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This questionnaire addresses the issues affecting the interface between insolvency law and company law, and should be answered providing a) references to the statutes and provisions quoted; b) relevant cases, if any; c) any other supporting information, such as references to books or articles.

As an introduction to the questionnaire, consider the following examples of interaction and conflicts between insolvency law and company law (the examples, that assume certain characteristics of some legal systems, should be understood as having only illustrative purposes):

1) A company is under a reorganization procedure. Its directors have prepared a reorganization plan that, inter alia, provides for the conversion of creditors’ claims into equity of the company. In more detail, the plan would provide for the cancellation of the existing shares and the issuance of new shares to be allotted according to the plan, exclusively to the company's creditors, except if the shareholders make a new contribution into the company.

The plan also provides for the transfer of a substantial part of the business to a third party. The shareholders oppose the plan. However, the creditors and the board, with the support of a due diligence analysis, have reason to believe that the opposition is unreasonable, as the value of the company's liabilities clearly exceeds the value of the assets, and in a liquidation the shareholders would not receive any proceeds.

2) In a company under a reorganization procedure, the plan foresees the issuance of new shares to be allotted to the company's creditors, diluting the existing shares but without cancelling them. The new shares would have prevailing voting and governance rights over the existing shares. The shareholders oppose the plan.

3) A reorganization plan foresees, inter alia, a capital increase structured in such a way to ensure that a substantial share in the company would be acquired by an external investor, whose resources/business strategies would help save the long-term operation of the company. However, the shareholders opposing the plan decide to exercise their pre-emption rights in the capital increase, thereby defeating the plan’s strategy based on the stepping-in of the significant investor.

4) A company is under a reorganization procedure and the board of directors is designing a plan that, while ensuring the viability of the business, would adversely affect the rights of the shareholders. A minority shareholder requests that a general meeting of the company be held, seeking the approval of several proposals by the meeting, including the removal of the directors of the company in reorganization.

5) A reorganization plan is approved with the decisive support of intra-group (insider) creditors, with the result that unsecured creditors suffer a loss, whereas shareholders retain value in the reorganized company.

These stylized examples, drawn from a number of real cases in different jurisdictions around
the world, illustrate the tension between the shareholders, the creditors and, in general, company law and insolvency law.

The purpose of the following questionnaire is to identify how shareholder rights are affected by the insolvency of the company (including in cases of imminent insolvency), and the interaction between shareholder rights and the normal operations in an insolvency process (either a liquidation or a reorganization process). Although some general questions are also relevant for insolvency procedures applicable to special regulated companies (i.e., for example, financial institutions), the questionnaire is designed to analyse the conflicts between insolvency law and company law, and therefore, reference should be made to the ordinary insolvency procedures as applied to the corporate forms which are generally used in your jurisdiction for both “close” and “open” companies (1).

The main issues can be summarized as follows:

- The respective powers of the board and the shareholders’ meeting in insolvency proceedings;
- The substantive and procedural rights of shareholders in a company subject to insolvency proceedings;
- The possibility of using the old/same corporate entity as a vehicle for the reorganization of the company;
- The possibility of the shareholders to retain a participation in the reorganized company, and, if they are allowed to retain a participation, the allocation of value between creditors and shareholders.

All of these issues are structured around two principal areas of conflict between company law and insolvency law: the individual rights of shareholders and the role of the shareholders’ meeting in an insolvent company.

Dealing with the preceding issues implies, inter alia, addressing the question of the legal position of the shareholders in companies, e.g. the question of whether and to what extent the law considers shareholders as owners of the company in a legal sense. The effects on the legal position of shareholders of an insolvent company may in fact create a conflict with special - even constitutional- safeguards for the protection of property rights. These safeguards, in turn, may be less or more stringent, depending on whether the company is insolvent in the balance-sheet sense (i.e., whether the value of its liabilities exceeds the value of its assets) or not, and whether a liquidation or a reorganization procedure is used.

In addition, the preceding issues may present further variables according to the characteristics of the company involved. Outcomes could be different depending on the fact that the company is closely held or is a listed company, or is a specially regulated company, such as a financial intermediary.

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(1) For instance, the questionnaire for the UK will include references to both limited liability companies (LLCs) and public limited companies (PLCs); the questionnaire for Germany will cover both AGs and GmbHs; and the questionnaire for Italy will cover SPAs and SRLs.
I. Introductory questions on the insolvency procedures available in the relevant jurisdiction.

1. What insolvency procedures – either liquidation or reorganization procedures – are available for distressed or insolvent companies?

   **Answer:**

   Argentina introduced, on July 20, 1995, a bankruptcy law, which contemplates the insolvency procedures for reorganization and liquidation. The law is designated as No. 24.522 and known as the *Ley de Concursos y Quiebras* (Law of Insolvency and Bankruptcy, hereinafter ‘**LCQ**’), and has been partially amended several times since 1995. The LCQ governs insolvency procedures for reorganization (which the Argentine law calls Preventative Agreements –“*concurso preventivo*”), and liquidation (bankruptcy or “*quiebra*”).

