FINLAND

1. 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?

Under Finnish law, a distressed or insolvent company may be subject to two types of statutory insolvency proceedings: bankruptcy pursuant to the Finnish Bankruptcy Act (120/2004, as amended) or restructuring proceedings pursuant to the Finnish Restructuring of Enterprises Act (47/1993, as amended. Hereafter referred to as the Restructuring Act). In the following, the questions will be answered with regards to these two formal proceedings and separately where deemed suitable.

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

Yes, with regards to the process of liquidation set forth in the Limited Liability Companies Act (624/2006) (please see question 3 for further information).

Normally, the shareholders’ meeting decides on the placing of the company into liquidation (Limited Liability Companies Act, Chapter 20, Section 3). However, in the case of a commercial banks and other credit institutions in the form of a limited company, the Finnish Financial Supervision Authority shall, at the same time as deciding on the withdrawal of the authorisation of a credit institution, order it to be placed in liquidation (Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company 1501/2001, Section 19).

The aforementioned act hence provides for means to place a company of the said form in liquidation without a decision by the shareholders’ meeting.

The Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company also includes certain special provisions, especially regarding the ranking of claims, concerning the bankruptcy proceedings of commercial banks and other credit institutions falling under the scope of the act.

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

Finnish law does not include provisions on informal restructuring proceedings. Informal proceedings are limited to individual negotiations with creditors, and agreements reached are binding only inter partes.

The Limited Liability Companies Act (624/2006, as amended) provides for a proceeding called liquidation (in Finnish selvitystilamennetty, in Swedish lik-
vidationsförfarande). However, the purpose of liquidation is to ascertain the financial position of the company, to convert the requisite amount of assets into cash, to repay the company’s debts and to return the surplus to the shareholders or others (the Limited Liability Companies Act, Chapter 20, Section 7). Liquidation is aimed at companies which assets exceed their liabilities, and insolvency is not a prerequisite for liquidation. An insolvent company may also enter into a liquidation proceeding if its creditors agree to voluntarily waive their claims towards the company.

If the company is insolvent, the company shall instead be petitioned for bankruptcy according to the Bankruptcy Act, or, if it’s probable that the insolvency will be remedied, a restructuring proceeding may be commenced according to the Restructuring Act.

4. What are the commencement criteria for insolvency procedures?

Bankruptcy: The main commencement criterion is the insolvency of the debtor. Insolvency means that the debtor is otherwise than temporarily unable to repay his or her debts as they fall due (the Bankruptcy Act, Chapter 2, Section 1).

Bankruptcy can be petitioned for either by the debtor itself or by a creditor. The insolvency criterion is shared by both, but they also contain separate criteria.

If the bankruptcy is petitioned for by the debtor itself, the debtor shall be deemed insolvent, if there are no special reasons for not accepting that declaration. Unless it is otherwise proven, the debtor shall be deemed insolvent especially if: (1) the debtor has discontinued its payments; (2) it has been determined in enforcement proceedings during the six months preceding the filing of the petition for bankruptcy that the debtor cannot repay the claim in full; or (3) a debtor, who is, or who during the year preceding the filing of the petition for bankruptcy has been, under the obligation to keep accounts, has not repaid a clear and due claim of a creditor within a week of the receipt of a reminder.

The debtor may be declared bankrupt under the third prerequisite only if the creditor files the relevant petition within three months of the time limit referred to in that provision and the claim still remains unpaid. (The Bankruptcy Act, Chapter 2, Section 3).

If the bankruptcy is petitioned for by a creditor, the following criterion apply: The claim (1) is based on a res judicata judgment, or a judgment, decision or other ground for enforcement that can be enforced as a res judicata judgment; (2) is based on a commitment signed by the debtor and not contested by the debtor with obvious justification; or (3) is otherwise so clear that its validity cannot justifiably be doubted.

If the creditor’s claim is insignificant and an order of bankruptcy would be obviously inappropriate in view of the costs and benefits of bankruptcy proceedings or clearly contrary to proper debt collection practice, the creditor’s petition for bankruptcy shall be ruled inadmissible.

However, a creditor cannot petition for bankruptcy if the time limit of enforcement of the ground for enforcement relating to his or her claim has expired in
accordance with chapter 2, sections 24–26, of the Enforcement Act (705/2007; ulosottokaari). However, a petition for the bankruptcy of a decedent’s estate may still be filed on the basis of such a claim.

Restructuring: According to the Restructuring Act, the application for restructuring proceedings may be filed by (1) the debtor; (2) a creditor or several creditors together, but not, however, a creditor with a claim contested as to its basis, a claim essentially contested as to its amount, or a claim otherwise unclear; or (3) a party for whom the insolvency of the debtor would probably cause financial loss on a claim, on grounds other than partnership or shareholding (a probable creditor) (the Restructuring Act, Section 5).

Restructuring proceedings may be commenced if (1) at least two creditors whose total claims represent at least one fifth of the debtor’s known debts and who are not related to the debtor file a joint application with the debtor or declare that they support the debtor’s application; (2) the debtor faces imminent insolvency; or (3) the debtor is insolvent and no other outcome ensues from the application of section 7(1)(1).

