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.

(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.
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.

***
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?**

   In Mexico there is only one procedure known as Concurso Mercantil governed by the Mexican Bankruptcy Law (LCM – Ley de Concursos Mercantiles) applicable to any kind of commercial companies.

   As general rule, this judicial procedure comprises two different and successive phases: i) Conciliación (Conciliation or reorganization) and ii) Quiebra (Bankruptcy or liquidation).

   The first phase of the procedure, known as Conciliation, is contemplated to preserve the bankrupt company, trying to achieve an agreement between the debtor and its creditors that allows the bankrupt company to continue its operations. Unless otherwise is provided by the Judge, in this phase the debtor continues with the administration of its business with the help of a Trustee (Conciliador) appointed by the Instituto Federal de Especialistas en Concursos Mercantiles (“IFECOM”) with the purpose of reaching an agreement with its creditors. This phase is contemplated to endure 185 calendar days and can be extended twice for a 90-day period each upon a Judge resolution.

   When the Conciliation term elapses and/or if the Conciliator and the Judge consider that conditions for reorganization are not existent, the second phase known as Bankruptcy (i.e. liquidation), is formally opened and the liquidation process of the bankrupt company begins in order to sell the company; firstly as an on-going-business and if this do not happen, the different assets in order to obtain the greatest payment for the benefit of the creditors.

   Liquidation phase will endure until all of the debts are paid or all of the assets of the bankrupt company are sold. The IFECOM will name a new Trustee (Síndico) that will administer the bankrupt company and will lead the selling process.

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

   Yes. Mexican regulation provides a special procedure for:

   a) Financial Institutions Insolvency.

   The Mexican Bankruptcy Law has a specific chapter for financial institutions (banks not included) ancillary credit institutions and merchants who execute ancillary credit activities. Their insolvency is ruled by a combination of LCM and the specific provisions in the legal bodies that regulate such financial entities.

   b) Banks Insolvency.
The insolvency of banking institutions is regulated by the Credit Institutions Law (Ley de Instituciones de Crédito); in the understanding that LCM is not applicable for this kind of entities. The regulatory authorities of financial institutions have a major role in the proceeding.

c) Companies that provide public services as chartered by the State.

The insolvency of those companies is ruled by the LCM but giving a relevant participation to the administrative authority who granted the charter.

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

There is no specific provision or limitation for an out-of-court restructuring, but Mexican laws offer different alternatives for the liquidation and reorganization of commercial entities, other than the formal insolvency proceeding.

Private Restructuring Agreement. A voluntary out-of-Court process, in which via private agreement or settlement, the shareholders, the company corporate body and its creditors are entitled to adopt any and all decisions in connection with the credits and its guarantees.2

As this is not a judicial process the parties are allowed to consent, among other things: i) the total or partial remission of the credit amount, ii) an extension to the credit term with the correspondent modification of the amounts payable in each payment date, iii) the extension of guarantees, iv) the conversion of the credit into equity, or v) any other decision in connection to the credits and its collateral (as long as the concession granted do not prejudice any other creditor or party involved or not). The unique limitation to adopt this alternative is that provisions of such agreement do not prejudice the public interest or third person’s rights.

This kind of agreements are governed by the general commercial and civil law (Commercial Code and Civil Code, particularly) and the commercial entity specific regulation; this last one in the understanding that Mexican normative framework allow the existence of more than eight different commercial entities whose regulation offer different grades of complexity in connection with corporate governance and shareholder rights.

When the private restructuring agreement is not viable, if the above-mentioned parties judge it proper, they can even settle and pay its debts via the voluntary liquidation of the company by granting its consent or commence, jointly or separately, a bankruptcy process.

4. What are the commencement criteria for insolvency procedures?

Article 9 of the LCM states that a debtor will be declared in bankruptcy when it is in general default on its debts. The creditors or the debtor itself can seek the bankruptcy

2 In the understanding that such decision do not conflict
declaration. In Article 10 the LCM provides the basis for considering when the debtor is in general default on its debts with more than one creditor: (1) overdue debts with more than 30 days of default representing more than 35 percent of the total liabilities of the debtor, and (2) the debtor does not have enough assets to cover at least 80 percent of its defaulted debts.