   The provisions of the LCQ apply to both natural persons as well as juridical persons. The LCQ is also applied to insolvent government-owned corporations and other state companies.

   The LCQ includes a chapter on “small insolvencies,” which specifies a rather simplified procedure: documents do not need to be certified by a CPA on petitioning reorganization; creditor’s committees are dispensed of, and there in no possibility of creditors and other interested parties to acquire the equity of the small company in case of securing the other creditors’ acceptance by majority vote of this third-party plan towards reorganization, as would be viable in a larger insolvency case.

   Otherwise, the main body of legislation governing companies in Argentina is the *Ley de Sociedades Comerciales* No. 19.550 (the Law on Commercial Companies, hereinafter ‘**LSC**’). This law has been partially modified by the unified Civil and Commercial Code that will enter into force on August 11, 2015. After this date, the Law on Commercial Companies will be known as *Ley General de Sociedades* (General Law on Companies).

2. Are there special insolvency procedures available for financial institutions or for other special classes of companies?

   **Answer:**

   The LCQ does not fully apply to the insolvent liquidation of financial institutions and insurance companies.

   The *Ley de Entidades Financieras* No. 21.526 (1997) (the Law of Financial Institutions) establishes significant modifications to the LCQ for the liquidation of insolvent banks and financial institutions. The *Ley de Ejercicio de la Actividad Aseguradora* No. 20.091 as of February 7, 1973 (the Law of Insurance Activities), establishes slight modifications to the LCQ with respect to the liquidation of insolvent insurance companies. Neither insolvent banks nor insolvent insurance companies are entitled to file for reorganization proceedings. Notwithstanding this, some judicial resolutions concerning insolvent banks have enabled them to file for reorganization once they had been disenfranchised to operate as such.

   There is another special regime for insolvent civil associations with a specific purpose of sport practices. The *Ley de Régimen Especial de Administración de las Entidades Deportivas con Dificultades Económicas* No. 25.284 (2000) (the Law of Special Administration Regime for Sport Entities under Economic Difficulties), establishes an
option for the settlement of a trust (Fideicomiso de Administración con Control Judicial or Administration Trust under Judicial Control) under judicial control for the administration of sport clubs in Liquidation or Reorganization, thus modifying several rules of the LCQ regime.

Trusts (as governed by Ley de Fideicomiso No. 24.441, (1995) (Law of Trusts), and which will be governed by the unified Civil and Commercial Code after August 1, 2015) are entities completely excluded from the LCQ regime.

Shipping and airline activities’ insolvencies are considered in the Maritime Code (Código de la Navegación), and the Aeronautic Code (Código Aeronáutico) both of which include a specific procedure for insolvency applicable only in that area.

There are no specialized procedures for other different activities, such as for railroads or farmers.

3. Are there any specific legal provisions that apply to debt restructurings achieved without a full formal insolvency process?

Answer:

Yes. The LCQ contemplates an abbreviated procedure for judicial confirmation of out-of-court reorganization agreements or plans approved by a majority of creditors, which is called Extrajudicial Preventative Agreement (“acuerdo preventivo extrajudicial” –APE). Upon court confirmation, such agreement or plan shall have the same effects of a reorganization plan achieved in a full formal insolvency process, binding all creditors –including dissenting ones.

4. What are the commencement criteria for insolvency procedures?

Answer:

Creditors may file a petition for liquidation of an insolvent debtor. They must produce evidence that the debtor is unable to regularly fulfil its obligations –irrespective of the nature of such obligations and the reasons that caused such inability (“cessation of payments”, according to LCQ, articles 1 and 78). To this end, a creditor will typically argue and demonstrate that the debtor did not timely pay an outstanding debt (rebuttable presumption of insolvency: LCQ, article 79 inc. 2). Thus, in actual practice, a liquidity test determines whether or not a liquidation petition by a creditor should be opened. The so-called balance-sheet test is not applicable under the LCQ regime.

A debtor may file a petition for reorganization or its voluntary liquidation. In theory, the commencement criterion for these procedures is also the cessation of payments or actual insolvency of the debtor. In practice, however, a debtor may also file the mentioned petitions even before (at the earlier or preparatory stages of the financial crises) because such petitions are themselves considered as “judicial recognition of cessation of payments” (LCQ, article 79 inc. 1) and, thus, the judge will usually open the insolvency proceeding without requesting any further evidence or investigation.

Extrajudicial Preventative Agreements (APE) may be commenced if the debtor is in cessation of payments, or it is experiencing economic or financial difficulties of a general character (LCQ, art. 69).

Finally and in addition to the APEs, there are a few exceptional cases where an insolvency proceeding may be commenced irrespective of the existence of cessation of payments or insolvency, namely: (i) reorganization of an enterprise group, which can be opened even though one or more members of the group are not insolvent,
provided that the insolvency of other (s) member (s) of the group may affect the rest of them (LCQ, article 66). The same rule applies to a group composed of a debtor and its guarantor/s (LCQ, article 68); (ii) insolvency proceeding in Argentina of a debtor who already is under an insolvency procedure abroad (LCQ, article 4); (iii) extension of bankruptcy from a debtor’s bankrupt to other individual (s) or legal entity (ies) which not need to be insolvent but should have acted, with respect to the former, as contemplated at LCQ, articles 160 and 161.