Restructuring proceedings on the basis of imminent insolvency shall be commenced on the application of a creditor or a probable creditor only if this is necessary in order to secure a considerable financial interest of the applicant’s or in order to prevent such an interest from jeopardy. (The Restructuring Act, Section 6).

However, there are also a set of barriers hindering a restructuring proceeding. Restructuring proceedings shall not be commenced if e.g. (1) the debtor is insolvent and it is probable that the restructuring programme will not remedy the insolvency or prevent its recurrence otherwise than for a short period; (2) it is probable that the debtor’s assets are not sufficient to cover the costs of the restructuring proceedings and no one else has undertaken to cover these costs; (3) it is probable that the debtor will not be able to repay debts arising after the commencement of the proceedings; (4) there is justifiable reason to believe that the primary purpose of the application is to prevent a creditor from collecting on his or her claim or otherwise to violate the rights of a creditor or the debtor; or (5) there is justifiable reason to believe that the necessary conditions for the preparation or approval of a restructuring programme for the debtor do not exist (the Restructuring Act, Section 7).

5. Who can propose a restructuring plan?

Bankruptcy: A bankruptcy proceeding does not contain a specific plan to be adhered to. Instead, an estate inventory and a disbursement list shall be drafted by the estate administrator. The realization of assets and all further undertakings shall then be arranged as deemed best for the common benefit of the creditors (the Bankruptcy Act, Chapter 17, Section 3).

Restructuring: The administrator shall prepare a draft restructuring programme and submit it to the court within a period to be set by the court. However, certain other parties are entitled to submit competing restructuring programmes: (1) the debtor; (2) a party who is personally liable for the debts of the debtor; (3) parties who own at least one fifth of the shares or portions in the
debtor company; (4) secured creditors whose claims represent at least one fifth of the total claims of all secured creditors; (5) creditors whose claims represent at least one fifth of the claims of other than secured creditors. (The Restructuring Act, Section 40).

6. Please describe whether and to what extent shareholder’s 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?)

Bankruptcy: Before and irrespective of the opening of a bankruptcy proceeding, shareholders’ rights aren’t affected by the fact that a company is in a situation of distress/insolvency. Shareholders have no fiduciary duties to apply for bankruptcy.

After the commencement of a bankruptcy proceeding, the interpretation is, based on the fact that new members of the Board of Directors may be appointed (the Limited Liability Companies Act, Chapter 20, Section 25) by the shareholders’ meeting, that the shareholders meeting continues to exist also during insolvency proceedings. However, in practice, the authority of the shareholder’s meeting is greatly reduced due to the fact that all assets of the company are transferred to the bankruptcy estate (the Bankruptcy Act, Chapter 3, Section 1) and are under the power of the creditors and the estate administrator.

Restructuring: Before and irrespective of the opening of a restructuring proceeding, shareholders’ rights aren’t affected by the fact that a company is in a situation of distress/insolvency. Shareholders have no fiduciary duties to apply for restructuring.

After the commencement of a restructuring proceeding, the shareholders rights aren’t as a main rule affected. However, during restructuring proceedings and after the approval of a restructuring programme, certain actions by the debtor are prohibited by law. The restructuring programme may also restrict or provide for certain actions of the debtor, hence restricting the shareholders rights.

The restructuring programme may include certain provisions, such as the emission of new shares or debt-to-equity swaps, which require shareholder approval and may not be substituted by programme provisions.

2 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?

Bankruptcy: Shareholders as such are not considered creditors in a bankruptcy proceeding, and the Bankruptcy Act prescribes for no specific requirement on giving a notification to the shareholders of the initiation of a bankruptcy proceeding.
However, listed companies are obliged to disclose information materially affecting the value of a security (Securities Market Act 746/2012, chapter 6, section 4). Commencing a bankruptcy is considered as materially affecting the value of a security (NASDAQ OMX Helsinki Ltd Rules of the Exchange 2 October 2013, Section 3.3.3.5).

Restructuring: Shareholders as such are not considered creditors in restructuring proceedings, and the Restructuring Act prescribes for no specific requirement on giving a notification to the shareholders of the initiation of restructuring proceedings. Filing for restructuring proceedings, however, requires a decision by the shareholders’ meeting.

However, listed companies are obliged to disclose information materially affecting the value of a security (Securities Market Act 746/2012, chapter 6, section 4). Commencing a restructuring is considered as materially affecting the value of a security (NASDAQ OMX Helsinki Ltd Rules of the Exchange 2 October 2013, Section 3.3.3.5).

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

Bankruptcy: A shareholder is not regarded as a creditor based on his capital investment in the company. A shareholder may, however, be in the position of a creditor based on e.g. a capital loan or a dividend claim. A dividend claim is theoretically possible, but in practice questionable. If a company is able to pay dividends, the state of insolvency of the company may be questioned.

