**Case Study 1: Responses to Assigned Questions**

**Nina Mocheva**

1. **What were in your opinion the causes of financial distress at Flow Management (see e.g. Mellahi & Wilkinson, 2004)? Could the financial distress have been prevented? If yes, explain how. If no, why not?**

***Causes of financial distress at Flow Management***

Flow Management appears to be a once successful family-owned business (“the Company”) owned by the Johnson family based in the USA that grew, probably too rapidly, with the support of two potentially passive institutional investors (“the investment companies”) which did not contribute to improve the corporate governance or the business, and massive leverage provided by four banks that were not monitoring their exposure adequately and who failed -from the very due diligence- at identifying early enough the shortcomings of the Company’s management and its operational systems and procedures.

As discussed in the 2004 Mellahi and Wilkinson’s study,[[1]](#footnote-1) literature on failure tends to gather around two main tendencies when it comes to analyzing organizational failures, that focus either on external or internal factors. This seems counterintuitive, as common sense would suggest -as the authors propose- that failed companies can fail for either or both, internal and external factors, hence, their proposal for an integrated approach.

In the case of Flow Management, the causes of financial distress of the Company appear to be primarily caused by a combination of organizational (managerial organization and performance) and psychological factors (managerial perceptions), that have been exacerbated by the lack of adequate systems.

We have neither information nor indications as to environmental or ecological factors that could have contributed to its organizational failure. In fact, a turnaround consultant was hired and confirmed the viability of the business, taking into consideration its market share and expected turnovers.

Based on the facts outlined in the case study, the following problems can be identified as causes of financial distress at Flow Management:

Organizational failure:

* Accounting (incorrect annotations in the Company’s books, improper assumptions, etc.)
* Operational (outdated and inadequate systems)
* Financial (overleveraged structure)
* Ethical (CEO and CFO collected bonuses predicated on incorrectly reported results)

Based on the problems that are reported, it could be inferred that the Company’s growth may have happened too fast and that it was not followed by a proportional growth and sophistication of the internal systems and controls. Lack of an adequate backbone to support larger and more complex operations is a common theme in family-run business as they seek to expand. A failure to implement adequate professionalization strategies of the Company’s management can enhance the problems.

In the present case, the Company did not keep an updated price chart, which led to significant losses. This is a negligent lapse in management for a company that makes a living out of operating leases.

On the other hand, there have been serious communication issues: information about losses has been delivered to stakeholders by piecemeal. This raises multiple questions and concerns as to Management’s competence and character. More importantly, numbers kept changing drastically and rapidly. In fact, in a matter of 2 months from the initial meeting with creditors to discuss the losses of the group, such losses went from ($5.4 MM) to ($36.5 MM), i.e., more than $31 MM difference. Such striking difference could be symptomatic of gross negligence in the management of this business or of foul play. Even if the latter is not the case, it can make negotiations with lenders overly burdensome as it would be very difficult to persuade a lender that the management of a heavily leveraged borrower was not aware of such a sizeable loss. As discussed in the Pajunen 2006 study, frequent and open communication between management and key stakeholders, in this case the four financial institutions, can enhance the continuing support of those stakeholders and increase the probability of organizational survival.[[2]](#footnote-2) In the case of Flow Management, the frequency and accuracy of the communication provided by management suffers from major flaws and should make financial lenders concerned.

Structuring and supervision failures:

Another factor that could have played a significant role in the failure of Flow Management, is the size of its financial debt, the extraordinarily low equity to total assets ratio that the lenders allowed, and what appears to be a group of banks arguably staying passive until the Company’s financial distress became inevitable. The combination of these factors with a weak management structure, can create a perfect storm.

Indeed, this was such a highly leveraged business that it warranted very close monitoring from lenders, and we have no indication that this was the case. Allowing such low levels of equity in a company breaks the alignment of interests between creditors and shareholders, and it can result -as I submit it did- in a situation where management appears to have been left without supervision or much guidance. This would not necessarily be a problem with a very competent and strong management but that was not the case.

It appears that the debt financing of this transaction was flawed from inception:

* Adequate diligence from lenders should have identified the inadequacy of the reporting systems and controls of the Company.
* Appropriate structuring of the debt would have also included stricter leverage ratios. It should have required an action plan to improve accounting controls and systems, and it would have included extensive reporting requirements.
* The security package was also flawed, which is a very serious lapse from the lenders, more so in such a heavily leveraged transaction (reportedly, there was “a problem with the securities (pledges) on the assets established by the banks”).

Given that the problems with the security package were common to all lenders, it could be inferred that certain banks provided financing earlier than others (presumably banks A & B) and implemented a comprehensive security package. When new lenders joined the financing (arguably banks C & D), that security package would have had to be shared with them, and an inter-creditor agreement might have been put in place, governing the security sharing among lenders.

More importantly, lenders should have monitored this transaction closely and frequently. While this is not stated in the facts, it seems plausible to conclude that lenders were passive, and their monitoring was not fully adequate.

***Could the financial distress have been prevented and how?***

The situation of Flow Management could have been prevented if the governing stakeholders[[3]](#footnote-3) had assumed a more proactive and critical view of things. In fact:

* Management has had presumably ample opportunities to improve controls and systems, to increase efficiencies and to make sure that their pricing is correct;
* Board of Directors had, at a minimum, annual opportunities to challenge what the Management was doing;
* Shareholders also had opportunities and -presumably- an interest to make sure this business succeeded by demanding more accountability and better governance.
* Lenders were not monitoring adequately the level of risk that they were exposed to. While they have been taking a risk akin to equity, they seem to have been acting as passive lenders up to this point.

Had any of the parties above done a better job in monitoring the performance of the Company, some corrections could have been made on time to mitigate the extent of the financial disarray of the group.

1. **What are in general advantages and disadvantages of an out-of-court restructuring (workout) as compared to a formal bankruptcy procedure? More specific, what are the advantages versus disadvantages in your country?**

As descussed in the 2006 Adriaanse & Kuijl paper,[[4]](#footnote-4) informal or out-of-court restructuring (workout) has important advantages compared to formal (court-supervised) procedures, because of their (i) flexibility (ability to reach a mutual agreement without strict statutory regulations on its content required by many jurisdictions’ formal bankruptcy laws, subject only to the requirements of a valid contract under governing law, and applicable requirements of relevant laws governing the existing arrangements), (ii) confidentiality (as opposed to formal bankruptcy procedures which are public by definition and may lead to clients and suppliers removing their trust in the distressed company, potentially resulting in reputational damage of the debtor and loss of value), and (iii) management and governing stakeholders retain control of the restructuring process (as opposed to judges and trustees who supervise and manage the process in formal proceedings).