5. Who can propose a restructuring plan? (e.g. corporate bodies, insolvency representatives, creditors)

**Answer:**

During the so-called exclusivity period of a reorganization procedure, only the debtor or its legal representative (such as the president of the board of directors) can propose a restructuring plan (LCQ, article 43).

After the mentioned period has elapsed, if the debtor could not obtain the creditors’ majority vote required by law, a second period will be opened in reorganization proceedings of limited liability companies, joint-stock corporations, cooperatives and other legal entities, during which the debtor’s legal representative, the creditors and any third party (an investor, for example) can propose a restructuring plan (LCQ, article 48, known as "Argentinean cramdown").

The insolvency representative is not entitled to propose a restructuring plan.

6. Please describe whether and to what extent shareholders’ rights can be affected by a situation of distress/insolvency of a company before and/or irrespective of the opening of a formal insolvency proceeding (e.g., are there any fiduciary duties of the shareholders to approve corrective measures/plans proposed by the board?)

**Answer:**

Neither the LCQ nor the company legislation establishes fiduciary duties of the shareholders to approve corrective measures/plans proposed by the board. As above mentioned, however, the shareholders’ meeting must issue a decision on continuation (or not) of the reorganization proceeding initiated as a result of a decision of the board, within 30 days of the petition filed by the legal representative of the company (LCQ, article 6). If the shareholders’ meeting does not expressly decide to continue the reorganization process, this shall be dismissed (closed) by the judge.

**II. Shareholders’ Rights in Companies Subject to Insolvency Proceedings**

7. Are shareholders notified of the initiation of an insolvency process? If notification is individualized, what are the mechanisms used to identify shareholders?

**Answer:**

The LCQ does not establish that shareholders should be notified of the initiation of an insolvency process. However, if a company filed a petition for commencing its own reorganization or voluntary liquidation, the shareholders will be notified (according to the rules of the company law) to participate in a shareholders’ meeting that must take a decision to continue or not the mentioned insolvency procedures petitioned by the board (LCQ, articles 6 and 82).

8. Are shareholders required to file claims in the insolvency proceeding? What are the
consequences of not filing a claim?

Answer:

Shareholders would be required to file claims in insolvency proceedings if they are also creditors of the company in reorganization or liquidation.

Not filing a claim produces several consequences, namely:

In reorganization, other than not being able to participate in the proceedings the LCQ establishes a statute of limitations period of two years that will shorten any other longer statute of limitations applicable (according to the general law) to all credits not filed within such period (LCQ, art. 56).

In liquidation, claims not filed will not participate in distribution of the bankruptcy dividend (LCQ, art. 223).

9. Can shareholders continue to trade and transfer shares after the initiation of an insolvency proceeding affecting the company?

Answer:

Shareholders can continue negotiating and transferring their shares after the opening of a bankruptcy proceeding, except those partners who respond unlimited for the debts of a company.

In case of bankruptcy of a company whose partners are liable without limit for the debts of the company (as it occurs, for example, in so-called de facto companies, irregular companies, collective companies, and others), the company’s bankruptcy is automatically extended to its partners with unlimited liability (LCQ, art. 160). Being declared bankrupt automatically by the bankruptcy of the company, these partners are not allowed to sell their property, including its remaining shares in the bankrupt company. Bankruptcy of these partners implies full divestment of its assets and this prevents them from exercising the rights of administration and disposition on them (LCQ, articles 106, 107 and following).

In reorganization, the judge orders a general prohibition to encumber or transfer any and all assets subject to registration (“bienes registrables”) which are property of the company or its unlimited liability partners (paragraph 7 of article 14, LCQ). Therefore, prior to transferring their shares these partners should ask authorization from the judge of the bankruptcy of the company.

On the other hand, there is no legal provision that prevents the possibility of agreeing by contract (through a contractual clause or through a partners’ agreement) a restriction on the transfer of shares if the company is under insolvency proceedings.

10. Do shareholders have the right to request that a shareholders’ meeting is held, even if the company is insolvent? (If there are separate reorganization and liquidation procedures, does this affect the response?)

Answer:

Shareholders have the right to request that a shareholders’ meeting is convened even if the company is insolvent or bankrupt. Unlimited liability partners of a company, however, do not have such right because they are also declared bankrupt and therefore cannot exercise their rights of partners in the bankruptcy of the company (see previous answer).
In corporations, shareholders representing five percent of the share capital are entitled to request that a shareholders’ meeting is convened when the company is insolvent (LSC, article 236, first paragraph). If the issue to be considered is of the competence of the ordinary shareholders’ meeting, the request shall be made to the board of directors. If it does not convene the meeting, a request can then be made to the organ of internal control of the company. But if it is a matter of competence of the extraordinary meeting, the request can go either to the directory or the organ of internal control.