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

In a voluntary proceeding, the filing debtor must present a project of the reorganization plan along with filing. At the end, either in a voluntary or in an involuntary case, the Debtor or the Trustee who is responsible to prepare the reorganization plan, can present to the court and to the creditors the reorganization plan when they deem to have the necessary majority.

Additionally, LCM set for a special procedure known as “Pre-packaged Bankruptcy” (Concurso Mercantil con Plan de Reestructura Previo) where a reorganization plan that has been approved by the debtor and 50% of the creditors, must be filed.

In both cases the plan has to be approved by the Bankruptcy Judge.

6. Please describe whether and to what extent the 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)

Mexican insolvency regime is oblivion of the presence of shareholders. They rule their activity, rights and liabilities according the Mexican Commercial Corporations Law (MCCL – Ley de Sociedades Mercantiles)

In order to file for an insolvency proceeding the requirements set in the by-laws of the company (for instance a decision formally made by the board of directors or the general shareholders meeting) must be met in order to authorize the filing.

In the conciliation stage, its boards and shareholders meeting will still administrate the distressed company. The main function of the trustee will be to review the operation of the distressed company and suggest a better way to handle the business. LCM intends that the trustee and the directors work together in order to reorganize the company. Shareholders rights will not be affected.

Administrators of the company have a fiduciary duty to creditors and shareholders. The fiduciary duties to creditors are regulated under the LCM but the liabilities they incur face to shareholders are the regular accountability they have as administrators of the company.

If the trustee requests from the Court the authorization to remove the Debtor in possession and appoint the trustee to act as an administrator and the request is granted, the shareholders will keep their role face to the trustee as they did with the
Board, director o whatever administrator they had.

Nevertheless, as the operation of the company in such case is limited by: the automatic stay, the restrictions in operating contracts and all the other consequences of being insolvent, the possibility of action is very limited for the shareholders.

In the liquidation stage, the trustee act as unique administrator. Shareholders and the corporate boards are no longer entitled to take or adopt any measure or decision. They only can wait for what is left after paying creditors.

I. Shareholders’ Rights in Companies Subject to Insolvency Procedures.

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

   Under article 2 of the Mexican Commercial Corporations Law (MCCL) the commercial corporations have different and separated personality of the one of its shareholders. LCM does not take into account the rights of shareholders; those are ruled by the MCCL.

   If the by-laws of the Debtor establish that a corporate decision must be taken in relation with a Concurso Mercantil proceeding, then those requirements should be met.

   LCM does not provide that shareholders must be served with the notification about the beginning of the proceeding.

   If it is determined that insolvency was caused by fraudulent shareholders' decisions or acting as legal representatives of the company, liability arising from such acts can be claimed in favour of the estate.

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

   Other of the correspondent shareholders meeting resolution in order to enter in concurso mercantil, if such thing is required under their by-laws, is not necessary for shareholders to file any claim in order to obtain a devolution of its participation in the company.

   LCM does not contemplate specific rules for the payment to the shareholders. General rule is that after paying the whole credits, the residual assets will be delivered back to the shareholders who will have to liquidate and finish the company in accordance to the MCCL.

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

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

In the conciliation (reorganization) stage it is possible. At this stage the corporate governance will continue in an ordinary basis. This applies only if the debtor is still in possession.

In the liquidation stage, or in the reorganization stage where the debtor has been removed from the administration of the company, it will not be possible.

11. Do shareholders have the right of requesting 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?

In the conciliation stage the corporate governance will continue in an ordinary basis and as a consequence, their rights vis à vis the directors of the company remain the same. As for the Insolvency Representative, it is of the interest of both, the shareholders and the Insolvency Representative to be in touch and interchange information in order to try to reach the approval of a reorganization plan. The usual way is that the Conciliator will act closely with the CEO, directors or whatever will be the organization of the company and that includes the information accountability to the Shareholders Assembly. Article 172 of the MCCL establishes that at least annually the administrators of the company have to provide to the shareholders a financial report of the company. The shareholders can reduce the period of time for presenting the financial report but cannot increase it.

In the liquidation stage the shareholders cannot ask for financial information to the trustee. Article 59 of the LCM states that the trustee shall make a bimonthly report to the Bankruptcy Judge of the status of the distress company. Shareholders may obtain the financial information of the company trough this bimonthly report.

