The legislation governing corporate insolvencies is primarily contained in the Companies Acts, 1963 to 2013 (the collective citation covering nearly 20 individual statutes). However, it has been decided not to include references to the relevant statutory provisions in our responses to this questionnaire as all the existing law will shortly be replaced by a new consolidated piece of legislation. While this legislation is currently before the legislature, it is likely that section references will change as amendments are made. Accordingly, any references that could be supplied at this time would probably be redundant within a matter of months. While some elements of the legislation are being updated and reformed, the consolidation is primarily technical in nature so most of the current provisions will be re-enacted the new legislation. On the circumstances, I would expect that the responses given to the questions that follow will remain largely correct even after the new legislation is enacted.

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?

- Creditors Voluntary liquidation (CVL)
- Court Liquidation
- Receivership (a private contractual remedy not considered in the subsequent answers.
- Examinership
- Voluntary Arrangement with Creditors

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

Yes. Certain banks and financial institutions are subject to the CENTRAL BANK AND CREDIT INSTITUTIONS (RESOLUTION) ACT 2011.

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

Debt restructurings without a formal insolvency may be purely contractual or may use a scheme of arrangement under the Companies Acts.
4. What are the commencement criteria for insolvency procedures?

<table>
<thead>
<tr>
<th>Creditors Voluntary liquidation (CVL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally, a CVL will be commenced when the members of the Company form the view that the company is insolvent and call a meeting of creditors to consider a resolution to wind up the company and appoint a liquidator.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court Liquidation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generally, a Court liquidation will be commenced following a petition by a member of creditor of the company where they believe that the company is insolvent and unable to pay its debts.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Receivership</th>
</tr>
</thead>
<tbody>
<tr>
<td>A receivership will usually be commenced by a party with secured obligations where there has been some default by the company. A receiver can be appointed over specific secured assets (fixed charge) or may be appointed as receiver/manager over the general assets of the company on foot of a floating charge over the general assets of the company.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Examinership</th>
</tr>
</thead>
<tbody>
<tr>
<td>An examinership may be commenced following a petition to the Courts by the company itself, its directors, its creditors or by the members. A petition can only be made where the company is insolvent and no resolution to wind up the company subsists and no order to wind it up has been made. In addition, there is a need to demonstrate that there is a reasonable prospect of survival of the company and there is a reasonable prospect of survival of the whole or any part of its undertaking as a going concern.</td>
</tr>
</tbody>
</table>

Special provisions apply to financial companies including banks and insurance companies. In the case of insurance companies, a petition may only be presented by the Minister for Jobs, Enterprise and Innovation. In the case of banks, petitions can generally only be made by the Central Bank. There are also special rules for other entities regulated by the Central Bank.

<table>
<thead>
<tr>
<th>Voluntary Arrangement with Creditors</th>
</tr>
</thead>
<tbody>
<tr>
<td>No formal criteria are specified in the legislation. Generally, such arrangements, which are rare, are initiated by the company but must secure the approval of creditors in accordance with the legislation.</td>
</tr>
</tbody>
</table>
5. Who can propose a restructuring plan? (e.g. corporate bodies, insolvency representatives, creditors)

| CVL | Technically, the liquidator can propose a restructuring plan. However, this is extremely rare in practice as liquidation is generally a winding up rather than a restructuring procedure. |
| Court Liquidation | Technically, the liquidator can propose a restructuring plan. However, this is extremely rare in practice as liquidation is generally a winding up rather than a restructuring procedure. |
| Examinership | The Examiner can propose a Scheme of Arrangement, which is essentially a restructuring plan. |
| Voluntary Arrangement with Creditors | No formal criteria are specified in the legislation. Generally, such arrangements, which are rare, are initiated by the company but must secure the approval of creditors in accordance with the legislation. |

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?)

The directors are required to call a general meeting of the company if the net assets of the company fall below 50% of the called-up share capital of the company. The purpose of the EGM is consider whether and to what extent steps should be taken to address the situation. If insolvency is in prospect, the fiduciary duties of the directors switch from being owed the shareholders to being owed to creditors and creditors interests must be prioritised over those of shareholders.

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?

It should be noted that stock exchange listed companies are not exempt from making market announcements unless and until their shares are suspended or delisted which would normally follow an insolvency. Accordingly, regardless of shareholder
notification requirements associated with the procedures themselves, market announcements may be required. A listed company would be required to notify its insolvency to the relevant exchange.

**CVL**
Shareholders must be notified of and have the opportunity to vote on the resolution to wind up the company voluntarily. Shareholders are identified through the register of members.

**Court Liquidation**
Shareholders are not directly notified. However, notice of the petition to the Court must be advertised.

