Global Insolvency Practice Course 2023/24 - Flow Management

Angelo Carella

Question #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?

Flow Management Holding BV – based in The Netherlands (Amsterdam) - is part of an international group of companies that leases trucks and private cars and is also active in short leasing, real estate and truck repair. The entire company employs over 3.000 people and has more than 200,000 cars in its fleet.

In November 2013 announced to its lenders that the reported pre-tax profit until September 2013 of € 8 million really turns out to be a loss of € 5.4 million. In addition, faults have been found in the annual accounts of 2012. The result of € 3 million must be downgraded by € 8 million. The company management identified the following reasons for that:

- Inappropriate management remuneration decision: large management bonuses (€ 3 million) have been wrongfully issued (concerning salaries of the CEO and CFO of Flow Management Holding BV);
- Accounting mistake: a contingency gain relating to three years has been received in 2012 and has been wrongfully booked as a result in 2012. A negative correction of € 1.6 million must be made;
- Uncertain profit recognition and not realized: in 2012, in anticipation of book profit ('paper gain') to be realised in 2013, a € 2.8 million book profit is made. This book profit was neither realised in 2012 nor in 2013;
- Insufficient financial control and wrong pricing: the 2013 loss is the result of the basic principles used in the cost price calculation deviating from reality (because of a 'formula error' in a spreadsheet, it emerges later). Since they failed to periodically check the real costs against the results of the cost price calculation, the prices charged were too low, resulting in a loss.

To address the causes of financial distress at Flow Management through the requested framework, let's delve into both deterministic and voluntaristic perspectives, define failure in the context of a business, and then integrate these views to form a comprehensive picture.

In the case of Flow Management, the financial distress encountered can be analyzed through an integrated lens that incorporates both deterministic and voluntaristic perspectives, delineates the nature of failure, and then provides a specific understanding of the company's situation.

<u>Deterministic vs. Voluntaristic Perspectives</u>

Deterministic Perspective: This suggests that external market forces and industry conditions exert a significant impact on a firm's performance. It might imply that Flow Management's struggles were a result of industry-wide trends beyond their control, such as downturns in the leasing market or broader economic headwinds. We have no evidence of significant impact from external forces, except for an accounting system that provide flexibility in recognizing revenues that are not secured yet.

Voluntaristic Perspective: This view posits that the internal decisions and actions taken by management are pivotal. In Flow Management's case, the choices made by the management, particularly concerning remuneration and accounting practices, highlight the impact of internal decision-making. Like a tree whose roots are eroding, Flow Management's financial base became unstable due to unwarranted bonuses and accounting errors.

Combining Perspectives: Just as a biopic portrays a person's life through multiple lenses, an integrative approach to Flow Management's distress reveals both the impact of external factors and the critical role of internal decisions.

Flow Management's downfall appears to be predominantly driven by internal mismanagement, evident in their voluntary choices like the inappropriate remuneration and faulty accounting practices. However, without understanding the market conditions, we cannot fully rule out external pressures.

Prevention could have taken the form of better internal controls—like more rigorous checks and balances, akin to having both a co-pilot and an autopilot to prevent a plane from veering off course. Enhanced governance could have functioned like a stronger dam to control the flow of financial decisions that eventually flooded the company's resources. By implementing a more conservative accounting policy, akin to a cautious navigation strategy, and by fostering a culture of critical analysis, similar to a council of wise advisors challenging the king's decisions, Flow Management might have remained solvent and avoided distress.

Question #2: 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?

Understanding the nuances between out-of-court restructuring (workout) and formal bankruptcy procedures is critical. These processes differ significantly in execution, implications, and outcomes for the company in distress. Here's a general examination followed by a specific look at the context of the United Arab Emirates (UAE).

General Advantages of an Out-of-Court Restructuring:

- Confidentiality: Workouts are private, allowing companies to avoid the negative publicity associated with bankruptcy filings.
- Control: Management retains more control over the company's destiny, rather than ceding to a court-appointed trustee.
- Flexibility: Terms can be tailored to fit the unique needs of the company and its creditors.
- Cost Efficiency: Generally, incurs lower legal and administrative costs than formal bankruptcy proceedings.
- Speed: Workouts can be implemented more quickly than court procedures, allowing for a faster return to normal operations.
- Preservation of Value: Can help preserve business relationships and goodwill, as it is less disruptive to operations.