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

During the conciliation stage, the shareholders continue with the entire administration of the company, which means that they can designate the directors of the company unless the Conciliator has been given the authorization to act as an administrator, so the authority of shareholders to appoint directors is removed.

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?)

There is in certain kind of corporations in Mexico the possibility to grant different governance rights to different share's series, but this is not affected as a consequence of the insolvency proceeding. The answers given to questions 11 and 12 apply here,
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 directors? And against acts of an insolvency representative? Is authorization by 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?)

During conciliation stage, and as long as the corporate bodies remain in full force and effect, the general rule is that thirty three per cent (33%) of the stocks are able to challenge any decision taken by the shareholders meeting and file claims against the administrators (According to articles 163, 184 and 201 of MCCL).

Although, LCM provides the right of shareholders representing the 25% of the company's capital to take action against the directors of the company as an exception to the ordinary regime mentioned in the previous paragraph.

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

LCM does not contemplate the possibility of shareholders asking a special investigation. They could do it in the conciliation (reorganization) through the regular inspector of the company (comisario) while staying in possession of the company.

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

LCM does not contemplate the establishment of shareholders’ committees.

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

In conciliation stage the corporate governance will continue in an ordinary basis and any transfer of the shares shall be executed in accordance with the bylaws of the company. They cannot do it overlooking what is provided in the bylaws.

In the liquidation stage the shareholders could transfer the shares according the bylaws but it seems a strange thing to do because the value and the number of possible buyers will be near zero.

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?)

There is no provision in the LCM about this subject. Insolvency offers no obstacle to the operation of the regular life of the company other than the mentioned possibility
of the Conciliator taking over the administration. All the assignment of outstanding shares would follow the usual and normal way.

On the other hand, one of the possibilities that are contemplated in the LCM is that as a part of the reorganization plan an increase of capital can be one medullar point in the reorganization.

LCM does not include the principle according to which the affected shareholders should not receive less than in a liquidation procedure.

19. Can outstanding shares of the company undergoing insolvency proceedings be cancelled without the consent of 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 liquidation procedure?)

LCM does not contain expressly provision regarding the cancellation or assignment without the consent of shareholders. Cancellation of shares could have the opposition of creditors, Conciliador and is likely to be rejected by the Court because it supposes a decrease on the company’s capital and, consequently, of the estate.

20. Do shareholders of the company undergoing insolvency proceedings have a pre-emption right 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?)?

Since during the conciliation stage, corporate governance continues in an ordinary basis, shareholders enjoy the benefit of a pre-emption right if the issuance of new stock is agreed. The previous unless otherwise is set for in the company’s by-laws, or they agree and consent the resignation of such right in the correspondent meeting minute. Is important to say that this shareholders faculty remains only during the conciliation stage. It is also provided that if the shareholders do not use the pre-emption right when an increase of capital is part of the reorganization plan (they have a term of 15 days to exercise the right), the Court could accept other proposal made by the conciliator in the reorganization plan.

21. Can shareholders retain a participation in the company undergoing an insolvency process even if the company is 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?).

In liquidation stage shareholders cannot be able to ask for payment of their share until creditors have been paid. In a reorganization stage when a reorganization plan

(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.

4 According to Article 132 of MCCL.
is agreed upon, each share will still represent a percentage of the value of the company whatever this might be.

22. Are the ranking 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?)

   No. Shareholders will be the last to be paid in accordance with the structure of the equity. They will be treated in accord of the nature of the class of share. If a reorganization plan is approved they will remain as they were unless other provision have been established in the reorganization plan.

23. Can shareholders in the curse 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?

   Since the company and shareholders are considered different persons, the last ones are able to supply goods, render services or provide financial resources to the distressed company.

   The trustee (Conciliator) is entitled to approve the maintenance and fulfilment of agreements that are considered necessary to maintain the company's operations in a regular basis.

   The ranking position of creditors that continue to render a service, or provide goods or post-commencement financing) is considered a debt against the bankruptcy estate and is preferred in its payment towards other 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?).

   Contractual relationships existing previously to the insolvency proceeding will in general continue if the Trustee (Conciliator) deems is beneficial to the normal and regular operation of the company. This is done regardless the nature of the third party involved (i.e. whether a shareholder or other)

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

   There is not a creditor's meeting in the structure of Mexican insolvency. The rights of vote in the reorganization plan that creditors have will be affected if creditors are related parties. Shareholders are considered in that category.
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?)