In addition to these three main advantages, other important benefits of workouts are:

* Speed: the workout process is flexible and does not have to follow legally prescribed timeframes and often bureaucratic steps mandated by bankruptcy laws, therefore it can be highly efficient.
* Cost-effectiveness: expenses associated with court filings and attending court hearings can be avoided.
* Consistent with cultural preferences: since they are privately negotiated, workouts may be an attractive option as courts are not involved and might be more in line with a cultural preference for consensual dispute resolution.

As discussed in the 2006 Adriannse & Kujil paper, there are also potential problems with workouts, namely (i) passive attitude by management and shareholders leading to an unsuccessful process; (ii) lack of sufficient information into the actual financial situation of the company, as provided by the management and/or informational asymmetry vis-à-vis different creditors; (iii) inability to find timely risk-bearing capital. These are all practical challenges which may result in an unsuccessful workout, but other disadvantages of the process, depending on the jurisdiction where it takes place, may be:

* Risk of a creditor or shareholder “holdout”: workouts are contractual in nature and therefore only binding on the parties who sign on to them.
* Risk of disagreements among creditorsto voluntarily subscribe to the workout or to agree on a standstill (in the Flow Management case, there is a strong risk that banks C and D will frustrate the process). Unlike formal reorganizations which provide for an automatic standstill in many jurisdictions, workouts are dependent on creditors agreeing to abide by a standstill.
* Problems with coordination among creditors: since no court or an authority is involved, coordination may be challenging, unless the creditors appoint a leading coordinator to facilitate negotiations.
* Provisions on the avoidance or reversal of transactions in the formal bankruptcy law may nullify agreements as part of a workout that involve the creation of additional security or preferences, while the company is on the verge of insolvency (e.g., agreements granting super priority of new financing).
* Potential lack of consequences for directors and managers, who may have been found liable for the financial distress of the company in a formal bankruptcy procedure.
* Requirement of “workout culture” among creditors, which may not be present in the jurisdiction.

The benefits of informal workouts outweigh the potential disadvantages, and they are recognized by the World Bank, the international standard-setter in the area of insolvency and creditor/debtor rights regimes, as a core feature of a country’s restructuring framework. WB-ICR Principle B5 recommends the development of a code of conduct on a voluntary procedure for dealing with cases of corporate financial difficulty in which financial institutions have a significant exposure and may take the form of guidelines for OCWs.[[5]](#footnote-5) That said, informal workouts operate in the “shadow of the law”, i.e., against the backdrop of the applicable legal rules, and therefore work best when the parties can fall back on the formal procedure if they fail to come to an agreement, as the knowledge that they might get a worse result in a court filing gives them the incentive to reach a deal. Some of the disadvantages of a purely informal workout, such as the holdout problem and the risk of avoidance of transactions, may be avoided with a hybrid workout procedure in which the terms of a restructuring plan can be crammed down on dissenting creditors and shareholders, such as the new Dutch scheme WHOA, discussed in the 2022 Broekema & Adriaanse paper[[6]](#footnote-6) or the 2020 Polish simplified restructuring procedure, known as “proceedings for the approval of arrangement”, in which negotiations take place entirely out of court and court involvement in the procedure is limited to hearing motions to lift the automatic stay for cause, and approval of the restructuring plan following voting by creditors. Both of these hybrid workouts are inspired by the 2019 EU Restructuring Directive[[7]](#footnote-7) which provides pioneering guidelines for member country authorities on preventive restructuring frameworks, allowing distressed but viable debtors to remain in possession of the operation of their business, while undergoing restructuring proceedings, facilitating access to interim and new financing, promoting voting by creditors’ classes, and improving restructuring outcomes by the incorporation of cross-class cram-down mechanisms to ensure a swift and simplified adoption of the restructuring plan by overriding the dissenting minority creditors.

In the jurisdiction where I am licensed, Bulgaria, there is no prevalent practice for out-of-court restructuring. A culture of out-of-court collective negotiation and agreements to restore an enterprise financial viability is insufficiently developed. Many financial institutions in Bulgaria recognize that in theory an informal workout could be faster and cheaper and more successful than formal reorganization proceedings (which are also infrequent in practice), but banks find it difficult to negotiate together a single solution in the case of a common debtor. In addition, the legal framework does not encourage the use of workouts. Most transactions that could be entered into by the debtor and some creditors in a workout would be at a risk of being challenged in bankruptcy under the avoidable transactions regime. The bankruptcy law[[8]](#footnote-8) does not provide for an expedited procedure to confirm a pre-negotiated agreement (“pre-packaged plan”).

1. **Were the turnaround/reorganization approaches as presented in the reading material (see e.g., Adriaanse & Kuijl, 2006, Pajunen, 2006, Sudarsanam, S, Lai, J., 2001, Schmitt, A., Raisch, S., 2013) applied in this case? If yes, explain in what way. If no, detail what in your opinion should have been done differently.**

Some of the turnaround approaches discussed in the reading material seem to have been applied in the Flow Management restructuring case but many important considerations do not seem to have been deployed to result in an effective forward-looking solution.

**Phases and components of informal reorganization**

The Adriaanse & Kuijl, 2006 article discusses the difference between formal and informal reorganization[[9]](#footnote-9), and the former was first attempted by the management and its key creditors. The paper identifies two main components of an informal reorganization, namely business restructuring and financial restructuring.

*Business restructuring* is then dissected into four main phases:

* Phase I. Stabilizing is described with the identification of the critical problems requiring immediate action in order to stabilize the situation of the distressed company, particularly with a view to crease cash flow in the short term.

Indeed, Flow Management takes action to cutback expenditures (with regard to labor costs in particular – 130 staff members will be made redundant in order to yield an annual saving of € 3.3 million) and plans to realize extra savings by improved loss recovery, higher excess premiums and savings on car repairs (expected to result in € 3.9 million total amount of savings). The shareholder company proposes to sell 350 cars to improve the solvency rate.

* Phase II. Analyzing requires the company to look into its long-term prospects. This is the phase where the company should actively engage with its main creditors – financial institutions and large suppliers, as well as the equity shareholders.

Flow Management plans to take active steps to engage with its main stakeholders: through negotiating price increases with its main clients / informing other clients of the price increases, starts discussions with its four bank lenders (banks A, B, C and D) and an independent accounting firm is engaged to investigate the internal procedures of the Company. An inquiry into the actual financial position is made and is revealed that the foreign subsidiaries have made a loss of € 6.3 million as a result of which total losses of 2013, including a loss of the holding [Flow Management] of € 11.4 million, amount to € 23.1 million. An independent turnaround consultant is also hired during this stage and concludes that the company is viable, with a view to the market share and achieving the estimated turnovers. However, shortly thereafter it is announced that total loss is even higher than initially stated and solvency is virtually zero. In an attempt to continue the restructuring process, a new CFO is hired, restructuring options are explored, proposals are made and eventually, a Restructuring Agreement is finally signed.