When the articles of association provide for the existence of a supervisory board (made up of shareholders, which is of little use in Argentina corporate practice), it can convene a regular or special meeting when deemed appropriate (Article 281, inc. b), part of the LSC). Furthermore, the supervisory board is obliged to call such meetings when requested by shareholders representing 5 percent of the share capital (Article 281, inc. B), second part of the LSC).

If the governing bodies do not convene the requested meeting, the shareholders may request it to the judge or the authority that controls corporations (Article 236, third paragraph, of the LSC).

11. Do shareholders have the right to request information in an insolvent company? Do they have information rights as to the progress of a reorganization procedure? Can they exercise that right vis-à-vis the directors of the company -if they remain in charge of the company- or vis-à-vis the insolvency representative?

Answer:

Shareholders of an insolvent company are entitled to request information from the board as regards the progress of reorganization proceedings (Article 55 argument, first paragraph, of the LSC). Shareholders may also request such information from the insolvency representative in reorganization proceedings, where the administration of the company is under the supervision of an insolvency representative. In joint stock companies and limited liability companies with organ of internal control or supervisory board, shareholders must request such information through those bodies unless there is a contractual or statutory provision to the contrary (arg. Articles 55 second paragraph, 158, 284 last paragraph, and 281 of the LSC). In joint stock companies with organ of internal control, it is required that the information request be made by shareholders representing at least two percent of the capital.

If the company is in bankruptcy, the board of directors is not in charge of administration. Thus, shareholders would be entitled to request information from the insolvency representative. They may be considered as interested parties because after paying all creditors’ claims in liquidation, shareholders and partners are entitled to receive the remaining balance (LCQ, article 228).

12. Can shareholders make proposals for nomination of directors, if the directors continue managing the company?

Answer:

Yes, shareholders can make proposals for nomination of directors, if the directors continue managing the company.

13. If special categories of shares exist whose holders are granted additional governance rights, are these additional rights affected by the opening of an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the
Rights of holders of shares with additional governance rights (privileged shares – "acciones privilegiadas") are not affected by the opening of an insolvency proceeding, except where: (1) the articles of incorporation established otherwise; or, (2) the privileged shares were issued under a condition establishing that additional governance rights will be affected or modified if the company is subject to insolvency proceedings.

Preferred shares ("acciones preferidas") may also be issued. These grant privileges or economic benefits, which may include a preference in the receipt of dividends or the distribution in the company's liquidation, and may lack voting rights. Notwithstanding this, if the preferences are not satisfied the holders of these shares will have voting rights throughout the duration of the arrears (Article 217, second paragraph of the LSC). In case of preferred shares issued before the opening of reorganization or bankruptcy, these shareholders may vote because their economic preferences cannot be paid by the company in bankruptcy.

14. Can shareholders challenge the decisions of the shareholder meeting, if it is still active? Do they retain the possibility of taking action against the acts of the directors? And against the acts of an insolvency representative? Is any authorization by a judicial or administrative body required to do so or, more generally, to exercise corporate rights? (If there are separate reorganization and liquidation procedures, does this affect the response?)

Answer:
In both reorganization and liquidation, corporate bodies continue to operate, but with restrictions: a) in reorganization, the debtor retains the administration but under the supervision of an insolvency representative; and, b) in liquidation, the administration is in charge of an insolvency representative. The decisions taken by the board of directors or the shareholders meeting may be reviewed judicially at the request of the shareholders, who may exercise that right without any authorization by a judicial or administrative body.

Shareholders may also question the actions of the insolvency representative in both reorganization and liquidation. To this end no judicial or administrative authorization is required. It is not clear however, whether shareholders can individually and directly challenge acts of the insolvency representative, or must first go to the mechanisms for company decision-making and then the legal representative of the company or those empowered to this avail may execute the decision.

15. Do shareholders have the right to call a special investigation of the affairs of the insolvent company?

Answer:
Shareholders have the right to request the insolvency representative an investigation into the affairs of the insolvent company (arg. Articles 102, 254, 275 inc. 3, 274 inc. 1 of the LCQ).

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2 Cámara Nacional de Apelaciones en lo Comercial, Sala C, 28-ago-2012, in re: DSD Construcciones y Montajes S.A. s/ quiebra, incidente de apelación, MJ-JU-M-75128-AR | MJJJ75128 | MJJJ75128
Also, if it is a corporation or limited liability company that have internal body of audit (corporate organ of control –“órgano de control interno o sindicatura societaria”), shareholders representing at least two percent (2%) of the share capital (article 294 inc 11 LSC) may require that body to investigate the affairs of the insolvent company.

16. Does the law provide for the establishment of a shareholders’ committee (or several committees, in case of different share classes)? What are their powers? Who bears the related costs?

Answer:
The law does not contemplate shareholders’ committee (s) in insolvency proceedings.

17. Can shareholders voluntarily transfer shares of the company undergoing insolvency proceedings against any provisions in the articles/bylaws restricting transfers of shares?