In order to be entitled to a disbursement, a shareholder in the position of a creditor shall lodge a claim in bankruptcy in writing (letter of lodgement), unless the claim is to be taken into account without lodgement (the Bankruptcy Act, chapter 12, section 6). If filed later than the lodgement day, the creditor will in principle lose his entitlement to disbursement.

However, a creditor who hasn’t lodged a claim has a right to a retroactive lodgement of claim. A creditor may lodge a claim or make an additional claim also after the lodgement date (retroactive lodgement), if the creditor pays in the bankruptcy estate a charge amounting to one per cent of the amount of the lodged claim or additional claim. In any event, the charge shall not be less than EUR 600 or more than EUR 6,000.

Restructuring: A shareholder is not regarded as a creditor based on his capital investment in the company. A shareholder may however be in the position of a creditor based on e.g. a capital loan or a dividend claim.

The administrator shall prepare a draft restructuring programme. The restructuring programme shall contain itemised accounts on among others the liabilities of the debtor (the Restructuring Act, Section 41). As opposed to bankruptcy, known claims are hence registered ex officio without any need to lodge a claim. A creditor only needs to lodge a claim if the debt is unknown to the administrator.
A restructuring debt that has not been declared by the debtor or, in accordance with section 71(1)(3) of the Restructuring Act, by the creditor, and which has otherwise not come to the attention of the administrator before the approval of the restructuring programme, shall lapse on the approval of the restructuring programme, unless otherwise provided in the programme (the Restructuring Act, Section 47).

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

**Bankruptcy:** Yes, in theory. The shareholders’ meeting continues to exist also after the commencement of a bankruptcy proceeding. No specific prohibition on transfer of shares is provided for in the Bankruptcy Act. However, the shares of a company undergoing a bankruptcy proceeding are in practice of nil value, since all assets have been transferred to the bankruptcy estate, a separate legal entity.

**Restructuring:** During restructuring proceedings, the principle of debtor in possession is applied, i.e. the debtor remains in possession of its business and its assets. Certain significant actions require the administrator’s consent (Restructuring Act Section 29). Shareholders can however continue to trade and transfer shares of the company.

The restructuring programme may contain provision on transferring shares, e.g. on that a transfer of shares shall take place, or that such a transfer shall be prohibited. However, such a transfer requires the acceptance of the shareholders in order to be effective.

On the request of the administrator or a creditor, the authority of the debtor may be restricted also in ways other than those referred to in section 29 of the Restructuring Act, if there is a risk of the debtor acting in a way that harms or compromises the interests of a creditor. The debtor may inter alia be deprived of the authority to enter into a given transaction, enter into a given transaction without the consent of the administrator or undertake a measure that can be assumed to decrease the value of property belonging to or in the possession of the debtor (Restructuring Act Section 30).

10. Do the shareholders have the right to request that a shareholders meeting is held, even if the company is insolvent?

**Bankruptcy:** Yes, in theory, but this is highly unusual in practice.

**Restructuring:** Yes, the shareholders have the right to request that a shareholders meeting is to be held according to the normal provisions set forth in Chapter 5 of the Limited Liability Companies Act.

11. Do shareholders have the right to request information in an insolvent company? Do they have information rights as to progress of the 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?
**Bankruptcy:** No, the shareholders have no additional or specific right to request information in a company undergoing a bankruptcy procedure.

**Restructuring:** No, the shareholders have no additional or specific right to request information in a company undergoing restructuring. Restructuring proceedings do not generally affect a shareholders right to information based on the Limited Liability Companies Act.

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

**Bankruptcy:** While in bankruptcy, the company as the bankrupt debtor shall be represented by the Board of Directors and the Managing Director. New Members of the Board of Directors may be appointed by the shareholders’ meeting while the company is in bankruptcy. (The Limited Liability Companies Act, Chapter 20, Section 25). However, due to the transfer of all assets from the debtor to the bankruptcy estate, this is highly unusual in bankruptcy situations.

**Restructuring:** During a restructuring process, the principle of debtor in possession is applied, i.e. the debtor remains in possession of its business and its assets. Directors can be changed in normal order. A shareholder can make proposals for the nomination of directors at the general meeting or at an extraordinary general meeting (the Limited Liability Companies Act, chapter 5).

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?

**Bankruptcy:** The shareholders’ meeting continues to exist during bankruptcy proceedings, hence additional governing rights aren’t formally affected. Shares with additional governance rights are however affected in the same manner as ordinary shares, meaning the authority of the shareholders’ meeting is very limited.

**Restructuring:** A restructuring does not per se affect shares with any additional governance rights. However, certain significant actions are prohibited during a restructuring proceeding (the Restructuring Act, Chapter 4) while others require the administrator’s consent (the Restructuring Act Section 29).

14. Can shareholders challenge the decision of the shareholder meeting, if it is still active? Do they retain the possibility of taking action against 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?