* Phase III. Repositioning is the phase where the implementation of the reorganization plan is initiated, and special emphasis must be made on management’s reporting of information in an open and timely manner in order to restore the confidence of interested parties.

Information sharing appears to be problematic in the case of the Flow Management restructuring, and as indicated in my answer to the first question, should have been approached differently by management. Multiple times during the attempted reorganization process, information about losses has been delivered to stakeholders by piecemeal. This is tremendously frustrating and raises multiple questions and doubts as to management’s competence and character, which makes it difficult to restore the confidence of interested parties. More importantly, numbers kept changing drastically and rapidly, which may raise stakeholders’ concerns about gross negligence in the management of this business or of foul play.

* Phase IV. Reinforcing requires looking into changes of the management structure, and the balance sheet.

Indeed, some changes of the management structure have been deployed in the case of Flow Management: it announces that it will appoint a new CFO, the CEO is replaced by the board of the shareholder company, a CRO is eventually appointed in the board at the banks’ initiation.

*Financial restructuring,* as discussed in the Adriaanse & Kuijl, 2006 article is also applied in the case of Flow Management although it may not have been optimal to effectively reorganize the Company. Relevant creditors indeed voluntarily commit to revised terms of the funding they made available, through the Restructuring Agreement signed in July 2015 where the main drivers were minimizing loss of value and maximizing recovery. That said, it does not seem that new funding was made available by the lenders or the shareholders: banks initially put pressure on the shareholder to raise € 35 million in order to repay part of the debts, which does not seem to take place, and it is unclear if the additional € 12.5 million to strengthen the equity capital position was ever contributed by the shareholder (on the contrary, it is mentioned that injection of necessary capital by the shareholder will “possibly not be taken”).

**Importance of stakeholder influences in company turnaround**

The Pajunen 2006 paper discusses the importance of identifying the influential stakeholders in the turnaround process and how handling them based on their importance may be operationalized to achieve successful restructuring. In particular, the paper argues that the distressed company must ensure the support by the critical (influential stakeholders) through undertaking management replacements if necessary and continuous communication with the critical stakeholders in order to positively influence their perceptions. In the Flow Management case, the four bank lenders can quickly be identified as the most influential stakeholders with banks A and B being “governing” stakeholders, as defined in the Pajunen 2006 paper (particularly when they contemplate buying out banks C and D when they threaten to frustrate the process) and banks C and D being “potential” stakeholders, becoming governing stakeholders when they start lacking confidence in the Company and hesitate to sign a standstill agreement, thereby jeopardizing the restructuring process. The banks critically influence the process, when they appoint (at bank A’s instigation) a CRO in the board of the Company.

The CRO may also be identified as “governing” stakeholder as she is entrusted by the banks to be their “eyes and ears” into the management of the company and is credited with the “slight result improvement” that eventually leads to their decision to pursue a standstill agreement in the short term. The January 2015 Restructuring Agreement envisages the CRO as one of the board members that receives shares in the NewCo (Flow Management II BV).

“Minor” stakeholders would be the main clients of the Company as they seem to be going ahead with the price increases and do not pose difficulties in the process, the other contacts/clients may also be identified as “minor” as they also seem to be fine with the price increases with “only a few negative replies” received which do not seem to be influential of the process.

The approach to stakeholder identification and appropriate management seems to have been deployed by the Company as part of their turnaround process as evidenced by the Company’s readiness to replace critical managerial positions, in particular to engage a new CFO in order to gain the governing stakeholders’ trust, as well as to cooperate with the CRO appointed by the banks. However, there are issues with respect to achieving consensus on long-term goals among the governing stakeholders (particularly banks A and B on one hand, and banks C and D on the other hand) which at some point threatens to undermine the probability of organizational survival. Banks C and D do not seem to have been properly “handled” in the process, potentially because of asymmetry of information they receive in comparison to banks A and B, and management’s changing numbers in terms of the size of the losses.

**Effective implementation of turnaround strategies**

The Sudarsanam & Lai 2001 paper makes an important distinction between the successful recovery firms and non-recovery firms based on their strategy implementation.[[10]](#footnote-10) While restructuring strategies are similar across the board (managerial, operational, asset and financial restructuring), successful restructuring is dependent on the timing, intensity and effective implementation of these strategies. Moreover, non-recovery firms seem to focus mostly on operational and financial restructuring (internal focus) while successfully recovered firms place a focus on longer-term goals looking into acquiring companies that strengthen their core business and engage in major reconfiguration of their assets.

Based on the facts in the case study, in the case of Flow Management, the restructuring approach is entirely internal – operational and financial restructuring – which is classified as “fire-fighting” by the Sudarsanam & Lai 2001 paper. Multiple operational changes (aimed at cutting costs and laying off workers) and managerial replacements were deployed in the course of the Flow Management attempted reorganization process, and the Restructuring Agreement that was eventually signed was mainly focused on financial and organizational restructuring.

In my opinion, the stakeholder should have looked into longer-term competitive positioning of the Company, potentially discontinuing some of the business lines, not closely connected to the core business such as real estate, and / or the least profiting subsidiaries, and investing in proliferating the core product offerings by potentially adding new/enhanced products and looking into more profitable market locations. It does not become clear from the case study if this strategic investing approach has been deployed in the turnaround process. As also discussed in the Schmitt & Raisch 2013 paper, retrenchment and recovery approaches should be adopted in complementarity to have better prospects for successful restructuring.[[11]](#footnote-11)

**Importance of business valuation in the context of restructuring**

An important aspect of successful restructuring process is credible estimation of the distressed company’s liquidation and reorganization values. As analyzed in the Broekema & Adriaanse 2022 paper, valuation outcomes may differ depending on the interests of the stakeholders that have commissioned the valuation, particularly in the context of a restructuring process which by definition poses a high degree of uncertainty, as there is no real market verification.[[12]](#footnote-12) At the same time, credible valuation trusted by the main stakeholders is of critical importance for the decision whether to pursue an out-of-court restructuring option or to resort to liquidation, if the liquidation value of the distressed business is higher.

In the case of Flow Management, it is indicated that a “liquidation scenario will probably have low proceeds” (a maximum of 55% of the total debt). It is unclear if proper valuation was conducted for the different restructuring options considered by the stakeholders (going concern option; going concern sale; debt-to-equity swap; judicial reorganization) and how potential different valuations may have affected the behavior of some stakeholders in the process (e.g., banks C and D). As suggested in the Broekema & Adriaanse 2022 paper, an independent valuation may have contributed to less problematic behavior by the banks and more efficient negotiations.