Answer:
Shareholders cannot voluntarily transfer shares of a company undergoing insolvency proceedings against provisions in the articles/bylaws restricting such transfers. If they do it, the transfer may be invalidated.

18. Can outstanding shares of the company undergoing insolvency proceedings be assigned to third parties without the consent of the relevant shareholders? If yes, under what conditions? Are existing shareholders entitled to compensation? What other safeguards are provided? (e.g., does the law include a principle according to which the affected shareholders should not receive less than in a liquidation procedure?)

Answer:
No outstanding shares may be assigned to third parties without the consent of the relevant shareholders.

19. Can outstanding shares of the company undergoing insolvency proceedings be cancelled without the consent of the relevant shareholders? If yes, under what conditions? Are existing shareholders entitled to compensation? What other safeguards are provided? (e.g., does the law include a principle according to which the affected shareholders should not receive less than in a liquidation procedure?)

Answer:
No outstanding shares may be cancelled without the consent of the relevant shareholders. The decision to cancel shares, which implies a reduction of stock capital, must be adopted by the shareholders summoned in a general extraordinary meeting, in accordance to article 244 of the LSC.

20. Do shareholders of the company undergoing insolvency proceedings have pre-emption rights over new issues of shares? Are there special conditions for the suppression of pre-emption rights if the company is insolvent (if there are separate reorganization and liquidation procedures, does this affect the response?)

Answer:

(3) Please, note that the power to decide new issues or conversions of shares, as well as the power to decide operations that affect the structure of the corporate entity (e.g., by merger, spin-off, or change of the legal form) are dealt with in Questions 33 and 34 below.
Yes, holders of ordinary shares of a corporation ("sociedad anónima") are entitled to pre-emptive rights over new issues of shares and to a right to increase its holding in proportion to the number of shares which have been subscribed on each occasion. These rights may be extended by the bylaws of a shareholders meeting to the holders of preferred shares.

There are no special rules for the suppression of the pre-emptive rights when a company is insolvent. Therefore, the general rule sets forth in the Commercial Companies Law applies (art. 197 of LSC).

This provision provides that the pre-emptive rights may be limited or suspended by a prior decision of the extraordinary shareholders meeting, with an aggravated majority, in certain exceptional and particular cases, when the interest of the company ("interés social") demands it and provided certain additional conditions are complied with, namely: a) that the decision is included in the agenda of the shareholders meeting; and b) that the shares being issued are paid in with contributions in kind ("aportes en especie") or are delivered in payment of pre-existing obligations ("obligaciones pre-existentes").

21. Can shareholders retain a participation in the company that has emerged from an insolvency process (or in the company to which the insolvent company’s assets have been transferred) even if the company was insolvent according to a balance-sheet test? (i.e., where the value of its liabilities exceeds the value of its assets) If yes, under what conditions? (If there are separate reorganization and liquidation procedures, does this affect the response?)

**Answer:**
Yes, it is common that the shareholders retain an interest in the company that has emerged from an insolvency process.

It shall be noted that the Bankruptcy law describes several type of plans that the debtor may present but permits any type of agreement which obtains the required support from the creditors, computed in number of creditors and in capital, within each class. The law does not mandate that shareholders may retain a percentage only if creditors are fully paid.

Bankruptcy plans which dilute existing shareholders as a consequence of a capitalization of credits proposal were not common, but have started to be used on bankruptcy proceedings of large companies, particularly for those debtors which have issued notes ("obligaciones negociables") on the public market, being rather uncommon on small or medium companies. The percentage of dilution depends on the proposal present by the debtor and, finally, on the negotiation with the bondholders.

Under liquidation, should there be a remainder of assets (which is highly unlikely, as the law requires that once the creditors’ admitted principal has been paid, if there are sufficient assets, the debtor must pay the interests which have been suspended as a matter of law by the bankruptcy order), those assets should be delivered to the

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4 Article 43, LCQ states that the plan may consist on debt reduction, waiting period or both; incorporation of a company where the unsecured creditors turned into shareholders; reorganization of the debtor company; administration of all or part of the debtor’s assets for the creditors’ benefit; issuance of bonds ("obligaciones negociables") or debentures; issuance of convertible bonds; granting of guarantees over third party’s assets; assignment of shares in other companies; capitalization of credits, including labor creditors, in shares, or in employee stock ownership plan, or of any other agreement accepted by a sufficient number of creditors (in number and capital) within each class.
22. Are the ranking of classes of shares and the preferential rights of classes of shares affected (and if yes, to what extent) by the fact that the company is undergoing an insolvency process? (If there are separate reorganization and liquidation procedures, does this affect the response?)

Answer:

No, they should not be affected by an insolvency process without shareholders’ approval.

The rights of a particular class of shares can only be affected or modified by a decision of the shareholders meeting provided there has been consent or ratification of the particular class of shares, which must be granted on a special shareholders meeting, summoned and held in accordance to the rules of the general shareholders meeting (Article 250, LSC).

23. Can shareholders, in the course of an insolvency procedure, supply goods, services or financial resources to the company? If yes, under what conditions (e.g., judicial authorization)? What would their ranking position be towards other creditors?

