QUESTIONNAIRE ON INSOLVENCY LAW AND COMPANY LAW

In the Russian Federation bankruptcy proceedings are regulated by the Federal Law №127-FZ at 26.10.2002 “On Insolvency (Bankruptcy)” (last amendment at 12.03.2014 by the law №145-FZ). Further we will mark it as “BL”.

The main laws (besides the Civil Code of the Russian Federation) regulating Corporate Relationships are the Federal Law № 208-FZ at 26.12.1995 “On Joint-Stock Companies” (last amendment at 28.12.2013) (Further we will mark it as “JSC Law”) and the Federal Law № 14-FZ at 8.02.1998 “On Limited Liability Companies” (last amendment 05.05.2014) (Further we will mark it as “LLC Law”).

It is also should be noticed that there is no definition of “shareholders’ meeting” in the BL. In this connection in the following answers we will use the term from BL “debtor’s managerial body” as a synonym of “shareholders’ meeting” of the company law.

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?

The BL provides five procedures applied in the bankruptcy case:

<table>
<thead>
<tr>
<th>Receivership (Supervision)</th>
<th>A bankruptcy proceeding applied to a debtor with a view to preserving the debtor’s property, analysing the financial state of the debtor, drawing up a register of creditors’ claims and holding the first meeting of creditors;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Rehabilitation (Recovery)</td>
<td>A bankruptcy proceeding applied to a debtor with a view to restoring the debtor’s solvency and having the debt repaid under a debt repayment schedule</td>
</tr>
<tr>
<td>External Administration</td>
<td>A bankruptcy proceeding applied to a debtor with a view to restoring the debtor’s solvency</td>
</tr>
<tr>
<td>Winding Up (Liquidation)</td>
<td>A bankruptcy proceeding applied to a debtor deemed bankrupt and aimed at meeting creditors’ claims on a pro rata basis</td>
</tr>
<tr>
<td>Voluntary Arrangement</td>
<td>A bankruptcy proceeding applied at any stage of examination of a bankruptcy case for the purpose of terminating proceedings in the bankruptcy case by means of arranging an agreement between the debtor</td>
</tr>
</tbody>
</table>
Liquidation of the Organization under Russian laws is not one of the bankruptcy procedures, but a consequence of the introduction of the bankruptcy proceedings.

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

The BL separates so-called “special categories of debtors” which have special insolvency criteria and conditions (Chapter IX, BL):
- city-forming enterprises,
- agricultural organizations,
- financial organizations (credit organisations, insurance organisations, professional participants in the securities market, management companies of investment funds, mutual funds, private pension funds, clearing organizations, credit cooperatives),
- strategic enterprises,
- natural monopolies,
- insolvency process of real estate developers.

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

Debt restructuring is applied as well as within official bankruptcy proceedings and also informally. The legislation supposes various forms of debt restructuring:
- change the terms and amount of payment;
- debt exchange for a share of ownership (debt-to-equity swap);
- relief of part of debt, etc.

The national law specifies that the debtor’s shareholders (even with creditors’ participation) should undertake measures to restore solvency and prevent bankruptcy of the debtor (Art. 30, BL), but there is no any list of such measures. The Law also describes an opportunity to recover financial status of the debtor out-of-court due to so-called “sanation”, i.e. getting financial aid. (Art. 31, BL).

4. What are the commencement criteria for insolvency procedures?

There are two commencement criteria in Russia (Art. 2, BL):

1. Illiquidity (insolvency) – used for legal entities and citizens. Insolvency is termination (by the debtor) of performance of financial obligations or mandatory payments occasioned by the shortage of funds.
2. Over-indebtedness (shortage of assets) – used only for citizens. Shortage of assets is exceeding of the debtor’s financial obligations and liabilities of mandatory payments over the cost of its assets.

A legal entity may be subject to bankruptcy proceedings if it has failed to satisfy the claims equal or exceeding RUB 100,000 (i.e. 2100 Euro) within 3 months (Art. 3, Art. 6 (2), BL).

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

According to the Federal Law № 127 – FZ “On Insolvency (Bankruptcy)” (BL) there are two reorganization procedures: Financial Rehabilitation (Chapter 5, BL) and External Administration (Chapter 6, BL). In each of them a restructuring plan is supposed.

