**US Junior Lenders**" mean [*client to confirm*] as junior lenders under the Efwon US Facility Agreement;

"**US Lenders**" means the US Senior Lenders, US Mezzanine Lenders and US Junior Lenders as lenders to Efwon US;

"**US Mezzanine Lenders**" mean [*client to confirm*] as mezzanine lenders under the Efwon US Facility Agreement;

"**US Senior Lenders**" means [*client to confirm*] as senior lenders under the Efwon US Facility Agreement;

"**WHOA**" means *Wet Homologatie Onderhands Akkoord*;

"**WHOA Plan**" means the restructuring plan in respect of Efwon Netherlands promulgated pursuant to the WHOA;