There is not a creditor’s meeting in the structure of Mexican insolvency. Only the recognized creditors are entitled to participate in the vote of the reorganization plan and vote the creditors agreement.

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

Although LCM does not provide specific rights to shareholders, companies of the same economic group are entitled to jointly request the commencement of an insolvency proceeding, in the understanding that its patrimony will never be consolidated. Creditors are also entitled to file the concurso mercantil of one or more companies that belong to the same economic group. Therefore the filing company (not the individual shareholders) will have information rights because is a part of the proceeding.

III. The Role of the Shareholders’ Meeting

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

During the conciliation stage, with the debtor in possession, the corporate governance will continue in an ordinary basis. Shareholders will not have the administration of the company if the Conciliator takes the administration or, in the liquidation stage, where the Trustee has taken the administration.

This situation means that the Shareholders meeting will be operative all along the proceeding, only in the second case, will continue to operate for other purposes than the administration issues, but it can operate for instance to request the responsibility of the insolvency representatives that have been acting through the proceedings and of the directors or relevant employees (articles 61 and 270 bis 1)

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

Please refer to answer in the previous question (28th).

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

Yes, the operation of the shareholder’s meeting is not cancelled as a consequence of the insolvency proceedings. They will have to review the accounts and approve, or reject, them on behalf of the shareholders and to the purpose to complaint if is the case about the performance of the directors and/or the insolvency professionals.
Article 59 of the LCM states that the trustee shall make a bimonthly report to the Bankruptcy Judge of the status of the distress company.

31. Does 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?)

   In conciliation stage if the debtor is still in possession, the shareholders’ meeting can freely remove and designate the directors of the distressed company. Shareholders' meeting can oppose the appointment of the insolvency representative (Conciliator) within the following three business days upon its appointing if such trustee:

   i) Has a family relationship with anyone of the members of the managing bodies, the shareholders with no limited liability, creditors or the Bankruptcy Judge;

   ii) Has a family relationship with anyone of the administrators of the company

   iii) Is the lawyer, attorney or authorized person of the distressed company or any of the creditors in a different trial;

   iv) Has or have had a labour relationship within the past six months with the distressed company or any of his creditors;

   v) Is partner, stockholder, lessor or lessee of the distressed company or any of his creditors;

   vi) Has direct or indirect interest in the solution of the Concurso Mercantil or if he is fired or enemy of the distress company or any of his creditors.

   In the liquidation stage, the shareholders’ meeting will not have any possibility to appoint a director or administrator as the Trustee is the one in charge of the administration of the company either in an on-going concern or if the company has stopped the operation. As for the trustee, the shareholders’ meeting have the same right to oppose the appointment of the insolvency representative on the same grounds explained in the previous paragraph.

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

   Shareholders’ approval is mandatory to be obtained prior the commencement of a voluntarily concurso mercantil. Part of the documents that have to file with the petition is the agreement of the shareholder’s meeting or board of directors (according the bylaws) that show the intention of partners or shareholders to apply for bankruptcy.

33. Does the shareholders’ meeting need to approve the insolvency or reorganization plan? Can shareholders, even individually, challenge an insolvency or reorganization plan?
The Debtor must approve the Reorganization Plan. Whether the shareholder's meeting, the board of directors or the CEO makes the approval, depends on the bylaws of the company. In a dubious case the reasonable thing to do is to get the approval of the shareholders' meeting but not always is possible mainly in large companies with numerous stockholders.

The decision adopted in shareholders' meeting in order to enter concurso mercantil can be challenged by the shareholders that own the thirty three per cent of the equity (33%). (Articles 163, 184 and 201 of the MCCL) this challenge is not to be dealt with in the Bankruptcy court but in a regular Court.

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

Yes. In reorganization stage (conciliation) shareholders’ meeting approval will be compulsory. The board could authorize the issue of new shares that have been kept in a stand by status according the bylaws. Nevertheless it wouldn't be wise to do so without an approved reorganization plan than includes the issue of new shares

The trustee cannot decide the issuance of new shares.

One logical feature of the reorganization plan would be to swap credits for equity. A decision of the shareholders' meeting will be required.

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 shareholder authorization required for this?

Yes to both questions. The reorganization plan has to be approved accordingly to the requirements stated in the LCM.