General Disadvantages of an Out-of-Court Restructuring:

- Creditor Agreement: Requires the consent of all or most creditors, which can be difficult to obtain.
- Lack of Structure: Without the formal structure of a court proceeding, negotiations can become protracted and inefficient.
- Partial Solutions: May only address certain aspects of financial distress, leading to the potential for future problems.
- No Automatic Stay: Unlike formal bankruptcy, there is no automatic stay on creditor actions, which can lead to piecemeal asset seizures.
- Potential for Bias: The outcome may disproportionately favor certain creditors over others.

Advantages vs. Disadvantages in the United Arab Emirates:

The legal framework governing insolvency in the UAE is relatively new, with the Federal Law No. 9 of 2016 regarding Bankruptcy Law coming into effect only in December 2016. Before this, the legal environment for handling insolvency was less developed.

Advantages in the UAE:

- Cultural Considerations: Out-of-court settlements are more aligned with the business culture in the UAE, which traditionally values discretion and direct negotiation.
- Regulatory Speed: Bankruptcy proceedings can be slower in emerging legal systems; workouts may be executed more quickly.
- Market Confidence: Workouts may preserve market confidence better in a region where bankruptcy might carry a stronger stigma.

Disadvantages in the UAE:

- Legal Certainty: The bankruptcy law in the UAE is new, and its processes might not be as predictable as those in more established jurisdictions, which can make out-of-court solutions more appealing but also more uncertain.
- Enforcement: Enforcing agreements from workouts may be more challenging if creditors do not comply, as the court's coercive power is absent.
- Recourse for Creditors: Creditors may have fewer recourses if the debtor fails to fulfill the terms of an out-of-court restructuring.

In conclusion, while out-of-court restructuring offers several advantages in terms of control, cost, speed, and privacy, it also presents challenges, particularly in ensuring creditor cooperation and dealing with potential enforcement issues. In the context of the UAE, where the insolvency framework is still evolving, workouts might offer a practical approach for businesses to restructure their debts, while formal bankruptcy proceedings are developing to become a more robust and predictable path for businesses in distress.

When examining the case study of Flow Management Holding BV and its choice to engage in out-of-court negotiations with creditors, we can better understand the advantages and disadvantages of such a workout in a situation where the discussions do not proceed smoothly, especially as reflected in the context of challenging bank negotiations.

In the case of Flow Management, the initiation of out-of-court negotiations was likely influenced by several factors:

- Discretion: Flow Management might have sought to avoid the negative publicity associated with bankruptcy, aiming to preserve business relationships and customer confidence.
- Cost Consideration: Given the scale of their operations, a formal bankruptcy could have been significantly more expensive due to high legal and administrative costs.
- Swift Action: The management may have believed that a quicker resolution with creditors was essential to resume normal operations and to stabilize the company financially.

However, the company faced difficulties, particularly with the banks. This illustrates the disadvantages of workout processes in situations where creditors are not in agreement:

- Creditor Cooperation: The banks had different levels of exposure, differing policies on risk, or varying strategic interests, leading to a lack of consensus.
- Negotiation Complexity: Flow Management's negotiations with its banks become more complex due to the severity of the financial misreporting, causing a breakdown in trust and complicating consensus-building efforts.

Transposing this situation to a context like the UAE, where the legal landscape regarding bankruptcy and financial restructuring is still maturing, the potential for difficult negotiations may be even more pronounced. The legal uncertainties and the lack of a well-trodden path for bankruptcy proceedings could lead creditors, especially banks, to be more cautious and protective of their interests, thereby making out-of-court negotiations more challenging.

When faced with financial complexity and mistrust, as in the case of Flow Management, these negotiations become particularly fraught, leading to potential impasses that a formal bankruptcy process might avoid. The difficulties are compounded in regions like the UAE, where the evolving legal context adds another layer of complexity to the already delicate negotiation landscape.

Question #3: Were the turnaround/reorganization approaches as presented in the reading material applied in this case? If yes, explain in what way. If no, detail what in your opinion should have been done differently

Flow Management Holding BV did indeed attempt to apply several principles of turnaround and reorganization. However, the efficacy of these approaches and the sequence in which they were applied seem to have been less than optimal, leading to a slow and challenging recovery process.