1. **Banks C and D seem to frustrate the process at a certain point. What could have been the (rational and/or opportunistic) reason(s) for them to behave like that? What would you have done in that situation in your role as advisor of the other two banks?**

There is a variety of reasons that could be fueling the disruptive behavior of banks C and D at a certain point in the process and their refusal to cooperate in the negotiations and to sign a standstill agreement.  Below is a list of possible causes:

1. Chronology:

* Banks C & D may have come onboard to the transaction later in time. If that was the case, banks C & D could feel that banks A & B are benefitting unfairly from their financing (newer money) and should take some responsibility for their poor structuring of the deal (e.gr.: the problems with the security package).
* Alternatively, banks C & D, as providers of the additional working capital (which is presumably the money that came in last), may feel that they should have a way to recover their additional exposure first in time, without the participation of banks A & B and the negotiation of those terms might be affecting the entire process.

1. Low exposure:

* Banks C & D may be the ones with the lowest exposure, and they could be trying to encourage Banks A & B to buy them out (as indicated, Banks A & B are considering this option after C & D refuse to sign a standstill, although at a 15-20% discount).
* Having less exposure generally means that someone else must have a stronger incentive to make things work.

1. No Prior experience with client or sector:

* Banks C & D might have limited or no prior exposure to Flow Management as a client, or to the operating lease sector.
* Banks A & B could be the Company’s relationship banks, or the more experienced ones in the operating lease sector.
* This could influence the diverging lenders’ opinions on the character and capabilities of the management team, or on the prospects of a turnaround.

1. Low tolerance to non-financial risks:

* Banks C & D might have a stronger view on the reporting mishaps, on the negligent management and imperfect communications of the Company. Reportedly, Banks C & D seem to be more concerned with the management’s behavior than banks A and B and lose confidence in the ability of management to work towards a solution.
* Banks C & D might have harsher requirements when it comes to corporate governance, integrity, ESG, etc., which can heavily influence their decision making.
* In other words, they could be looking at the facts as presented in the case study as strong indication of fraudulent behavior on the part of management, in which case, they would be less inclined to trust current management.  This would explain why they ultimately acceded to the restructuring, after a change of CFO, CEO and the incorporation of a Chief Restructuring Officer takes place.

1. Size of exposure relative to a bank’s portfolio can also influence how seriously they care about successfully restructuring a deal.  The larger the exposure vis-à-vis the total portfolio, the more likely it is to incentivize strongly the relevant bank to find solutions.
2. Possible contributory role of lead coordinator (if there was one, which the case study does not mention):

* If the financing was a syndicated transaction, Banks A & B might have been the lead arrangers, leading the due diligence, documentation and potentially the monitoring of the loans.
* Banks C & D may now feel that they are in this situation for failures of the co-arrangers to conduct proper diligence, to perfect security package adequately and to monitor the transaction prudently.

As advisor to Banks A & B, I would have made sure to get on the table with Banks C & D, early on, and understand their position and their asks.  As described in the Pajunen 2006 paper, ensuring the support from potential stakeholders early in the reorganization process, as they may convert into critical stakeholders at a certain point, should be done with a strategy of proaction or accommodation which is crucial for the survival of the company.[[13]](#footnote-13) Buying them out should not be a solution for banks A & B, rather there should be some discussion as to what role -if any- all parties involved had in the various faults in the diligence, structuring and monitoring, not to place blame but to make sure that the consortium of banks will not repeat those mistakes again.

It appears from the facts that the security package was somewhat perfected eventually.  Understanding the feasibility of this must have been a critical piece in the discussions with C & D, to give them assurances that the situation would be under control.

1. **Which of the eight principles of the 'Statement of Principles for a Global Approach to Multi-Creditor Workouts II' can be found in the workout process of Flow Management (explicit or implicit)?**

The 2017 INSOL International Statement of Principles for a Global Approach to Multi-Creditor Workouts II[[14]](#footnote-14) (the “INSOL Principles”) is the revised and improved edition of the Statement of Principles introduced in 2000 and endorsed by the Bank of England, the World Bank and the British Bankers’ Association. The INSOL Principles may be used in an out-of-court workout in any jurisdiction and are designed to provide guidance to financial creditors on how to take a collective, coordinated, and cooperative approach to debtors in financial difficulties and, most importantly, facilitate their restructuring. The eight INSOL Principles are followed by commentary on the most critical aspects of their application and encompass many considerations that apply to workouts generally (at least in respect of purely private negotiations).

Several of the principles may be identified in the workout process of Flow Management, although it is not clear whether the workout stakeholders formally subscribed to follow a specific framework. Below is a brief overview of the practices in the Flow Management workout, aspects of which are consistent with the best practice promoted in the INSOL Principles:

* **First Principle**: Where a debtor is found to be in financial difficulties, all relevant creditors should be prepared to co-operate with each other to give sufficient (though limited) time (a “Standstill Period”) to the debtor for information about the debtor to be obtained and evaluated and for proposals for resolving the debtor’s financial difficulties to be formulated and assessed, unless such a course is inappropriate in a particular case.

Indeed, the focus is on “all relevant creditors” to be included in the workout process, particularly all financial creditors, even though some financial creditors may be less exposed than others and therefore have less interest in the rescue attempts. In the case of Flow Management, all four bank lenders agree to discuss the Company’s situation and to “constructively work together on a solution”. The also realize that a joint approach by the banks is desired and standstill agreement should be signed to give the debtor sufficient time to provide the necessary information and also for the banks to solve the legal problems with regards to the pledges. At the same time, no company has a “right” to breathing space to conduct a workout: the granting of a standstill period is a concession by creditors and not a right of the debtor. The Company (together with its advisors) needs to assess whether there is a realistic possibility that its financial difficulties can be resolved, and its sustainability restored. If a realistic possibility does not exist, liquidation of the enterprise through a formal insolvency proceeding should be considered, which indeed was part of the four options drawn up in the October 2014 scenarios. Consistent with the First Principle, the signed standstill is of limited duration (four months) and different possibilities are explored, including sale scenarios and a liquidation scenario.

* **Second Principle**: During the Standstill Period, all relevant creditors should agree to refrain from taking any steps to enforce their claims against or (otherwise than by disposal of their debt to a third party) to reduce their exposure to the debtor but are entitled to expect that during the Standstill Period their position relative to other creditors and each other will not be prejudiced. Conflicts of interest in the creditor group should be identified early and dealt with appropriately.