Answer:

Shareholders – as any other third party - can supply goods, services, or financial resources to their company undergoing an insolvency process. The general provisions under contract and company law apply.

If the shareholder is also a board member, then the restrictions imposed by the LSC applies. Article 271 of the LSC sets forth that the director may execute agreements with are of the activity of the company as long as they comply with market conditions. Further, LSC article 272 states that board members with an interest contrary to the company interest should disclose its conflict of interest and abstain from participating in the consideration of the matter.

Further, the Bankruptcy law imposes that any act which “exceeds the ordinary administration of the company’s business“ (“los [actos] que excedan de la administración ordinaria de su giro comercial”) shall obtain prior court authorization.

In principle, there is no obligation for a shareholder (or any other third party) to require court authorization regarding this type of acts, but it may be in the shareholder’s interest to require such court authorization if the amount involved is relevant and therefore the act may be seen as exceeding the ordinary administration.

In terms of ranking, the law does not distinguish between shareholders, acting as creditors, and others creditors. Notwithstanding that, certain authors have sustained that shareholders claims arising from funds advanced as loans when the company is undercapitalized cannot be granted the same ranking as third party claims and therefore should be admitted as subordinated claims. There is at least one case decided by the National Commercial Court which has adopted this solution.

24. Can shareholders, in their capacity as counterparties, be under a duty to continue a contractual relationship with the insolvent company during an insolvency procedure?

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5 In re “Diaz y Quirini SA s/ concurso preventivo s/ incidente de revisión”; decided May 31, 2012, National Commercial Court of Appeals, courtroom C
(If there are separate reorganization and liquidation procedures, does this affect the response?).

Answer:

No, there is no specific provision regarding contracts that involves shareholders as counterparties. The general rule stated in article 20 of the LCQ applies should these agreements be considered “contracts with pending mutual obligations” (“contratos con prestaciones recíprocas pendientes”).

25. Can shareholders (or companies of the same group) holding credit claims against the company under insolvency procedure participate in the creditors’ meeting and vote on the insolvency plan without restrictions? (If there are separate reorganization and liquidation procedures, does this affect the response?)

Answer:

In case of company debtors, article 45 of the LCQ provides that creditors that are controlling shareholders must not be computed within the creditors list and shall have no voting rights on the insolvency plan.

The Commercial Companies Law considers that a company holds a controlling interest – directly or indirectly – in another company when a) it holds a participation that, by any means, grants the necessary votes to decide the corporate will in the ordinary shareholders meetings of the subsidiary; or b) when it exercises a dominant influence on the subsidiary as a consequence of the shares, quotas or participation rights hold or due to the special bonds that exists between the companies (LSC, article 33).

Notwithstanding the fact that the provision restricts the voting rights of the controlling shareholders’, courts have extended the prohibition to creditors that are under the direct or indirect control of the debtor on the grounds of the lack of independence6.

26. If shareholders (or companies of the same group) do not hold credit claims against the company under insolvency procedure, must/can they participate in the creditors’ meeting? If that is the case, what rights or duties do they have in that meeting? (If there are separate reorganization and liquidation procedures, does this affect the response?)

Answer:

Shareholders are under no obligation to participate in the creditors’ informative meeting (“audiencia informativa”). The law mandates that the debtor, the members of the creditors committee and such creditors who wish to attend shall be present at the meeting.

As there is no legal rule, one can conclude that shareholders do not have the right nor the obligation to attend the creditors’ informative meeting, although if they wish to participate, the judge may decide to allow their participation.

27. Do shareholders in an individual company have information rights as to the filing of insolvency proceedings by the parent or other related companies?

Answer:

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6 In re “Inversora Eléctrica Buenos Aires S.A s/ conc. prev.”, decided July 13, 2006, National Commercial Court of Appeals, courtroom B
The general rule is that shareholders have information rights only regarding the company in which they hold shares. There may be exceptional cases where information rights on parent companies are granted, but that would depend on the facts of a particular case.

28. Do shareholders in an individual company have information rights as to the filing of insolvency proceedings by the parent or other related companies?

Answer:
See 27, above.

III. The Role of the Shareholders’ Meeting in Companies Subject to Insolvency Proceedings

29. Does the shareholders’ meeting continue to exist in insolvency proceedings? (If there are separate reorganization and liquidation procedures, does this affect the response?)

Answer:
Neither the insolvency law nor the company law establish specific rules on this subject. However, the jurisprudence recognizes that the corporate bodies of a legal entity continue to exist in insolvency proceedings (see response 14, above).

In reorganization proceedings, actions of the corporate bodies should be developed in accordance with the administration regime established in the insolvency law (See answer to question 36).