- Financial Restructuring: Flow implemented some classic financial restructuring steps, such as the sale of shares and assets outside their core region (the Benelux countries). This aligns with the strategies of divestment to stabilize the balance sheet.
- Operational Restructuring: By renegotiating prices and cutting spending, Flow was engaging in cost rationalization, a key aspect of the efficiency/operating turnaround stage described in the literature.
- Management Changes: Replacing the CFO and CEO, and hiring a Chief Restructuring Officer, reflects the change in top management which is often critical for a successful turnaround.
- Specialist Involvement: The hiring of an accounting firm and a turnaround specialist firm indicates the recruitment of external expertise to analyze the situation and implement a reorganization plan, which is a measure commonly associated with successful recovery processes.
- Business Mix Reassessment: The reassessment of the entire business mix signals a strategic move to focus on core competencies and products, a step towards recovery in strategic changes.

Despite these steps, the turnaround strategy employed by Flow Management was slow, indicating a possible misalignment with the key elements of timing, intensity, and effective implementation.

Possible improvements could had been on the following areas:

- Timing and Intensity: The slow pace of the turnaround suggests that the actions taken were neither as timely nor as intensive as necessary. Early and decisive action is crucial, and Flow may have benefited from more aggressive initial steps to address their financial distress.
- Effective Implementation: The gradual approach taken by Flow might have resulted in lost opportunities for quicker stabilization and a more effective restructuring process. An integrative approach that combines immediate cost-cutting with strategic vision can often yield better results.
- Communication and Stakeholder Engagement: The turnaround process should have also included open communication with all stakeholders to ensure support and manage expectations. Transparent and good relationships with stakeholders are critical success factors.
- Quick Actions: Given the slow strategy, Flow could have implemented quick wins to generate immediate cash flow improvements and signal to the stakeholders the commitment to the turnaround.
- Emphasis on Dualism and Duality: The steps Flow Management took indicate an attempt to balance the paradox between retrenchment and recovery (dualism), but there might have been insufficient emphasis on the synergies and complementary aspects (duality) which could have fostered a more holistic and sustainable turnaround.

In conclusion, while Flow Management Holding BV made several correct moves in their turnaround strategy, the slow execution and potentially the lack of an intensive and integrated approach may have hindered their success. It appears that a more aggressive and well-coordinated set of actions, implemented earlier and communicated effectively to stakeholders, might have yielded a more favorable outcome for the company.

Question #4: 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?

The behavior of Banks C and D during the negotiation process with Flow Management Holding BV can be understood through both rational and opportunistic lenses:

<u>Rational Reasons</u>

- Risk Assessment: Banks C and D might have assessed the risk of continuing to support Flow as too high, perhaps due to the slow turnaround process or poor past performance, and therefore might be less willing to concede to terms they see as unfavorable.
- Divergent Interests: The two banks could have different levels of exposure, collateral, or seniority in the debt structure, leading to a divergence in their interests compared to the other banks.
- Regulatory Constraints: Banking regulations may impose certain restrictions on how much exposure they can maintain to a distressed entity, which could have led Banks C and D to take a tougher stance to comply with regulatory requirements.

<u>Opportunistic Reasons:</u>

- Strategic Holdout: They may believe that by holding out, they can negotiate a better deal for themselves, either by obtaining higher repayment rates or by securing better terms.
- Asset Stripping: If Banks C and D have secured positions, they might see an opportunity to benefit from the liquidation of Flow's assets rather than a continued restructuring effort.

As an advisor to the other two banks, my approach would be multifaceted:

- Facilitating Understanding: First, I would aim to understand the specific concerns and objectives of Banks C and D to address them directly in negotiations.
- Mediation: Propose a neutral third-party mediator who could help bridge the differences in positions and facilitate a compromise.
- Collateral Reallocation: Suggest a restructuring of the collateral package that might reassure Banks C and D about their recoveries in case of default.
- New Terms Proposal: Work with all parties to develop new terms that could be more palatable to the dissenting banks, potentially including phased repayment or contingent clauses.
- Transparency and Data Sharing: Increase transparency by sharing detailed and up-to-date financial projections and business plans, which might alleviate some concerns about the viability of the turnaround plan.
- Strategic Concessions: Explore what concessions the other banks are willing to make to persuade Banks C and D to agree to the workout terms, recognizing that some compromise is necessary to avoid bankruptcy.
- Creating Urgency: Emphasize the importance of timely agreement and the costs associated with a delayed resolution, which could worsen the financial situation for all, including Banks C and D.
- Incentivizing Cooperation: If feasible, design incentive mechanisms for cooperative behavior, which could include fees, higher interest rates, or a better position in the repayment hierarchy.