While the four banks in the Flow Management workout seem to implicitly give breathing space to the Company, no formal standstill agreement was signed until two of the banks (banks C and D) became more confident in the information given by the Company, after the new management (and particularly the CRO) was appointed and they noticed slight improvement in the results of their actions. The objective of the Second Principle is to achieve stability and to maintain the pre-standstill status quo among relevant existing creditors. As discussed above in response to Question 2, the benefits of out-of-court workouts may be increased by the involvement of qualified professional advisors that have the required know-how and can earn the respect of the creditors. In the case of Flow Management, the hiring of a CRO seemed to have increased the creditors’ confidence in the prospects of the workout. Creditors must be confident that, in deciding not to pursue their individual rights and remedies, they will not be prejudiced vis-à-vis other creditors if a consensual way forward for the restructuring of the debtor cannot be found. Banks C & D at some point are no longer cooperating, as discussed in the response to Question 3, potentially because of a conflict with the other two banks, which justifiably worries Banks A & B, but the situation is eventually handled and all four banks get on board with the negotiations.

* **Third Principle**: During the Standstill Period, the debtor should not take any action which might adversely affect the prospective return to relevant creditors (either collectively or individually) as compared with the position at the Standstill Commencement Date.

Standstill Commencement Date means the date from which the Principles begin to operate and the standstill arrangements commence, which in the case of Flow Management is mid-August, 2014, although banks implicitly agree to follow a standstill earlier than that, when they agree to work together on a solution. It is unclear if such implicit agreement though would have had any effect before the standstill was formally signed. The case study does not provide any details with respect to the content of the standstill agreement that was signed, so I would assume it follows the Third Principle in substance, and exceptions with respect to the Company’s ability to continue to make payments in the ordinary course of its business are made, except preferential payments, transactions not at full value and incurring new debt without the four banks’ consent.

* **Fourth Principle**. The interests of relevant creditors are best served by coordinating their response to a debtor in financial difficulty. Such coordination will be facilitated by the selection of one or more representative coordination committees and by the appointment of professional advisers to advise and assist such committees and, where appropriate, the relevant creditors participating in the process as a whole.

Implicitly, in the Flow Management workout, the relevant financial creditors appear to have adopted the Fourth Principle in the beginning, by agreeing to work together on a solution and the Company also conditions its commitment to the workout process on the banks acting as “one party”. That said, it is unclear whether a coordination committee was ever appointed – most likely not, based on the facts, although Bank A seems to be the most proactive one, as evidenced by the appointment of the new CRO at its instigation on behalf of all banks. Perhaps the small number of constituents (four banks) did not merit the cost of appointing a steering committee. The CRO being appointed on the Board by the banks played a valuable role in the restructuring process, also consistent with Fourth Principle on the appointment of a professional advisor.

* **Fifth Principle**. During the Standstill Period, the debtor should provide, and allow relevant creditors and/or their professional advisers reasonable and timely access to, all relevant information relating to its assets, liabilities, business and prospects, in order to enable proper evaluation to be made of its financial position and any proposals to be made to relevant creditors.

Although information was provided by Flow Management to the creditors, it was far from being timely and reliable, which at some point threatened to jeopardize the continuation of the workout process, with two of the banks have serious concerns in the management’s handling of the situation. The integrity of the process depends on creditors being provided with good-quality information regarding the Company’s assets and liabilities, and information on its future business prospects, which was problematic in this case, although somewhat improved with the changes of CFO and CEO during the workout, and particularly the appointment of a CRO.

* **Sixth Principle**. Proposals for resolving the financial difficulties of the debtor and, so far as practicable, arrangements between relevant creditors relating to any standstill should reflect applicable law and the relative positions of relevant creditors at the Standstill Commencement Date.

The provisions of local insolvency law where the workout is taking place will be relevant with respect to the relative priority position of creditors. For example, unless local insolvency law specifically so provides, it will generally be unacceptable if shareholders are to be provided with substantial recoveries if creditors are not being paid in full. The Flow Management workout does follow the Principle in the sense that different proposals are explored, including going concern sale options, debt to equity swap and even judicial reorganization (formal suspension of payments)/ liquidation scenarios. Creditors will typically analyse their position under different scenarios (for example, in a liquidation or in a judicial reorganization) in order to decide what their view of any proposed restructuring plan should be. That said, the case study does not provide enough information regarding the validity and duration of the standstill agreement under local law, so I assume this has been considered and properly applied.

* **Seventh Principle:** Information obtained for the purposes of the process concerning the assets, liabilities and business of the debtor and any proposals for resolving its difficulties should be made available to all relevant creditors and should, unless already publicly available, be treated as confidential.

This idea of this Principle is that all relevant creditors should ideally be provided with the same information, subject to any issues of certain private information relating to the debt, at least where the debt is traded on an exchange (as is common in the case of bonds; the issue tends not to arise in other contexts), but this does not seem to apply to the Flow Management case. The information should be sufficiently detailed to permit the banks to form their own view of the merits of the proposal put forward by the Company. New and updated information should be provided to them during the course of the workout, including on significant events affecting the Company. There are no clear indications in the case study that information was not provided to all financial creditors on an equal basis, although the situation when banks C and D start to frustrate the process, may suggest such a problem. Additional problem is that the Company kept changing the information submitted to the banks even after the standstill was formally signed. All the press releases regarding the expected losses of the Company on multiple occasions, including by the CRO, in my view were problematic for the success of the workout. It is unclear if other stakeholders which may be considered “relevant” such as key trade creditors were receiving adequate information, expect the mentioned press releases.

* **Eight Principle**: If additional funding is provided during the Standstill Period or under any rescue or restructuring proposals, the repayment of such additional funding should, so far as practicable, be accorded priority status as compared to other indebtedness or claims of relevant creditors.

The only additional funding provided in the case of Flow Management seems to be the € 10 million deposited by the former CEO as an unsecured loan, at the time she was replaced by the board of the shareholder company, but that deposit was made in the middle of April 2014, before the standstill agreement was signed in mid-August 2014. She also makes a proposal mid-May 2014 to lend another € 27.5 million to Flow Management Holding BV under the same conditions, but it does not seem that this additional deposit was ever made. More proposals for shareholder financial contributions are made afterwards but none seems to have been effected. During the formal standstill period (mid-August, 2014 to mid-December, 2014) it is proposed in one of the possible workout scenarios (the going concern option), that the shareholder contributes another € 30 million and the banks will transfer security rights of € 45 million to the shareholder, but it is not included in the Restructuring Agreement signed on July 2015, so most likely that proposal did not take effect either.