**Bankruptcy:** Yes, in theory. The shareholders’ meeting continues to exist during a bankruptcy procedure, formally maintaining the right to challenge a decision made by the shareholders’ meeting, either due to procedural or material fault (the Limited Liability Companies Act, chapter 21). But as already mentioned, the authority of the shareholders’ meeting is very limited, which in practice restricts the possibilities for a shareholder to challenge a decision by the shareholders’ meeting. No authorisation by a judicial or administrative body is required.
The Bankruptcy Act does not provide for any additional means for a shareholder to object to acts of the administrator or decisions made by the committee of creditors.

Restructuring: Since the principle of debtor in possession is applied, normal corporate governance procedures apply. A shareholder may object to a decision by the shareholders’ meeting by bringing an action against the company, either due to procedural or material fault (the Limited Liability Companies Act, chapter 21). No authorisation by a judicial or administrative body is required.

A shareholder does not, according to the Restructuring Act, have a right to object to acts of the administrator or decisions made by the committee of creditors.

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

Bankruptcy: A shareholder has the right to information according to the ordinary provision in the Limited Liability Companies Act. A shareholder shall have the right to have a matter falling within the competence of the shareholders’ meeting dealt with by the shareholders’ meeting (the Limited Liability Companies Act, Chapter 5, Section 5). A shareholder also has a right to request information on matters dealt with by the shareholders’ meeting (the Limited Liability Companies Act, Chapter 20, Section 25). However, the authority of the shareholders’ meeting is very limited, which in practice restricts the possibilities for a shareholder to inquire on matters referring to the insolvent company.

The Bankruptcy Act provides the debtor for a right to be heard (the Bankruptcy Act, Chapter 4, Section 2). The debtor is however represented by the Board of Directors and/or the Managing Director (the Limited Liability Companies Act, Chapter 20, Section 25), and the Bankruptcy Act does not provide for any additional rights for a shareholder to call an investigation on the company.

Restructuring: A shareholder has the right to information according to the ordinary provision in the Limited Liability Companies Act. A shareholder shall have the right to have a matter falling within the competence of the shareholders’ meeting dealt with by the shareholders’ meeting (the Limited Liability Companies Act, Chapter 5, Section 5). A shareholder also has a right to request information on matters dealt with by the shareholders’ meeting (the Limited Liability Companies Act, Chapter 20, Section 25).

A restructuring process does not provide for any additional rights to call an investigation of the 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?

Bankruptcy: No, the Bankruptcy Act does not provide for any establishment of a shareholders’ committee.
Restructuring: No, the Restructuring Act does not provide for any establishment of a shareholders committee.

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

Bankruptcy: No, the Bankruptcy Act does not provide for any means of transferring shares against a provision in the articles of association.

Restructuring: The Restructuring Act does not provide for any methods or means to transfer shares against any provisions in the articles/bylaws.

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?)

Bankruptcy: No, the Bankruptcy Act does not provide for any additional means to transfer shares without the consent of the relevant shareholders.

Restructuring: No, the Restructuring Act does not provide for any additional means to transfer shares without the consent of the relevant shareholders.

19. Can outstanding shares of the company undergoing insolvency proceedings be cancelled 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?)

Bankruptcy: No, only treasury shares can be cancelled. In bankruptcy proceedings, treasury shares are transferred to the bankruptcy estate, whereby the creditor collective may decide to cancel the treasury shares. Due to the nature of bankruptcy proceedings, this is merely a theoretical scenario.

Restructuring: No, only treasury shares can be cancelled. The Board of Directors may decide to cancel treasury shares (the Limited Liability Companies Act, Chapter 15, Section 12).

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 if the company is insolvent (if there are separate reorganization and liquidation procedures, does this affect the response?)

Bankruptcy: In theory, yes. The shareholders’ meeting formally continues after the commencement of a bankruptcy proceeding. Any pre-emption rights are still valid in connection to a possible share issue. In practice however, the authority of the shareholders’ meeting and hence a shareholder is greatly reduced. A share issue by a company under bankruptcy proceedings is nonexistent.
Restructuring: Yes. The Limited Liability Companies Act, chapter 9, Section 3 provides for pre-emption rights to existing shareholders when issuing new shares, and a restructuring proceeding does not affect these rights.

However, issuing of shares is typically considered an action where the consent of the administrator and the committee of creditors is required, unless otherwise stated in the restructuring programme.

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?

Bankruptcy: Yes, in theory. If there still are assets left after the final settlement of accounts and the disbursement, the assets shall be transferred back to the debtor. However, in practice it is very rare that there are any assets left after the final settlement of accounts and the disbursement.

The Bankruptcy Act does not give a shareholder any right to retain a participation in the company to which the insolvent company’s assets have been transferred.

Restructuring: Yes, after the debt arrangement has ended and the debts have been paid, the company can continue its business as normal.

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?

Bankruptcy: No. The ranking of shares is not as such affected by the commencement of a bankruptcy proceeding. However, the ranking of share classes is affected in the sense that the authority of the shareholders’ meeting and the shareholders is very restricted.