- Ultimately, as an advisor, the goal would be to guide the banks towards a resolution that minimizes losses, maintains relationships, and serves the long-term interests of all parties involved, including the distressed company

Question #5: 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)?

To assess which of the eight principles from the 'Statement of Principles for a Global Approach to Multi-Creditor Workouts II' were present in the workout process of Flow Management, based on the provided framework and the workout process, I can infer the following:

<u>Cooperation and Standstill:</u>

- Explicit: If Flow Management initiated negotiations with creditors, there was likely some level of cooperation. A standstill agreement may have been in place, temporarily halting enforcement actions while discussions proceeded.
- Implicit: Cooperation is implicit in any workout as all parties must communicate and work toward a common goal to avoid formal bankruptcy proceedings.
- Flow Management: The principle has not applier for most of the restructuring process, with the standstill signed too late due to lack of reliability and transparency in the communication process.

<u>No Enforcement of Claims During the Standstill:</u>

- Explicit: This principle would be explicit if there was a formal agreement among creditors not to pursue their claims while a restructuring plan was being formulated.
- Implicit: It could be implicit in the general forbearance of creditors as they negotiated, even if not formalized in a standstill agreement.
- Flow Management: The principle implicitly applied since no creditors enforced.

<u>Debtor Not Worsening Recovering Perspectives During the Standstill:</u>

- Explicit: Flow's active engagement in cost-cutting and hiring specialists suggest a commitment to not worsening the situation.
- Implicit: The hiring of a Chief Restructuring Officer and other management changes imply an acknowledgment of the need to maintain or improve recovery prospects.
- Flow Management: The principle applied, albeit no standstill was signed for most of the discussion time.

<u>Creditors to Establish Committee and Appoint Advisors:</u>

- Explicit: If creditors formed a committee or appointed advisors, this would be an explicit adherence to the principles.

- Implicit: Even without a formal committee, creditors acting in concert, such as when negotiating or sharing information, reflects this principle.
- Flow Management: This principle applied only partially and not effectively. Accounting advisor was appointed, but a financial advisor would have facilitated contribution among the creditors.

Debtor to Promptly Provide Information to Allow Evaluation:

- Explicit: The hiring of an accounting firm indicates that Flow was likely providing the necessary information to creditors.
- Implicit: Promptness and adequacy of the information can be inferred from the progression of the workout process.
- Flow Management: Accounting firm was appointed, but forecast information resulted to be not accurate and reliable. This aspect made negotiations less productive

Proposal to Reflect Applicable Law:

- Explicit: Any proposal made by Flow Management would need to reflect the applicable law to be viable.
- Implicit: The involvement of legal and financial advisors suggests compliance with legal standards, even if not stated outright.
- Flow Management: Applied, although I have not found explicit reference to the appointment of a legal advisor. However, I assume it was appointed.

Proposal to Be Available to All Creditors and Treated as Confidential:

- Explicit: If Flow Management shared its reorganization plan with all creditors equally and maintained confidentiality, this principle was followed explicitly.
- Implicit: The general practice of information sharing during workouts implies adherence to this principle unless specified otherwise.
- Flow Management: Principle applied in the case of Flow Management.

New Money Should Have the Priority:

- Explicit: This would be explicit if new financing was provided and was given priority in terms of repayment over existing debts.
- Implicit: The principle might be implicit in the negotiations regarding the restructuring of the debt or in the actions taken to incentivize new investments.
- Flow Management: Principle applied, but the time required was more than advisable and this might have destroyed value

Question #6: 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?

If it is not possible to convince other creditors to adopt the Statement of Principles in a given situation, there are often other informal practices that can be leveraged to facilitate an out-of-court restructuring or workout process. The availability and applicability of these will depend on the specific legal and cultural context of the country or region in question. Some general approach that could be applied include:

1. Local Best Practices and Guidelines:

In many jurisdictions, local banking associations or financial regulatory bodies may have developed their own sets of best practices for restructuring distressed debt. These can serve a similar function to the Statement of Principles, providing a framework for negotiation and cooperation that creditors may be more willing to accept if they are tailored to the local context.