1. **Suppose it is not possible to convince other creditors to adopt the Statement of Principles in a given situation, are there any other possibilities for “soft law” to use (perhaps specifically in your country/region)? If yes, explain in what way. If not, do you see any alternative (informal) possibilities?**

Non-binding out-of-court workout guidelines have been adopted and promoted in a number of countries over the years. For example, the “Bangkok Approach” was adopted in Thailand during the Asian Financial Crisis, and the Latvian Corporate Debt Restructuring Guidelines[[15]](#footnote-15) were introduced by the Ministry of Justice during the global financial crisis in 2009. Similar to the INSOL Principles, generalized out-of-court restructuring principles were also published by other industry organizations or by regional bodies (for instance, the Asian Bankers’ Association (ABA) Workout Guidelines and Model Agreement).[[16]](#footnote-16) The latter contains non-binding principles on how financial creditors should deal with debtors in difficulties in circumstances where the debtor is dealing with multiple financial creditors with a detailed road map on how the informal workout process should unfold.

It may be challenging to convince all relevant stakeholders to adopt a framework of Principles to guide the out-of-court workout such as the 2017 INSOL Principles, because they are voluntary in nature and all participants who are critical for the workout should agree to be bound by some common terms. If this is not possible, the procedure may be enhanced through the involvement of an administrative authority to encourage stakeholders to enter into restructuring plans or to even require that restructuring participants commit in a legally binding manner to follow them. Such *enhanced workouts* are similar to out-of-court workouts in a way that there is no provision for the court to play a role. The main difference is that in this type of out-of-court restructuring, the participants are bound by law, regulation, or contract to follow restructuring-specific standards introduced by an administrative authority, usually in the banking sector.[[17]](#footnote-17)

Although the question calls for “soft law” and enhanced workouts need not be provided for in legislation, some jurisdictions gave a statutory basis for enhanced workouts. An example of such enhanced workout procedure can be found in the Republic of Korea’s Corporate Restructuring Promotion Act that features a statutory compulsion to participate in the multi-creditor workout framework. The reason was to address the collective action problem where too few financial institutions consented to the multi-creditor workout frameworks. For instance, the statutory compulsion to participate in multi-creditor workout agreements was introduced in the Republic of Korea in the form of a Corporate Restructuring Promotion Act (CRPA).[[18]](#footnote-18) The Act codified the voluntary framework developed by the banking industry in 1998 that committed participating creditors to using specific workout procedures. Because not all financial institutions participated in the framework voluntarily, the government made it obligatory for all financial institutions to participate in workouts through the CRPA enacted in 2001. Based on my understanding, the CRPA, enacted in 2001, has undergone five extensions, and the current version was set to expire in October 2023.[[19]](#footnote-19) The Financial Services Commission (FSC) has submitted an amendment to the National Assembly to consider making the CRPA a permanent law or extending its duration, but I have no updated information whether this amendment was adopted.

There is also a great variety of options in most jurisdictions for alternative dispute resolution, some of which may be adapted appropriately to a situation like the Flow Management workout and receive support from the stakeholders.  Among those, considering the circumstances of the Company, a non-binding expert determination of the case could be pursued, to provide the creditors with a realistic number of the actual recovery prospects that each class of creditors can expect, under the various scenarios.  This might be pricey, and the results can be rather theoretical, but it can contribute to motivate the stakeholders in a direction conducive to some form of workable arrangement rather than none.  A mediator may also be appointed to facilitate the resolution of the conflict between the four financial lenders and the management during the Flow Management workout, which seems to pose a bottleneck to the negotiations at some point. Mediation is a process of alternative dispute resolution which is available in many jurisdictions (including in the jurisdiction where I am licensed, Bulgaria) and it involves the intervention of a third-party neutral appointed with the agreement of participating stakeholders who is specially trained to assist the parties in negotiating jointly acceptable resolution of issues in conflict by exploring a variety of options. In the case of turnaround mediation, the mediator would preferably be skilled in both mediation techniques and business restructuring. In some countries like Japan, for example, this type of out-of-court turnaround mediation is provided by a private sector institution, the Japan Association of Turnaround Professionals (“JATP”),[[20]](#footnote-20) which was established in 2003, and is both certified under the 2004 Japan Act on Promotion of Use of Alternative Dispute Resolution[[21]](#footnote-21) and certified as a dispute resolution business operator under the Industrial Competitiveness Enhancement Act[[22]](#footnote-22) to manage the Turnaround ADR procedure.

1. **Explain in detail the essence and result of the restructuring agreement as signed on the 4th of July 2015.**

Based on the facts provided in the case study, the Restructuring agreement signed on 4 July 2015 seems to include purely financial restructuring terms, where the main drivers were minimizing loss of value and maximizing recovery.  It is unclear that there was any focus on the viability of the operations in the long term, which is a key differentiator of success between recovery and non-recovery firms as described in the Sudarsanam & Lai 2001 paper.

We lack enough information about some aspects that would typically be directly relevant to the viability of the Company in the long run and the prospects of recovery of the various classes of lenders.  For example:

* There are no references as to what arrangements have been made with employees (earlier in the workout process, the Company envisages spending cuts through making 130 staff members redundant and employees are often an important stakeholder group in a restructuring).
* We do not have visibility as to the main drivers of cost for the operations of Flow Management, and there are no references in the terms of the Restructuring agreement to personnel reduction, or to other measures to increase efficiency, for example, selling or shutting down ancillary operations that do not support the core business (such as, for example, the real estate line of business).
* It is unclear who will retain the residual value of NewCo, if any.  Will it be a directors-and-officers owned company, once the loans are paid off? Did Flow Management Holding retain the equity interest of that vehicle?

From the terms of the Restructuring agreement, it can be confirmed that working capital to the group was provided in at least two stages, as follows:

* original working capital financing in the amount of $346 MM provided to Flow Management Work BV by the consortium of banks (A, B, C, and D); and
* additional working capital financing provided by banks C & D to Flow Management Work BV ($55 MM).

Six months before the restructuring is finally signed, a payment of $25 MM to the providers of the additional working capital is made.  Presumably, this was a payment to banks C & D for their $55 MM financing to Flow Management Work BV.  The remainder of that debt, approximately $32.5 MM -which likely included interests and other charges- is ultimately cancelled as part of the restructuring.

All operating companies of Flow Management are placed under a new holding and the shares of that holding are all “transferred” to the consortium of banks.  While the terms of such transfer are not included in the case study, given that a $240 MM claim against Flow Management Work survives, it can be inferred that shares have been transferred as a fiduciary transfer or some other form of security arrangement, rather than a pure debt to equity swap.

Board members and presumably some management officers are incentivized with receiving shares in Flow Management II, as well.

The equity interests of original shareholders appear to have been completely eviscerated, as well as any financing that the holding company may have provided over time to the operating companies.  This does leave the question open as to who owns any residual interest in Flow Management II.