Restructuring: After the approval of the restructuring programme, if the debt arrangement under a restructuring programme restricts the right of creditors to payment against the capital balance of their claims, the assets of the debtor shall not be distributed to the owners between the approval and the conclusion of the restructuring programme, with the exception of remuneration or compensation referred to in section 42(1)(5) of the Restructuring Act for services in accordance with the programme (the Restructuring Act, Section 58). Shares with different rights to distribution of the assets are affected in the sense that shareholders hold no right to distribution according to the aforementioned.

The Restructuring Act does not offer any means to alter the shareholders’ rights as part of the formal restructuring procedure. Amendments to shareholders’ rights are only possible based on a separate decision by the shareholders’ meeting.
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?

**Bankruptcy:** The commencement of a bankruptcy proceeding does not as such affect the shareholders' position. However, as previously been mentioned, since the assets are transferred to the bankruptcy estate, the practical possibilities for the shareholders to exercise any decision making power is greatly limited.

A shareholder's right to supply goods, services or financial resources to the company is hence not as such affected by a bankruptcy procedure. It is however limited by the fact that the practical decision making power is reduced, and it is unusual that the debtor company acquires assets after the commencement of the bankruptcy proceeding.

Should the debtor company however acquire goods or other assets, e.g. from a shareholder, before the conclusion of bankruptcy, the assets will become assets of the bankruptcy estate (the Bankruptcy Act, Chapter 5, Section 1).

**Restructuring:** Also after the commencement of the proceedings, the debtor retains its authority to dispose of its property and to decide on its activities. The Restructuring Act does not per se limit shareholders' rights to provide the debtor company with assets.

However, after the commencement of the proceedings the debtor shall not without the consent of the administrator e.g. take on new debt unless the matter is of a debt that is connected with the regular activities of the debtor and its amount and terms are not unusual (the Restructuring Act, Section 29).

In case the restructuring proceeding would terminated and a bankruptcy proceeding commenced, a loan given during a restructuring proceeding, irrespective of who the lender is, is prioritized over debts given prior to the filing of the restructuring (the Act on the Ranking of Claims 1578/1992, Section 3a). The ranking position of such a loan in relation to both debts given prior to and after filing of the restructuring would depend on the type of the loan (e.g. secured, unsecured, capital loan).

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?

**Bankruptcy:** Yes, the debtor's contracts are not automatically terminated upon the initiation of bankruptcy proceedings, and contract clauses by which contracts are immediately terminated upon bankruptcy are considered null and void. The bankruptcy estate is entitled to become party to the contracts of the debtor by notifying the creditor of this within a reasonable time (the Bankruptcy Act, Chapter 3, Section 8). The fact that the counterparty is also a shareholder to the debtor company is irrelevant.
Restructuring: Yes, the debtor’s contracts are not automatically terminated upon the initiation of restructuring proceedings. The fact that the counterparty is also a shareholder to the debtor company is irrelevant.

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?

Bankruptcy: Yes, a shareholder in the position of a creditor can participate in the creditors’ meeting. The creditors shall exercise their authority in the creditors’ meeting (the Bankruptcy Act, Chapter 15, Section 2). The right to exercise the creditors’ authority belongs to those creditors who have a claim in bankruptcy against the debtor if they have lodged their claim or whose claim can otherwise be taken into consideration in the disbursement list (the Bankruptcy Act, Chapter 15, Section 1).

However, a creditor may not vote in a matter which concerns a contract between the creditor and the debtor or the bankruptcy estate, which concerns a liability of the creditor towards the debtor or the bankruptcy estate, or where the creditor is likely to gain a specific personal or financial advantage (disqualification, the Bankruptcy Act, Chapter 15, Section 5).

Restructuring: Creditors’ meetings are not held in restructuring proceedings. According to the Restructuring Act, a committee of creditors must be appointed if required so by the debtor, the administrator, or a creditor, unless it is deemed unnecessary given the amount of creditors or other circumstances. The duties of the committee of creditors, as an advisory body, are to assist the administrator in the performance of his or her duties and to monitor the activities of the administrator on the behalf of the creditors. (The Restructuring Act, Section 10).

A committee of creditors consists of (at least three) members representing the various groups of creditors, such as secured creditors and creditors whose claims have a similar basis, are equally represented. A shareholder as such isn’t entitled to participate in the meetings of the committee of creditors, but only through a representative member.

The administrator shall negotiate with among others the committee of creditors and when drafting preparing the draft restructuring plan. If a shareholder owns at least one fifth of the shares or portions in the debtor company, is a secured creditor whose claims represent at least one fifth of the total claims of all secured creditors, or is a creditor whose claims represent at least one fifth of the claims of other, is also entitled to put forward a draft restructuring programme (the Restructuring Act, Section 40).

A shareholder holding a credit claim against a company under restructuring is regarded as a creditor of the company, and therefore retains the rights of a creditor regardless of his position as a shareholder.

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?

Bankruptcy: Shareholders without credit claims may, in theory, be considered creditors on the basis on their possible dividend claims. If they have a dividend claim, they can participate in the creditors’ meeting. With regards to the participation in the creditors’ meeting, please see question 25.