**Examinership**
Shareholders are not directly notified. However, notice of the petition to the Court will generally be subject to a requirement that it be advertised.

**Voluntary Arrangement with Creditors**
There is no specific requirement for notification of shareholders.

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

Shareholders are not required to file claims.

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

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>CVL</td>
<td>Not unless there is specific Court sanction for the transfer</td>
</tr>
<tr>
<td>Court Liquidation</td>
<td>Not unless there is specific Court sanction for the transfer</td>
</tr>
<tr>
<td>Examinership</td>
<td>No specific provision prohibiting it.</td>
</tr>
<tr>
<td>Voluntary Arrangement with Creditors</td>
<td>No specific provision prohibiting it.</td>
</tr>
</tbody>
</table>
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?)

**CVL**
Shareholders must be notified of and have the opportunity to vote on the resolution to wind up the company voluntarily. In addition, the liquidator is obliged to convene an annual meeting of the shareholders if the liquidation continues for more than a year. The shareholders do not have a right to request meetings.

**Court Liquidation**
No.

**Examinership**
No.

**Voluntary Arrangement with Creditors**
Normal rules from Memorandum and Articles of Association apply.

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?

**CVL**
No right to request information. However, the liquidator is obliged to provide a report to shareholders if the liquidation continues for more than a year.

**Court Liquidation**
No. However, the liquidator is obliged to provide periodic updates to the Courts.

**Examinership**
If a Scheme of Arrangement is proposed, it will be put to the shareholders for approval, as well as to the creditors. However, these votes are essentially consultative in nature and it is ultimately a matter for the Courts to approve or reject a Scheme of Arrangement.

**Voluntary Arrangement with Creditors**
Normal rules from Memorandum and Articles of Association apply.

12. Can shareholders make proposals for nomination of directors, if the directors continue managing the company?
CVL
No. The directors have no role in the company once a liquidator is appointed.

Court Liquidation
No. The directors have no role in the company once a liquidator is appointed.

Examinership
Yes. However, examinership is a short process – maximum of 100 days and any changes in directors would normally form part of the Scheme of Arrangement.

Voluntary Arrangement with Creditors
Normal rules from Memorandum and Articles of Association apply.

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 response?)

Such rights are affected to the same extent as other shareholders.

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?)

In the case of a CVL or Court liquidation, the shareholder meeting will cease to operate. However, shareholders retain rights to apply to the Courts for certain reliefs such as personal liability of directors where they can demonstrate that the directors were guilty of reckless trading. There is also a general right to apply to the Courts for judicial review of decisions taken by the directors or insolvency representative.

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

Shareholders can apply to the Courts for the appointment of an inspector to investigate the affairs of the company provided the shareholders hold at least 10% of the issued share capital or are not less than 100 in number. In addition, the shareholders, along with any other interested party can complain to the Office of the Director of Corporate Enforcement or other relevant enforcement authority seeking an investigation of the affairs of the company. However, there is no obligation on the enforcement bodies to act on such complaints and it is a matter for them to determine
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?

No. However, in the case of a CVL, the creditors may appoint a Committee of Inspection to liaise with the liquidator and to approve his/her remuneration. Committees of Inspection can also be established in the case of a Court liquidation, though this is rare. Shareholders can seek to be appointed to a Committee of Inspection where one is established but do not have any particular entitlement to be appointed.

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

No.

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?)

This would generally not be relevant in the case of a CVL or Court Liquidation. In the case of examinership, any Scheme of Arrangement proposed by the Examiner would have to include proposals in relation to the shareholdings post-examinership and such proposals have to be voted on, separately by meetings of creditors and members, before being put before the Courts for approval. There are no specific safeguards for 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?)

This would generally not be relevant in the case of a CVL or Court Liquidation. In the case of examinership, any Scheme of Arrangement proposed by the Examiner would have to include proposals in relation to the shareholdings post-examinership and such proposals have to be voted on, separately by meetings of creditors and members, before being put before the Courts for approval. There are no specific safeguards for shareholders.
20. Do shareholders of the company undergoing insolvency proceedings have pre-emption rights over new issues of shares? (1) 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?).

Not in the case of a CVL or Court Liquidation. A Scheme of Arrangement in an examinership may deal with any pre-emption rights as part of its proposals. While the Scheme would be put to the shareholders for approval, as well as to the creditors, these votes are essentially consultative in nature and it is ultimately a matter for the Courts to approve or reject a Scheme of Arrangement.

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?)

As the company does not survive a liquidation, whether CVL or Court, this does not apply in such cases. The participation, or otherwise, of shareholders will generally be addressed in a Scheme of Arrangement approved on foot of examinership.

There would be no automatic right of participation in a separate company to which the business or assets are transferred.