The shareholders' meeting will be held under the provisions of corporate law; i.e., requirements and procedures under the corporate rules must be met. Therefore, at least one annual meeting of shareholders should be held. A shareholders’ meeting decision may also be necessary to make appropriate arrangements for the implementation of the reorganization plan where it consists in, for example, incorporating unsecured creditors as partners; reorganization of the debtor company; issuance of bonds or debentures; issuance of convertible bonds; transfer of shares in other companies; debt-to-equity conversion; etcetera (Article 43 second paragraph and 53, LCQ) –all depending on the content of the plan and the decision of the judge as to its implementation (art. 53, 2nd para., LCQ). Ordinary rules on notice, agenda, attendance, office, records, and others are applicable. The insolvency legislation does not contemplate that shareholders’ meetings of an insolvent company could (or should) be called by the insolvency representative; however, its presence and participation in such meetings is not prohibited.

In liquidation proceedings, there are no specific provisions governing the shareholders’ meeting of an insolvent company. Commencement of liquidation proceedings entails the dissolution of the company (Article 237, LCQ). This could only be reversed if such proceeding: (i) concludes by an agreement between the debtor and the unanimity of its creditors ("avenimiento"), or (ii) is converted into a reorganization proceeding ("conversión"). In liquidation, the company's management or directors cannot manage or dispose of assets of the insolvency estate. An insolvency representative will be in charge of administering such assets and liquidating them. So, although there are no specific provisions governing the role of the shareholders’ meeting in liquidation, it can be said that its competence is strictly limited by the mentioned effects of bankruptcy on the company situation. Both the board of directors and the shareholders’ meeting
would just be able to perform those acts that are consistent with the expectation of shareholders to obtain a dividend in case there is a surplus after all creditors’ claims are paid in the liquidation proceeding.

30. Does the shareholders’ meeting preserve all of its competences, generally? (If there are separate reorganization and liquidation procedures, does this affect the response?)

**Answer:**
See response to question 29.

31. Does the shareholders’ meeting need to approve the accounts of the distressed/insolvent company?

**Answer:**
Shareholders’ ordinary meeting ("asamblea ordinaria") is the body competent to approve the accounts of the company. There are no specific law provisions modifying this competence in case the company is distressed or insolvent.

32. Does the shareholders’ meeting have the power to dismiss directors – if directors are still in charge of the insolvent company? Can the shareholders’ meeting request the removal of the insolvency representative? (If there are separate reorganization and liquidation procedures, does this affect the response?)

**Answer:**
The shareholders’ meeting retains the power to remove directors during the reorganization process, applying for that purpose the rules of the company law. In liquidation proceedings, as above mentioned, the directors of the company do not continue in charge of the administration.

The insolvency law establishes rules for the removal of the insolvency representative by a decision of the judge, but does not contemplate who have standing to request such removal. There is no explicit legal provision granting the shareholders’ meeting the right to request the removal or dismissal of the insolvency representative.

33. Is a shareholders’ meeting authorisation required to start an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)

**Answer:**
The decision to file a petition for opening of insolvency proceedings must be taken by the board. The legal representative of the company is the one who signs and submits the request to the court. The governing body (i.e., the shareholders’ meeting), with the "majorities to solve ordinary affairs" (art.6, 2nd paragraph, LCQ) must resolve to continue the insolvency process within 30 days. Otherwise, the insolvency proceeding will be dismissed.

34. Does the shareholders’ meeting need to approve an insolvency or reorganization plan? Can shareholders, even individually, challenge an insolvency or reorganization plan?

**Answer:**
The insolvency law does not require that the shareholders’ meeting approve the reorganization plan the company will propose to the creditors.

However, in special cases such approval would be required. For example, when the plan consists in, for example, incorporating unsecured creditors as partners;
reorganization of the debtor company; issuance of bonds or debentures; issuance of convertible bonds; transfer of shares in other companies; debt-to-equity conversion; etcetera (Article 43 second paragraph and 53, LCQ) – all depending on the content of the plan and the decision of the judge as to its implementation (art. 53, 2nd para., LCQ).

The law does not contemplate that individual shareholders may challenge a proposed reorganization plan. While it is not forbidden for an individual shareholder to make such opposition, it has no specific procedure and would be of dubious success. Shareholders may seek debate on a proposed plan of reorganization through corporate bodies, which should be channeled as part of a shareholders’ meeting or petition to the board of directors.

35. Is a shareholders’ meeting decision required to issue new shares of the company undergoing insolvency proceeding? Can a new share issue be decided by the board? Can a new share issue be decided by the insolvency representative? (*) If a capital increase has to take place through the conversion of claims into new shares, does this affect the response?

**Answer:**

In general, the reorganization process does not affect the ordinary rules of capital increase. The capital increase shall in principle be resolved by the extraordinary shareholders’ meeting (art. 235 inc. 1, LSC). However, in order to facilitate the capitalization of the company, the corporate law provides that the articles of incorporation may contemplate a capital increase until its quintuple (art. 188, LSC). In this case, the shareholders’ ordinary meeting will be competent to increase the capital up to that limit (art. 234 inc. 4, LSC). This limit does not apply to companies that make public offering of its shares (arts. 188, 234, 234, LSC).

The shareholders’ meeting may only delegate to the board the time and form of the shares issue, as well as the payment conditions (art. 188, LSC).

The trustee in bankruptcy cannot decide on a new share issue.