The state of insolvency of a company, which is a prerequisite for bankruptcy proceedings, can however be questioned, if the company was able to pay dividends to their shareholders immediately prior to the commencement of a bankruptcy proceeding. Dividends shall not be paid or other assets distributed, if it is known or should be known at the time of the distribution decision that the company is insolvent or that the distribution will cause the insolvency of the company (the Limited Liability Companies Act, Chapter 13, Section 2).

Restructuring: Shareholders without credit claims may be considered creditors on the basis on their possible dividend claims. With regards to the composition and the duties of the committee of creditors, please see question 25.

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

Bankruptcy: No. Finnish law does not recognize joint bankruptcy proceedings for an entire corporate group, apart from a few provisions, e.g. on a joint estate administrator (please see question 40). Shareholders of an individual company do not have any additional information rights, with regards to a bankruptcy procedure, to those already provided for in the Limited Liability Companies Act (please see question 11 and 15). Hence a shareholder has no specific information rights as to the filing of bankruptcy proceedings by the parent or other related companies.

Restructuring: No. Finnish law does not recognise restructuring of an entire corporate group, whereby the entire corporate group would be restructured as such and e.g. a restructuring programme would be drafted for the corporate group. Shareholders of an individual company do not have any additional information rights, with regards to a restructuring procedure, to those already provided for in the Limited Liability Companies Act (please see question 11 and 15). Hence a shareholder has no specific information rights as to the filing of restructuring proceedings by the parent or other related companies.

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

28. Does the shareholders’ meeting continue to exist in insolvency proceedings?

Bankruptcy: Formally, yes. While in bankruptcy, the company as the bankrupt debtor shall be represented by the Board of Directors and the Managing Director or by the liquidators appointed before the bankruptcy. New Members of the Board of Directors or liquidators may be appointed while the company is in bankruptcy. (The Limited Liability Companies Act, Chapter 20, Section 25). Di-
rectors are appointed by the Shareholders Meeting (the Limited Liability Companies Act, Chapter 6, Section 9). This has been interpreted as that the Shareholders’ Meeting continues to exist also in insolvency proceedings.

However, all the assets of the debtor are transferred to the bankruptcy estate, a separate legal entity, upon the initiation of bankruptcy proceedings (the Bankruptcy Act, Chapter 3, Section 1). As previously described, the shareholders’ meeting therefore loses all authority over the debtor’s assets.

**Restructuring:** Yes, according to the principle of debtor in possession, the company continues to be in possession of the assets and to decide on matters relating to its business. Certain actions, however, require the administrator’s consent. Consequently, the shareholders’ meeting continues to exist and operate as normal.

29. Does the shareholders’ meeting preserve all of its competence, generally?

**Bankruptcy:** No, not in practice. Although the shareholders’ meeting continues to exist, its competence is greatly reduced by the fact that the debtor loses his or her authority over the assets of the bankruptcy estate (the Bankruptcy Act, Chapter 3, Section 1).

**Restructuring:** As a main rule, yes. However since the competence of the debtor is to a certain extent restricted, the competence of the shareholders’ meeting is reduced.

E.g. 1, after the commencement of the proceedings the debtor shall not, without the consent of the administrator, transfer a business or a portion thereof (the Restructuring Act, Section 29). A transfer of business is usually decided on by the shareholders’ meeting, and the competence of the shareholders’ meeting is consequently restricted during a restructuring proceeding.

E.g. 2, the assets of the debtor shall not be distributed to the owners between the approval and the conclusion of the restructuring programme, if the debt arrangement under a restructuring programme restricts the right of creditors to payment against the capital balance of their claims (Ibid. Section 58). The shareholders’ meeting makes the decision on the distribution of assets (the Limited Liability Companies Act, Chapter 13, Section 6), and the competence of the shareholders’ meeting is hence restricted.

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

**Bankruptcy:** The estate administrator shall see to the completion of the books of the debtor up to the beginning of bankruptcy and to the preparation of final accounts for the financial period ending with the beginning of bankruptcy (the Bankruptcy Act Chapter 9, Section 3). The final account of the debtor is not approved by the shareholders’ meeting, and is not audited as during ordinary course of business. A special audit may, however, be done by decision of the creditors of the books and the activities of the debtor concerning the time prior to bankruptcy (the Bankruptcy Act, Chapter 9, Section 4).
After the beginning of the bankruptcy, the bankruptcy estate shall keep books as warranted by the extent and nature of the estate. The estate administrator shall see to it that the bookkeeping of the bankruptcy estate has been appropriately organised. The creditors shall decide on auditing. However, auditing shall be required of extensive bankruptcy estates (the Bankruptcy Act, Chapter 16, Section 1). The shareholders’ meeting does not need to approve the bookkeeping of the bankruptcy estate.