2. Mediation and Conciliation Services:

In some countries, there are formal mediation and conciliation services that can be used to facilitate agreement between debtors and creditors. While not "soft law" per se, these services can provide a structured yet informal setting for workout discussions.

3. Insolvency Professionals:

Turning to insolvency practitioners or turnaround professionals who are well-versed in local customs and practices can be helpful. These professionals often have experience in negotiating out-of-court restructurings and can leverage informal networks and relationships to facilitate agreement.

4. Alternative Dispute Resolution (ADR):

ADR methods like arbitration can sometimes serve as a substitute for more formal legal processes. They can be particularly useful when creditors are reluctant to engage in a fully informal workout process.

5. Creditors Committee:

If none of these soft law or informal mechanisms are feasible, alternative possibilities might include direct negotiations led by a strong neutral party, informal creditor committees where a lead creditor can influence others, or even using public opinion and corporate social responsibility arguments to persuade creditors about the benefits of avoiding formal bankruptcy proceedings.

Question #7: Explain in detail the essence and result of the restructuring agreement as signed on the 4th of July 2015.

The essence of the restructuring agreement signed on the 4th of July 2015 for Flow Management involved a complex arrangement designed to salvage the financial stability of the company and lay the groundwork for a potential sale as a going concern:

1. Creation of a New Entity:

Flow Management Holding BV's operational companies were moved into a new shell subsidiary, Flow Management II BV, to isolate the healthy parts of the business from the distressed parts and facilitate a potential sale.

2. Transfer of Shares:

The shares in Flow Management II BV were transferred to the consortium of banks A, B, C, and D, which previously financed the original working capital of Flow Management Work BV.

3. Liquidation of Parent Company:

Flow Management Holding BV was to be liquidated, with all claims against this entity being cancelled by the banks and its shareholder.

4. Cancellation of Claims:

Flow Management Holding BV and its shareholder agreed to cancel all claims against Flow Management II BV and its subsidiaries, helping to clean up the balance sheet of the new entity.

5. Debt Forgiveness:

Banks C and D waived a substantial debt of €32.5 million provided as additional working capital to Flow Management Work BV. This was a significant haircut, indicating the banks accepted losses to facilitate the restructuring.

6. Additional Waivers:

The consortium that originally provided working capital to Flow Management Work BV also took a substantial hit, waiving €97.5 million while leaving a claim of €240 million outstanding against Flow Management Work BV.

7. Loan Cancellation:

A €55 million loan within Flow Management Work BV was fully cancelled, further improving the balance sheet of the restructured entity.

Results of the Agreement

Asset Pledges and Claims:

The restructuring reflected the security interests of the creditors: those with pledges on assets (consortium banks) positioned themselves to recover part of their claims in the event of liquidation.

Operational Losses:

Despite the restructuring efforts and the anticipation of breaking even, the 'new' company, Flow Management II, incurred operational losses of nearly €9 million in 2015, contrary to revised forecasts.

Positive Net Profit and Improved Solvency:

Due to the significant debt reduction, the company still managed a positive net profit and an increase in equity capital, improving its solvency ratio to above 5%.

Challenges in Sale and Refinancing:

Attempts to sell the company were met with resistance, as potential buyers seemed to be waiting for a possible liquidation. Moreover, the need to refinance the working capital was postponed to avoid triggering liquidation, showing that despite the restructuring, the company was still in a precarious position.

Outlook:

The restructuring agreement provided Flow Management with a lifeline, reducing its debt burden and improving its equity situation, which is essential for survival in the short term. However, the persistent operational losses and difficulty in attracting a buyer indicated that while the restructuring was a necessary step, it was not a panacea. The future of the company depended on its ability to turnaround operations, improve profitability, and potentially find a suitable buyer.

Question #8: Which (potential) legal and/or non-legal cross-border issues – if any – do you recognize in the Flow Management restructuring process?

Given the international nature of Flow Management's operations and the cross-border implications of its restructuring process, several potential legal and non-legal issues arise:

<u>Legal challenges</u>

1. Insolvency Regulation and Recognition:

The insolvency process, while initiated under Dutch law, must be recognized and enforceable in other jurisdictions where Flow Management operates. This can be complex, as different countries have varying insolvency laws and recognition agreements.

2. Jurisdictional Variations:

Subsidiaries operating under local company laws may face different restructuring regulations.