If there is value left in the going concern, having transferred it to a Flow Management II without any surviving claims might improve the prospects of a sale but the amount of leverage at the OpCo level is still so significant that any successful sale may involve even deeper haircuts or debt swaps.

1. **Which (potential) legal and/or non-legal cross-border issues – if any – do you recognize in the Flow Management restructuring process?**

Given that the Company may meet the insolvency test (cash flow or balance sheet) required to initiate insolvency proceedings in the jurisdiction, there is a risk that eligible creditors, not bound by the standstill agreement, may file for insolvency and bring the process in a bankruptcy court, thus jeopardizing any ongoing out-of-court negotiations. Moreover, some jurisdictions insolvency laws impose a duty on companies’ directors to file for insolvency which may trigger the potential liability of directors for delaying the commencement of an insolvency proceeding and potentially damaging creditor interests. For example, according to the Spanish Insolvency Law, the deadline for directors to file for insolvency is two months from when they become aware, or it is possible to become aware of the insolvency situation, and if they fail to file for insolvency within the legally required timeframe, the debtor, or its directors may incur personal liability. In the Flow Management case, this may potentially be an issue particularly for the Spanish subsidiary, although it is not clear from the case study.

In addition, some of the restructuring tools possibly used in the Flow Management workout may not be recognized by law in some jurisdictions, such as debt-to-equity swaps or a contractual standstill agreement.

As discussed above, and also mentioned in the Adriaanse & Kuijl 2006 paper, out-of-court restructurings are said to take place in the “shadow of the insolvency law.” Creditors' and debtors' interest in participating will be partly determined by the expected results without a workout. A debtor may refuse to commit to a workout if they can take advantage of ineffective enforcement and insolvency systems that allow them to avoid or delay creditors' collection. Thus, it is vital to understand the applicable insolvency law even in a wholly out-of-court restructuring of such a large group, with subsidiaries in several jurisdictions. Informal workouts mirror in a general way the handling of issues as specified in the applicable insolvency statute, for example, the ranking of creditor claims, voting, dealing with dissenting creditors, etc. The applicable insolvency law provisions (or lack of them), may undermine the viability of the Restructuring agreement reached out-of-court. For example, the insolvency law may not safeguard against revocation of the accords reached in good faith during the workout (for example, creation of additional security or granting priority to interim financing) based on avoidance actions that are applied in formal insolvency processes to reverse or nullify transactions detrimental to creditors that had been carried out during certain period before the insolvency proceeding (retroaction or suspect period).

Such differences in in national insolvency laws have important consequences in the case of companies with assets and liabilities in different countries, such as Flow Management which has the Netherlands as the center of main interest, and six operating companies (subsidiaries) five of which are in other jurisdictions, three of which are outside the European Union and not subject to the EU Regulation on Insolvency Proceedings, applicable in most European countries. Therefore, it should be assessed whether all jurisdictions in the Flow Management Group have introduced measures to facilitate the recognition of foreign proceedings and the cooperation and coordination among courts and administrators in the relevant countries where potentially insolvency proceedings may be initiated against a company within the Group. Since three of the subsidiaries of Flow Management are located in jurisdictions that have adopted provisions based on the UNCITRAL Model Law on Cross-Border Insolvency (Australia, South Africa and the USA)[[23]](#footnote-23), the interplay between these provisions and the EU Regulation on Insolvency Proceedings applicable in the Netherlands, France and Spain, should also be examined.

In terms of non-legal issues which may arise in the Flow Management workout, effective communication which is critical for any restructuring is even more important in the context of a cross-border one, which may pose difficulties with time delays and even language. Some of the conflicts that arise during the workout, may be also due to cultural clashes and different risk perceptions based on each country’s context.

1. **In October 2014 four scenarios have been drawn up. Why was or wasn’t calling for a moratorium (see scenario 4) a good option given the situation at that time? [you are allowed to give your opinion based on your own countries’ Bankruptcy Act; be as detailed as possible]**

Before signing a Restructuring agreement in January 2015, four possible scenarios are considered in the Flow Management workout process: i) a going concern option provided the Company is viable; ii) sale to a willing buyer; iii) a debt-to-equity swap; and iv) a court-supervised sale within a formal moratorium or liquidation proceeding.

Out of the four possible scenarios, the fourth one is the only one fully conducted within a formal bankruptcy proceeding, whether judicial reorganization or liquidation. As discussed in my answer to Question 2, out-of-court restructuring is often preferred because of its many benefits compared to court-supervised bankruptcy proceedings. With respect to judicial reorganization, countries’ insolvency laws differ, but generally they must be initiated through a formal petition to the court (by eligible petitioners, the debtor or creditors, if the jurisdiction allows it) and the procedure is “universal” in the sense that it must include all creditors, including state authorities (such as tax authorities).[[24]](#footnote-24) Throughout this process and until a restructuring plan is implemented / or a sale within liquidation is completed, the debtor is under the supervision of the court. In some jurisdictions (for example, the U.S.), a moratorium is imposed automatically, i.e., by statute, without any intervention or decision by the court or any administrative authority, simply by commencing the insolvency proceeding. Court-supervised bankruptcy procedures are public by definition and may also involve displacing the debtor’s management by a court-appointed trustee.

In the jurisdiction where I am licensed, Bulgaria, the bankruptcy legislation is encompassed within the Commercial Act (“CA”)[[25]](#footnote-25) and it comprises of two procedures: i) formal insolvency proceedings with reorganization or liquidation purposes and ii) a preventive restructuring procedure applicable to merchants and corporate debtors in financial difficulty (the “stabilization procedure”). Both the stabilization procedure and the reorganization procedure impose an automatic stay on individual enforcement actions, similar to the “formal suspension of payments procedure”, the difference is the entry to the process – if the debtor is in a state of insolvency as defined in the law (a liquidity or cash-flow test is contemplated by the law), the stabilization procedure is not available. I would not recommend a court-supervised option in the case of Flow Management because it is a lengthy, expensive, and largely inefficient process, and sale as going concern as envisaged in Scenario 4 is unlikely to be successful in Bulgaria. First, the mere opening of the insolvency proceeding can be a cumbersome and lengthy process (often exceeding the three months period prescribed by the law in the case of formal insolvency), because judicial terms are not imperative, which will negatively affect any chance of using the rehabilitation procedure successfully. Access to insolvency proceedings is not cost-effective either. Although the initial fees that a creditor must pay with a bankruptcy application are not high, the expenses determined by the court that the creditors should advance to continue a bankruptcy proceeding refrain creditors from filing bankruptcy petitions in many instances.