**Restructuring:** Yes, in normal order (the Limited Liability Companies Act, Chapter 5, Section 3).

31. **Does the shareholders’ meeting have the power to dismiss directors – if the directors are still in charge of the insolvent company? Can the shareholders’ meeting request the removal of the insolvency representative?**

**Bankruptcy:** Since the debtor loses his or her authority over the assets of the bankruptcy estate in the beginning of the bankruptcy (the Bankruptcy Act, Chapter 3, Section 1), the practical possibilities to run the company are greatly limited (although the shareholders and the directors are still formally in charge of the insolvent company). The company as the bankrupt debtor shall, however, be represented by the Board of Directors and the Managing Director while in bankruptcy. New Members of the Board of Directors may theoretically be appointed while the company is in bankruptcy (the Limited Liability Companies Act, Chapter 20, Section 25). The appointment of new Members of the Board of Directors shall be made by the shareholders meeting (the Limited Liability Companies Act, Chapter 5, Section 3).

**Restructuring:** Yes, in normal order (Limited Liability Companies Act, Chapter 5, Section 3).

32. **Is a shareholders’ meeting authorisation required to start an insolvency procedure?**

**Bankruptcy:** No, the assets of the company may be surrendered into bankruptcy by the decision of the Board of Directors (the Limited Liability Companies Act, Chapter 20, Section 25).

**Restructuring:** Yes, the application for the commencement of restructuring proceedings requires a decision of the shareholders’ meeting. Also the Board of Directors may file the application, if the matter is urgent (the Limited Liability Companies Act, Chapter 20, Section 24).

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

**Bankruptcy:** No, the disbursement list is drawn up by the estate administrator (the Bankruptcy Act, Chapter 13, Section 1). The debtor shall be heard on the matter (the Bankruptcy Act, Chapter 13, Section 10), but shareholders have no right to approve or dismiss the disbursement list. The estate inventory and the debtor description shall also be presented to the debtor, but shareholders have
no right to approve or dismiss the estate inventory or the debtor description (the Restructuring Act, Chapter 9, Sections 1 and 2).

In addition, the company as the bankrupt debtor, while in bankruptcy, shall be represented by the Board of Directors and the Managing Director or by the liquidators appointed before the bankruptcy (the Limited Liability Companies Act, Chapter 20, Section 25). The disbursement list, the estate inventory and the debtor description is hence not presented to the shareholders of the debtor company, but to the Board of Directors or the Managing Director.

Restructuring: The administrator shall prepare a draft restructuring programme. However the debtor is also entitled to put forward a draft restructuring programme (the Restructuring Act, Section 40).

The administrator shall negotiate with the debtor on his draft restructuring programme, but, in theory, no formal approval from the debtor is needed. Restructuring programmes of larger companies are, however, typically drafted in close cooperation with the debtor. The restructuring programme may include certain provisions that require a decision by the shareholders’ meeting prior to their execution. Approval of the restructuring programme may be made dependent on the shareholders’ meeting deciding on these provisions as set forth in the restructuring programme. In practice, approval of the restructuring programme by the debtor is a necessity for proceeding with the programme.

34. 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?

Bankruptcy: During a bankruptcy proceeding, the shareholders’ meeting formally continues, and is, since the Bankruptcy Act puts no specific prohibition on issuing of new share, formally able to decide on a new share issue according to the Limited Liability Companies Act, Chapter 9.

The debtor is however no longer in control of the assets of the company, in practice rendering nil value on the existing shares as well as the possible new ones. A share issue is hence a practically unseen action taken by an insolvent company.

A new share issue cannot be decided by the Board of Directors or an insolvency representative.

Restructuring: Yes, in normal order (the Limited Liability Companies Act, Chapter 9).

The restructuring programme can contain provisions on share issue and other types of corporate restructuring. The Restructuring Act does not, however, offer any means to dilute or otherwise affect the equity of the debtor company without the formal approval of the shareholders. A dilution or other amendments is only possible based on a separate decision by the shareholders meeting.
With regards to a debt conversion share issue during the restructuring proceedings, a creditor shall have the right to set a claim off against a debt owed to the debtor at the commencement of the proceedings under the same conditions as in bankruptcy proceedings (the Restructuring Act, Section 14). However, debts arising after the filing of the application shall be repaid as they become due (the Restructuring Act, Section 32), and a set-off is here possible in normal order.

35. 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?

**Bankruptcy:** No, not as such. A bankruptcy proceeding focuses on the debts and assets of the debtor company, and does not affect the corporate structure *per se*. A divestment is of course possible in case a parenting company would undergo a bankruptcy proceeding, and the assets were realized to a subsidiary company.

**Restructuring:** Yes. The restructuring programme can contain provisions on corporate reorganisation. The Restructuring Act does not, however, offer any means to dilute or otherwise affect the equity of the debtor company without a formal approval from the shareholders’ meeting. A dilution or other amendments is only possible based on a separate decision by the shareholders’ meeting.

36. On what conditions can the company carry on business during insolvency procedures? Is a shareholders’ meeting required?

**Bankruptcy:** The possibilities of the company to carry out any business is greatly reduced by the fact that it loses control over its assets (the Bankruptcy Act, Chapter 3, Section 1). Instead, the bankruptcy estate may carry on the business as a separate legal entity.