During initial Supervision procedure debtor’s corporate bodies are entitled to submit a petition for the application of Financial Rehabilitation to the first creditors’ meeting, and, in the cases specified by the Law, to the court of arbitration (Art.76 (1), BL). Before such application to the creditors’ committee the debtor prepares plan of Financial Rehabilitation (Art. 77 (5), BL).

The second type of reorganization procedure – External Administration – can be commenced only by the proposal from creditors. “External Administration is opened by the court on the decision of a creditors’ meeting, except for the cases specified by the Federal Law.” (Art.93 (1), BL) During one month from the opening of External Administration insolvency representative is obliged to prepare plan of External Administration of the debtor (Art. 106, BL).

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?)

Russian law does not provide specific fiduciary duties of the shareholders in case of distress or insolvency. It’s supposed that shareholders must always exercise their rights respecting those of the corporation and of the other 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?

Debtor’s director is obliged to notify the following parties of Supervision procedure commencement (during 10 days from the date of court decision): debtor’s employees, founders (stakeholders) of the debtor (Art.68 (3), BL).

A notification of the first creditors meeting should be sent to bankruptcy creditors or authorised bodies by post at least 14 days prior to the meeting’s date or in another way ensuring the receipt of the notice at least 5 days prior to the date of the meeting. If the number of bankruptcy creditors and authorised bodies exceeds 500, information should be published in the mass media(Art.13 (1,2), BL).

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

According to the Russian legislation shareholders are not considered as creditors, thus they cannot file claims in an insolvency proceeding.

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

Legislation does not establish a ban on the alienation of shares of the company in respect of which the bankruptcy case. However alienator shares of such company must notify the buyer of that company in respect of bankruptcy proceedings.

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

During External Administration (reorganization procedure) corporate bodies of the debtor are entitled to determine the general order of the shareholders meeting conducting (Art. 94 (2), BL).

If the debtor is declared insolvent (bankrupt) be the court and winding up procedures is commenced all powers of the debtor’s head and its other managerial bodies (including shareholders meeting) are terminated. Therefore, shareholders don’t have the right to request that a shareholders’ meeting is held, if the company is insolvent (Art. 126 (2), BL).

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?

During Supervisory and Financial Rehabilitation shareholders are entitled to request information and participate in the management of insolvency company (debtor-in-possession). Shareholders can exercise this right in relation to both the company's directors and the insolvency representative.

Within External Administration and Winding Up shareholders participate in such activity only partly and receive only strategic information.

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

During Supervision and Financial Rehabilitation when the directors continue managing the company the shareholders may offer another director of the company.

13. If special categories of shares exist whose holders are granted additional governance rights, are these additional rights affected by the opening of an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)

There are no special categories of shares whose holders are granted additional governance rights.

14. 1) Can shareholders challenge the decisions of the shareholder meeting, if it is still active?

2) Do they retain the possibility of taking action against the acts of the directors?
3) And against the acts of an insolvency representative?
4) 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?)

1) Corporate Law provides the right to challenge the decision of shareholders (creditors) meeting by shareholders (creditors) and the BL doesn’t limit this right.

“A shareholder shall have the right to appeal to a court a decision adopted by the general meeting of shareholders in violation of the requirements of this Federal Law, other laws of the Russian Federation, and the articles of association, if he did not take part in the general meeting of shareholders or he voted against the adoption of such decision and his rights and legal interests were violated by the said decision.” (Art. 49 (7), JSC Law)

“A decision of the general meeting of the company's partners, taken in a breach of the requirements of this Federal Law, other legal acts of the Russian Federation, the company's charter and violating the rights and lawful interests of a company's participant, may be recognized by a court of law as invalid upon the application of a participant who has not taken part in voting or voted against the disputable decision.” (Art. 43 (1), LLC Law)

2) The right of insolvency company’s shareholders/participants to challenge a decision of board of directors (supervisory board) or an individual or collective executive body is not limited by the BL.