If a capital increase must take place through the conversion of loans into new shares, the same rules apply.

36. Can an insolvency/reorganization plan affect the structure of the corporate entity (e.g., by merger, spin-off, or change of the legal form)? Is a shareholders’ meeting authorization required for this?

**Answer:**

If a reorganization plan of the affects the structure of the company (for example, merger, or other cases set forth in art. 43 second paragraph, LCQ), the authorization of the shareholders’ meeting is required in the terms explained in the response to the previous question. This shareholders’ meeting should be extraordinary.

37. On what conditions can the company carry on business during an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?) Is a shareholders’ meeting authorisation required?

(*) These questions are aimed at understanding whether the fact that the company is subject to insolvency proceedings allows or causes deviations from the company law rules determining the body competent to take decisions on the issue of new shares of the company, and/or from the company law rules establishing the criteria and purposes with which such decisions must comply.
In a reorganization process, the company and its representatives may continue the activity or businesses that do not exceed the ordinary administration (arts. 15, 16 et seq. LCQ) under the supervision of the insolvency representative. Judicial authorization is required only to perform acts of extraordinary administration. The authorization of the shareholders’ meeting is not required.

In a liquidation proceeding, the insolvency law provides for the possibility to continue the activity of the whole company or an establishment in the following cases: (i) if the interruption of activity could cause a severe decrease in realizable value; (ii) if an ongoing production cycle can be concluded; or (iii) if the judge deems it economically viable or needed to preserve the source of employment (art. 191 and correlative, LCQ). This continuation of the business activity upon commencement of liquidation is aimed at realizing the enterprise as a going concern. The authorization of the shareholders is not required.

38. In the course of an insolvency procedure, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business operation of the company? Is a shareholders’ meeting authorisation required? (If there are separate reorganization and liquidation procedures, does this affect the response?)

**Answer:**

In reorganization proceedings, a sale of assets outside the ordinary course of business requires court approval – granted by the judge after hearing the insolvency representative and the committee of control. The authorization of the shareholders’ meeting is not required. The same rule applies to the transfer of the establishment.

The insolvency law provides for the possibility that a third party proposes a reorganization plan, in certain cases where the company had failed to obtain approval of the plan it proposed (art. 48, LCQ). If the third party’s reorganization plan is approved by the required majority of the creditors of the company (and also by a majority of the shareholders if the company has positive equity) and the judge confirms such plan, all the shares of the company are transferred to the third party. Being a forced transfer of shares, the approval of the shareholders’ meeting is not required.

In liquidation proceedings, the sale of goods (piecemeal) or the company as a whole does not need the approval of the shareholders’ meeting. The bankruptcy judge decides the realization mechanism, whether the sale of the business as a going concern, or selling assets individually or together.

39. Does the shareholders’ meeting have any power in relation to a decision of the board or the insolvency representative to continue or reject any favourable, unfavourable or essential contract during an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)

**Answer:**

The shareholders’ meeting has no power contemplated in the law in relation to a decision of the board or the insolvency representative to continue or reject any favourable, unfavourable or essential contract during an insolvency (reorganization or liquidation) proceeding.

40. If an insolvency plan can be presented for a whole corporate group, must that plan be...
approved by the shareholders’ meetings of each company of the group, including of those that are balance-sheet insolvent? How are the different meetings’ decisions coordinated? Are there specific safeguards (e.g., any veto power or other remedy) for the minority shareholders of the companies that are not insolvent?

**Answer:**

The insolvency law allows a group of companies to jointly request a reorganization process. Such request shall include all members of the group, without exception. Also, all companies must complete the requirement of art. 6 LCQ; i.e., each and all of the shareholders’ meetings must resolve to continue the process of reorganization within 30 days (otherwise, the reorganization process will be dismissed).

In the reorganization of the group, the law allows proposals of separate plans (for each group member) or a plan or plans of reorganization treating the liabilities of all members of the group in a unified manner (arts. 65 – 67, LCQ).

The law does not provide for a reorganization plan to be approved by the shareholders’ meeting of each member of the group, including those who were not insolvent. Nor it provides for the coordination of the different corporate decisions or measures of specific protection for minority shareholders of non-insolvent companies.

See also the answers to question 33 of the questionnaire.

41. If companies belonging to the same group file separate insolvency proceedings, are there specific requirements/mechanisms to provide for coordination of those proceedings? Are shareholders’ meetings of the relevant companies involved in the coordination mechanisms, if any?

**Answer:**

If companies belonging to the same group request separate insolvency proceedings, the law does not provide for specific mechanisms to coordinate such procedures, but the judge may and should provide for such coordination in accordance with its powers and duties (art. 274, LCQ). According to the law, the shareholders’ meetings of the respective companies are not involved in the coordination mechanisms of the insolvency proceedings.

**IV. Other Obstacles for Insolvency Procedures Found in Company Law**

42. Please list any other legal provision in company law that, in your opinion or in your experience, may interfere with the insolvency procedure of a company in your jurisdiction.

**Answer:**

In our opinion, no significant obstacles exist.