3. Cross-Border Security and Collateral Issues:

The validity and enforceability of security interests across different jurisdictions may pose challenges, especially when dealing with asset pledges and the priority of claims.

4. Tax Implications:

The restructuring could have significant tax implications, including the possibility of triggering tax liabilities in multiple jurisdictions, considering transfer pricing, and the revaluation of assets.

5. Employee Rights:

Employees in different countries are protected by their local labor laws, which may affect the restructuring process, particularly in terms of layoffs, changes in employment contracts, or pension liabilities.

6. Contract Continuity:

Cross-border contracts, such as lease agreements, might be governed by various national laws, which can impact the continuity and enforceability of these agreements post-restructuring.

<u>Non-Legal Challenges</u>

1. Operational Coordination:

Ensuring the subsidiaries in different countries continue to operate effectively during the restructuring process can be difficult, especially if there are disruptions due to uncertainty among stakeholders.

2. Cultural and Communication Barriers:

Different business cultures and languages can pose non-legal challenges to the restructuring process, particularly in negotiations and when seeking consensus among various stakeholders.

3. Foreign Exchange Risk:

With operations in different countries, the company faces foreign exchange risks, especially when liabilities and assets are denominated in various currencies that may fluctuate due to market conditions or changes in the company's perceived creditworthiness.

4. Stakeholder Management:

Managing expectations and interests of diverse stakeholders, including international creditors, shareholders, employees, and customers, can be a significant non-legal challenge.

5. Reputation and Brand Image:

The restructuring process can affect the company’s brand image differently in each region, potentially impacting customer loyalty and market position.

In addressing these cross-border challenges, it is crucial for the advisors and legal teams to coordinate closely, taking into account the nuances of each jurisdiction while aiming for a harmonized approach to the restructuring process to maximize the chances of a successful turnaround for Flow Management.

Question 9: 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]

In considering whether calling for a moratorium as per scenario 4 was a good option for Flow Management, it is essential to understand the specifics of the situation at the time, as well as the implications of a moratorium under the relevant bankruptcy laws.

The Situation in October 2014:

Financial Status: The financial condition of Flow Management at the time would have been critical in deciding whether a moratorium was a good option. If the company was facing temporary liquidity issues but was otherwise viable, a moratorium could have provided breathing space for restructuring.

Cash Flow Forecasts: The expected future cash flows and the possibility of turning around the company's operations would also influence this decision. If there was a reasonable expectation of recovery, a moratorium might have been justified.

Stakeholder Positions: The attitudes and positions of creditors, shareholders, and other stakeholders toward a potential restructuring would be a significant factor. A cooperative environment would make a moratorium more viable.

Operational Considerations: The impact of a moratorium on the company’s operations, including its reputation, contracts, and employee morale, would need to be assessed.

Moratorium Under UAE Bankruptcy Law:

The UAE Bankruptcy Law, which was enacted in 2016, provides for a legal framework to assist businesses facing financial difficulties to avoid bankruptcy and liquidation:

1. Protection from Creditors:

A moratorium under the UAE Bankruptcy Law provides a company protection from legal proceedings by creditors, allowing it time to negotiate a settlement or a restructuring plan.

2. Restructuring Process:

The law encourages the restructuring of companies to allow for continued operation, which aligns with the aims of a moratorium to facilitate a potential recovery rather than proceeding to liquidation.

3. Management Continuity:

The management can potentially continue running the business, which could ensure that the company does not lose its operational and managerial expertise during the moratorium.

4. Court Supervision:

Any moratorium would likely be under the supervision of the court, ensuring that the interests of all parties are considered and that the process is transparent and regulated.

5. Financing During Moratorium:

The company may be able to obtain new financing under the protection of a moratorium, which could be critical for maintaining operations and achieving a turnaround.

<u>Evaluation of Calling for a Moratorium</u>

Given the context, calling for a moratorium in October 2014 might have been beneficial if Flow Management was aiming for restructuring, and the prospects of recovery were feasible. A moratorium could have provided the necessary time to reorganize debts, negotiate with creditors, and potentially secure additional financing without the immediate threat of enforcement actions.

In the UAE, as per the 2016 Bankruptcy Law, the decision to call for a moratorium would be highly situational, based on the company's specific circumstances, the likelihood of a successful restructuring, and the legal framework in place at the time.