“A shareholder has right to challenge in the court a decision taken by the board of directors or the supervisory board in the violation of the requirements of this Federal Law, other legal acts of the Russian Federation, the company's articles of association and with a breach of the rights and lawful interests of a company participant. The court has right to keep the decision in action until it led to the damages of the company or a shareholder or to other unfavorable consequences, and if the violation was not essential.” (Art. 68 (6), JSC Law)

“A decision taken by the board of directors or the supervisory board, by the individual or collective body of the company and the manager in the violation of the requirements of this Federal Law, other legal acts of the Russian Federation the company's articles of association and with a breach of the rights and lawful interests of a company participant may be recognized by a court of law as invalid upon the application of this participant.” (Art. 43 (3), LLC Law)

3) According to BL only a representative of the shareholders has a right to challenge acts of an insolvency representative, but not every single shareholder.

“A representative of the shareholders of an insolvency company’ means the chairman of the board of directors (supervisory board) or another similar collective managerial body of an insolvency company, or a person elected by the board of directors (supervisory board) or another similar collective managerial body of a debtor, or a person elected by the shareholders of an insolvency company to represent their legal interests in bankruptcy proceedings.” (Art. 2, BL)

All the complaints of representative of the shareholders (including the complaints against insolvency representative) are administrated by the court according to Art. 60 (3), BL.

The analyze of court practice shows that within receivership (observation), financial rehabilitation and external administration a representative of shareholders can only to lodge a complaint against insolvency representative. The possibility to remove an insolvency representative is not provided by the BL.

4) For the implementation of these rights BL doesn’t demand an authorization by a court or an insolvency representative. However the authorization by shareholders’ (creditors') meeting
could be required for realization some rights during implementation of some insolvency procedures.

For example, “Without a authorization of a creditors’ meeting (the creditors’ committee) ... the debtor (insolvency company) shall not be entitled to make decisions concerning its reorganization (merger, acquisition, division, separation, transformation) ...” (Art. 82 (3), BL); According to the Art. 114 (1), BL the authorization is required for additional issue equity shares of an insolvency company.

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

The Russian Legislation has no term “special investigation” what makes answering this question quite difficult.

If we understand under „special investigation“ a „statutory investigation“ in common law¹, this definition could be explained by the following acts in Russian Legislation:

1) Analysis of debtor’s financial status and results of its financial, operational and investment activities. (Art. 20.3, BL);

2) Identification of deliberate bankruptcy’s features in order, provided by BL (Art. 20.3, BL);

3) Identification challenging deals (Chapter III.1, BL);

4) Search, identification and restitution of property possessed by the third parties (Art. 129 (2), BL);

5) Identification of persons controlling an insolvency company and their role in the activity led to insolvency (Art. 10, BL).

All mentioned above actions are the duties of insolvency administrator within the all procedures of bankruptcy. In cases of improper discharge of his duties a representative of shareholders (creditors) is entitled to challenge a decision of insolvency administrator (See the answer on the question 14.3).

Moreover, a representative of shareholders (creditors) has right to submit a petition for expertise in order to identify deliberate or fictitious bankruptcy (Art. 34 (2), Art. 126 (3), BL).

Thus every single shareholder (creditor) has no right to file a petition to a court; moreover, even a representative of shareholders (creditors) is entitled only to challenge activity or inactivity of an insolvency administrator.

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?

Russian legislation doesn’t provide the establishment of a shareholder’s committee.

Federal Law “On Joint-Stock Companies” in the Articles 47 – 71 regulates establishment, operating and liquidation of general shareholders’ meeting, supervisory board, executive body and auditing commission.

In practice within a Board of directors there are often audit committee, reward committee, appointment committee etc. Establishment of shareholder’s committee is uncommon, however there

are some examples: Sberbank of Russia and several other banks has Committees for protection of minor shareholders’ rights.

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

BL doesn’t provide any limitation for transfer (selling) of shares in comparison with the requirements of corporate law, and also doesn’t provide any possibility to avoid the limitations on transfer of shares, set by the corporate law or articles of association.

At the same time BL doesn’t allow redemption of offered shares or payment of the actual value of the share (Art. 63 (1), BL).

Thus BL doesn’t provide a prohibition against participant’s withdrawal from LLC (“A share or a part of a share shall pass over to a company...” (Art.23 (6.1), Federal Law “On Limited Liability Companies’”), but set a prohibition against the payment to participant (shareholder) the value of share or part of the share.

The limitation for redemption of offered shares and payment to participant their value is set by the introduction of the receivership (observation). But in the articles regulating other stages of bankruptcy this limitation is not mentioned.