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 shareholders meeting authorization required?

The general rule is that the company will continue with the operation of the business.

The LCM requests that the insolvency representative (conciliator) and the Debtor must bear in mind the advisability of keeping the enterprise as an on-going concern. Notwithstanding, the insolvency representative (conciliator) may ask the judge to

(3) 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.
order the enterprise shutdown, in whole or in part, whether temporarily or permanently.
In the liquidation stage, the trustee shall continue with the operation of the company if possible. The trustee must to try to keep the company as an on-going concern.
Shareholders meeting authorization is not required

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 or the company? Is a shareholders meeting authorization required? (If there are separate reorganization and liquidation procedures, does this affect the response?)

In the reorganization (conciliation) stage, the insolvency representative (conciliator) can decide the sale of assets not related to the regular course of business of the Merchant’s enterprise. The special creditor's representatives (so called “interventores” or conservators) should be consulted. Conciliator can dispose of goods in such cases as such goods may be perishable or if such goods may be subject to a serious impairment of their price, or their conservation may be costly as compared with the profit that they may bring about for the Estate, only advising the judge. Selling the whole company as an on-going concern can be an option to be considered in the reorganization plan.
During the liquidation stage, selling of the company as an on-going concern is the first option. The insolvency representative (trustee) is requested to attempt to receive the highest return on the sale. If the sale of all of the properties and rights of the Estate as a productive unit allows for receiving the highest proceeds from the sale, the receiver must consider the advisability of keeping the enterprise as an on-going concern and only if it is not possible, sell the assets separately.
LCM establishes three processes for the selling of assets in the liquidation stage:
a) Sale of assets in public auction. This is the general rule for selling assets.
b) Special procedure proposed by the trustee. Trustee is entitled to propose a special procedure to sale an asset or a group of them under the consideration that this will increase its profitability. Hiring professional sellers or auctioneers is allowed.
c) Direct sale. No judge approval or any procedure is needed if assets are risking losing its value or maintenance is too expensive.
Shareholders meeting authorization is not required

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 favorable, unfavorable or essential contract during an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)

No. Article 75 of LCM provides the faculty solely to the trustee to decide which contracts will continue and which not and Article 92 establishes that during the conciliation stage all pending contracts shall be fulfilled by the merchant as agreed. The counterparty has the right to ask to the trustee to establish if the contract will
continue and ask for a guarantee for the compliment of the contract.

Shareholders can request the responsibility of the insolvency representative as well as the director's.

39. If an insolvency plan can be presented for a whole corporate group, must that plan be approved by the shareholder’s 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 minority of the companies that are not insolvent?

The concurso mercantil can involve two or more companies of the same economic group. In any case they will be treated in a single procedure but their patrimony will not be consolidated and the participation of the debtor in the approval of the plan will be the same for each one of the companies in a separate way. The idea is to appoint the same insolvency representative in order to coordinate the decisions of each debtor joining in the solution of the whole group of enterprises involved.

It is possible that companies belonging to the same corporate group could participate in the reorganization plan that solves the insolvency of the afflicted companies. Those decisions must be made according the bylaws of each of the company.

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 of the relevant companies involved in the coordination mechanisms, if any?

The same judge will prosecute the Concurso mercantil of two or more companies belonging to the same economic group and dockets can be accumulated but treated separately, there will be not a substantive consolidation. In order to foster coordination it is recommended to appoint the same insolvency representative for each one of the companies of the group involved in the proceedings.

Shareholders are not considered to participate in the proceedings. Shareholders’ meeting will have in each one of the companies the same role that has been depicted in the previous questions.

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.

Some legal provisions that may interfere with insolvency proceedings are those related to the way that the company law (MCCL) deals with the liquidation of the corporations. The reason to that is that company law is completely oblivion of the insolvency legislation. Si it is possible that when an enterprise is following a regular liquidation process might appear that the company is in the situation where an insolvency proceeding is the right way to proceed.

Similarly, after the liquidation stage in the insolvency proceeding (concurso
In order to accomplish the process contemplated in the company law to "finish" the company.

Company law in Mexico was created some 70 years before the current Ley de Concursos Mercantiles, so there is no connection at all between the two bodies. Additionally, recently some very important provisions regarding company law has been introduced in other body of law: the on about the securities market, increasing the diaspora of legal provisions.