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?)

Not in the case of liquidation. A Scheme of Arrangement approved on foot of examinership could potentially have such affects.

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?

Yes. In the case of a liquidation, it would be a matter for the liquidator to agree the terms on which such items are supplied. Similarly, if an examiner procures the

(1) 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.
provision of goods or services from a shareholder, it would be a matter for the examiner to determine the terms involved. In both cases, costs incurred by the liquidator or examiner would be expenses of the process and rank in preference to pre-insolvency process creditors.

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? (If there are separate reorganization and liquidation procedures, does this affect the response?).

There are no specific duties imposed – ordinary contract law applies.

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?)

Yes. However, in the case of examinership, shareholders holding credit claims would be classed as “connected creditors” and would be subject to a separate vote from unconnected creditors. As indicated previously, such votes are effectively consultative in nature as, ultimately, it is a matter for the Courts to determine whether a Scheme of Arrangement proposed in an examinership should be approved or rejected.

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?)

Shareholders may attend a creditors meeting in a CVL but would not have a right to vote. In the case of examinership, shareholders without credit claims would not be entitled to attend a creditors meeting.

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

No.
III. The Role of the Shareholders’ Meeting in Companies Subject to Insolvency Proceedings

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

No.

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

No.

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

No.

31. 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?)

No. The directors cease to function in a liquidation and only have a very limited role during an examinership. A shareholder can apply to the Courts for the removal of the insolvency representative.

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

CVL - Yes.
Court Liquidation - No.
Examinership – No.
Voluntary Arrangement with Creditors – Yes.

33. Does the shareholders’ meeting need to approve an insolvency or reorganization plan? Can shareholders, even individually, challenge an insolvency or reorganization plan?
There are no shareholder’s meetings in the case of CVLs or Court Liquidations.

In the case of examinership, a shareholders meeting will be held to approve the Scheme of Arrangement proposed. However, this meeting is consultative in nature and it is a matter for the Court to determine whether, or not, to approve the Scheme.

Voluntary Arrangement with Creditors – Yes.

An individual shareholder can apply to the Courts challenging any insolvency process.

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?

Not applicable to CVLs or Court Liquidations.

In the case of examinership, only the Examiner would have the power to propose the issue of new shares or conversion of claims as part of a Scheme of Arrangement. A shareholders meeting would be held to approve any such Scheme of Arrangement proposed. However, this meeting is consultative in nature and it is a matter for the Court to determine whether, or not, to approve the Scheme.

Voluntary Arrangement with Creditors: Normal rules of company law apply.

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?

Not applicable to liquidations. Theoretically possible in examinership or voluntary arrangement but more usually would involve transfer of business to a new company entity.

36. 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?

In the case of a CVL, the liquidator can decide to continue trading for a limited period if he/she determines that this is in the interests of a beneficial winding up. Shareholder

(2) 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.

11
approval not required.

In the case if Court Liquidation, the liquidator can, subject to the approval of the Court, decide to continue trading for a limited period if he/she determines that this is in the interests of a beneficial winding up. Shareholder approval not required.

In the case of examinership, it would be common for trading to continue through the examinership period. Shareholder approval not required.

In the case of a Voluntary Arrangement with Creditors, the normal rules of company law apply.

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? (If there are separate reorganization and liquidation procedures, does this affect the response?)

In the case of a liquidation, the liquidator is free to dispose of specific assets or the entire business. However, he/she must be able to demonstrate that he/she has achieved a fair price for the assets. In addition, where he/she intends to sell assets to connected parties, he is obliged to notify all creditors in advance of the proposed transaction. Shareholder’s approval is not required.

The disposal of assets could form part of a Scheme of Arrangement proposed by an Examiner (though not the disposal of the entire business since the purpose of the procedure is to allow the survival of the business or part of it). Any such disposal would be subject to the standard examinership approval arrangements.

In the case of a Voluntary Arrangement with Creditors, the normal rules of company law apply.

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? (If there are separate reorganization and liquidation procedures, does this affect the response?)

No.

39. 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?

Not relevant to liquidations. In the case of examinership, shareholder’s meetings would be held to approve any Scheme of Arrangement proposed. However, these...
meetings are consultative in nature and it is a matter for the Court to determine whether, or not, to approve the Scheme.

Voluntary Arrangement with Creditors: Normal rules of company law apply.

40. 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?

There are no specific requirements. However, a liquidator can apply to the Courts to pool the assets of several connected companies and to wind them up as if they were a single company. It is also possible for a liquidator to apply for a contribution order from a connected company. Shareholder’s meetings are not involved.

IV. Other Obstacles for Insolvency Procedures Found in Company Law

41. 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.

None.