**Restructuring:** During a restructuring process, the principle of debtor in possession is applied, i.e. the debtor remains in possession of its business and its assets, but certain significant actions require the administrator’s consent (the Restructuring Act Section 29).

37. 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?

**Bankruptcy:** The estate administrator can decide on the sale of specific assets or sale of the entire estate as an entire business operation. The estate administrator can arrange the sale as deemed best for the common benefit of the creditors. (The Bankruptcy Act, Chapter 17, Section 3)

Notwithstanding a bankruptcy, a creditor protected by collateral may exercise his right of liquidation of collateral and collect on his claim out of the sale price, provided that the protected creditor has first given notice of the claim to the estate administrator (ibid. Section 11).
A shareholders’ meeting authorisation is neither required nor possible, since the company loses control of the assets in the beginning of a bankruptcy proceeding (the Bankruptcy Act, Chapter 3, Section 1).

Restructuring: During a restructuring process, the principle of debtor in possession is applied, i.e. the debtor remains in possession of its business and its assets, but certain significant actions require the administrator’s consent.

Upon the commencement of a restructuring procedure, certain interdictions are placed on the restructuring debts, among others interdiction on repayment and provision on security. The legal consequences of the commencement of the proceedings shall continue until the restructuring programme is approved (the Restructuring Act, Section 17 and Section 28 respectively).

The debtor shall not, without the consent of the administrator, among others transfer a business or a portion thereof or transfer fixed assets, liquid assets, intellectual property rights or other essential rights necessary for its activities unless the matter is of a measure connected with the regular activities of the debtor or transfer current assets otherwise than on the usual terms and as a part of regular activities (the Restructuring Act, Section 29).

Once the restructuring programme has been approved, the terms of the restructuring debts and the other legal relationships covered by the programme shall be redefined in accordance with the programme (the Restructuring Act, Section 57). If the debt arrangement under a restructuring programme restricts the right of creditors to payment against the capital balance of their claims, the assets of the debtor shall not be distributed to the owners between the approval and the conclusion of the restructuring programme (the Restructuring Act, Section 58).

The restructuring programme may provide for the sale of the assets or certain parts of it, and the debtor shall adhere to the restructuring programme.

38. 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?

Bankruptcy: The debtor’s contracts are not automatically terminated upon the initiation of a bankruptcy proceeding. The bankruptcy estate is entitled to become party to the contracts of the debtor. The creditor is, however, entitled to terminate the contract if the bankruptcy estate cannot provide sufficient collateral (the Bankruptcy Act, Chapter 3, Section 8).

The debtor, and consequently the shareholders’ meeting, cannot decide to terminate such a contract, nor does it have any power to do so, would the bankruptcy estate choose to become party of such a contract.

Restructuring: Certain actions require the consent of the administrator, such as terminating agreements that are necessary for its activities or for the existence of the prerequisites of continued activity (the Restructuring Act, Section 29).
Once the restructuring programme has been approved, the terms of the restructuring debts and the other legal relationships covered by the programme shall be redefined in accordance with the programme (Ibid. Section 57). The restructuring programme may provide for the termination or continuing of certain contracts. The debtor must not act against the restructuring programme.

39. If an insolvency plan can be presented for a whole corporate group, must that plan be approved by the shareholders’ meeting 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?

Bankruptcy: No. Neither the estate inventory nor the disbursement list needs any approval from the debtor, and consequently no approval is needed from the shareholders’ meeting. Separate insolvency proceedings concern each separate legal entity.

Restructuring: Finnish law does not recognize restructuring of an entire corporate group, whereby the entire corporate group would be restructured as such and a re-structuring programme would be drafted for the corporate group.

40. If the 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?

Bankruptcy: No. A person who has been appointed or nominated as an estate administrator may be appointed as the estate administrator also for another debtor in bankruptcy belonging to the same group of companies or otherwise to the same economic entirety, if this can be deemed expedient for the administration of the bankruptcy estates and if there is reason to believe that the functions can be performed without conflicts of interest that would cause an essential disturbance therein (the Bankruptcy Act, Chapter 8, Section 3).

The shareholders’ meeting is not involved in the aforementioned appointment.

Restructuring: Finnish law does not recognise restructuring of an entire corporate group, whereby the entire corporate group would be restructured as such and a restructuring programme would be drafted for the corporate group. Each entity within the corporate group constitutes a separate legal person in law, and hence any restructuring programme is drafted with regards to a single company. A corporate group is only legally relevant regarding jurisdiction in restructuring proceedings (the Restructuring Act, Section 67).

In practice however, when two separate companies belonging to the same corporate group are subject to restructuring proceedings at the same time, the restructuring programmes are drafted and handed in simultaneously and with regards to one another. In cases where only a part of the companies in a corporate group undergo restructuring proceedings, other companies in the same group may agree to adhere to provisions set forth in the restructuring programmes of those companies in restructuring.
41. Please list any other legal provisions in company law that, in your opinion or in your experience, may interfere with the insolvency procedure of a company in your jurisdiction.

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