In practice, most insolvency proceedings end up as a piece-meal liquidation of assets, and going concern sales, as contemplated in Scenario 4, under a rehabilitation plan are rarely implemented for many reasons. The law does not contemplate any mechanism to protect and encourage the use of workouts by pre-insolvent or insolvent debtors, through a “prepackaged plan” or “expedited reorganization” which may invalidate the agreements or concessions made in the Flow Management case prior to filing in court. Perhaps the most important impediment is requirement that the Ministry of Finance authorizes / approves any plan where taxes or other state claims are affected in any way, which remained in the law even after the most recent 2023 amendments. The preferential treatment afforded to state claims by the tax legislation may frustrate any rehabilitation plan procedure or attempt at a sale as going concern. Where a plan contemplates the sale of the whole enterprise as a going concern, the requirement that a draft sale agreement signed by the purchaser shall be attached to the plan renders such sales quite difficult to achieve. The one-month deadline for submitting a plan proposal is too short to allow a third-party buyer to evaluate the convenience of such a transaction and to structure all its terms in a draft that must be signed.

Finally, while the Bulgarian bankruptcy legislation includes provisions governing cross-border insolvency issues where a non-EU member state is involved, it does not prescribe a clear and efficient process for obtaining recognition of foreign insolvency proceedings. Many legal and practical aspects which are typically involved in cross-border cases are not regulated. Also, there are no legal provisions that contemplate the insolvency of domestic enterprise groups and, other than the EU Regulation there are no provisions that deal with the insolvency of international enterprise groups where non-EU member states are involved, which is critical in the Flow Management situation.

1. Mellahi, K., & Wilkinson, A. (2004). *Organizational failure: a critique of recent research and a proposed integrative framework.* International Journal of Management Reviews, 5(1), 21-41. [↑](#footnote-ref-1)
2. Pajunen, K. (2006). *Stakeholder Influences in Organizational Survival*. Journal of Management Studies, 43(6), 1261-1288. [↑](#footnote-ref-2)
3. Governing stakeholders are *described in the 2006 Pajunen study as those who have “direct influence on an organization’s survival”, see* Pajunen, K. (2006). *Stakeholder Influences in Organizational Survival.* Journal of Management Studies, 43(6), 1261-1288. [↑](#footnote-ref-3)
4. Adriaanse, J.A.A., & Kuijl, J.G. (2006). *Resolving Financial Distress: Informal Reorganization in The Netherlands as a Beacon for Policy Makers in the CIS and CEE/SEE Regions?*, Review of Central and East European Law, 31(2), 135-154. [↑](#footnote-ref-4)
5. World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes, available at https://openknowledge.worldbank.org/server/api/core/bitstreams/3824fe8e-edb3-5f9b-aa28-f5afc759e562/content#:~:text=The%20Principles%20for%20Effective%20Insolvency,involved%20in%20developing%20those%20solutions. [↑](#footnote-ref-5)
6. Broekema M.J.R. & Adriaanse J.A.A. (2022), *Valuation Ambiguities under the European Directive on Preventive Restructuring Frameworks: Insights from the Netherlands*, The European Business Valuation Magazine 1(1): 4-10. [↑](#footnote-ref-6)
7. European Union Directive 2019/1023 on preventive restructuring frameworks, on the discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency, and discharge of debt. [↑](#footnote-ref-7)
8. The amended version of the Bulgaria Commerce Act transposing the EU Restructuring Directive (supplemented by Law No 25 of 29.03.2022, in force as of 8.07.2022, amended by Law No 66 of 1.08.2023) was published on August 1, 2023, in the Official State Gazette. [↑](#footnote-ref-8)
9. Formal reorganization in the Netherlands, which is the jurisdiction the analysis is mainly based on, is the so called “moratorium on payment”, Adriaanse, J.A.A., & Kuijl, J.G. (2006). *Resolving Financial Distress: Informal Reorganization in The Netherlands as a Beacon for Policy Makers in the CIS and CEE/SEE Regions?,* Review of Central and East European Law, 31(2), p. 138. [↑](#footnote-ref-9)
10. Sudarsanam, S, Lai, J., (2001), ‘Corporate Financial Distress and Turnaround Strategies: An Empirical Analysis’, British Journal of Management, Vol. 12, 183-199. [↑](#footnote-ref-10)
11. Retrenchment approaches are focused on more typical fire-fighting strategies aimed at stabilizing the company in the short-term while recovery approaches are aimed at long-term results. *See* Schmitt, A., Raisch, S. (2013). ‘*Corporate Turnarounds: The Duality of Retrenchment and Recovery’*, Journal of Management Studies, 50(7), 1216-1244. [↑](#footnote-ref-11)
12. See Broekema M.J.R. & Adriaanse J.A.A. (2022), *Valuation Ambiguities under the European Directive on Preventive Restructuring Frameworks: Insights from the Netherlands*, The European Business Valuation Magazine 1(1): 4-10. [↑](#footnote-ref-12)
13. Pajunen, K. (2006). *Stakeholder Influences in Organizational Survival.* Journal of Management Studies, 43(6), p. 1262. [↑](#footnote-ref-13)
14. INSOL International. (2017), Statement of Principles for a Global Approach to Multi-Creditor Workouts II. [↑](#footnote-ref-14)
15. Ministry of Justice of Latvia, available at: https://www.tm.gov.lv/lv/media/7364/download [↑](#footnote-ref-15)
16. The Asian Bankers Association (ABA) Workout Guidelines and Model Agreement, available at: https://www.aba.org.tw/wp-content/uploads/2018/11/ABA-Informal-Workout-Guidelines.pdf (last accessed on September 1, 2023) [↑](#footnote-ref-16)
17. For purpose of this assignment, I have used the definition of “enhanced workouts” adopted by the World Bank. 2022. *A Toolkit for Corporate Workouts*. World Bank, Washington, DC. [↑](#footnote-ref-17)
18. English translation available at: <https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=49395&type=part&key=23>. Also see World Bank. 2022. *A Toolkit for Corporate Workouts*. World Bank, Washington, DC., p. 41 [↑](#footnote-ref-18)
19. Based on the submission by Judge Sanghoon NA of the Seoul Bankruptcy Court, Republic of Korea, shared during the 2023 INSOL Tokyo Judicial Round Table. [↑](#footnote-ref-19)
20. http://www.turnaround.jp/ [↑](#footnote-ref-20)
21. Act No. 151 of December 1, 2004. [↑](#footnote-ref-21)
22. Act No. 98 of December 11, 2013. [↑](#footnote-ref-22)
23. As of November 2023, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border\_insolvency/status [↑](#footnote-ref-23)
24. Even though, in some jurisdictions creditors whose claims are not affected may not be a part of the process. [↑](#footnote-ref-24)
25. Last amended on August 1, 2023, and published in the Official State Gazette. [↑](#footnote-ref-25)