At the same time Third Arbitrage of Appeal has cancelled the decision of a court of primary jurisdiction and refused the satisfaction of a request to repurchase the shares by a company referring to the Article 63.1 of Bankruptcy Law. The Arbitrage made a conclusion that shareholders’ requests could be satisfied only after termination of bankruptcy proceeding or complete satisfaction creditors’ requests within winding up (liquidation) (The order of the Federal Arbitrage, East-Siberian District, on 02.09.2009 within the case N A33-14666/08). Higher jurisdictions approved the conclusion of the court.

18. - 19. 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?)

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?)

BL doesn’t provide any additional requirements to the terms of corporate law regarding to the insolvency proceedings.

The shares are redeemed since the legal entity is excluded from the Unified Register of Legal Entities after winding up (liquidation).

BL doesn’t provide any other ways to repurchase shares or parts without the consent of the relevant shareholders.
The possibility of “forced” cancellation of shareholders is provided by the corporate law but is not determined by the insolvency proceeding.

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

An increase of founding capital (by new issue of shares) is one of the most preferable measures of a debtor’s financial recovery.

“The debtor shall be entitled to increase its founding through the offer of an additional ordinary registered book-entry shares by closed subscription at the expense of additional contributions of its founders (stake-holders) and third persons … . In this case the state registration of a report on the results of an issue of additional ordinary shares and amendments to the debtor’s constitutive documents shall be effected before the date of the court hearing dedicated to consideration of the bankruptcy case.” (Art. 64 (5), BL)

“For the purpose of debtor’s financial recovery the external administration plan may envisage an increase in the founding capital of the debtor being a joint-stock company through the offer of an additional ordinary registered book-entry shares.” (Art. 114(1), BL)

“The offer of debtor’s additional ordinary shares may be performed only by closed subscription.” (Art. 114 (2), BL)

“The shareholders of the debtor shall have a priority right to acquire the debtor’s additional ordinary shares being offered, in the manner envisaged by a federal law(Federal Law “On Joint-Stock Companies”). The term provided to the shareholders of the debtor to exercise their priority right to acquire debtor’s additional ordinary shares shall not exceed 45 days after the commencement of the shares.” (Art. 114 (3), BL)

This article refers to the bylaws of Federal Law “On Joint-Stock Companies” which describe the general rule of priority right of shareholders on closed subscription of an additional offer of ordinary shares, “which cannot be less than 45 days after the time when the notice is forwarded (delivered) or published”. (Art. 41 (1), JSC Law)

While Winding Up (Liquidation) an additional offer of ordinary shares isn’t supposed.

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?)

Shareholders may participate in the management of organization despite the fact that it is in the course of insolvency procedure. We conclude this on the basis of the fact that shareholders are the owners of the property of the company; therefore they are debtors as well. According to the BL shareholders participate in the member's meeting of the debtor.

In Supervision there are limitations on quitting the meeting of the founders of the debtor. "It shall be prohibited to meet the claims of the debtor’s participants (stakeholder) for a partition of participatory share (stake) in the debtor’s property in connection with ceasing to be a promoter
The debtor’s managerial bodies may execute exclusively on the consent of the interim administrator in writing, deals or several interrelated deals:

- relating to the acquisition, alienation or possibility of alienation directly or indirectly of the debtor’s property of which the balance sheet value makes up over five per cent of the balance sheet value of the debtor’s assets as of the date of institution of the receivership;
- relating to the receipt and granting of loans (credits), and guarantee, claim assignment, debt assignment and also the institution of a trust in respect of the debtor’s property.

The debtor’s managerial bodies shall not be entitled to adopt decisions on:

- the reorganization (merger, accession, division, separation, transformation) and liquidation of the debtor;
- the foundation of legal entities or the debtor’s interest in other legal entities;
- the foundation of branches and representative offices;
- the disbursement of dividends or distribution of the profit of the debtor among the debtor’s promoters (stake-holders);
- the floatation of bonds and other issue securities by the debtor, except for shares;
- somebody’s ceasing to be a promoter (stakeholder) of a debtor, on the acquisition of the shares issued earlier from shareholders;
- participation in associations, unions, holding companies, financial and industrial groups and other associations of legal persons;
- the conclusion of a contract of simple partnership” (Art.64(2,3), BL).

There are the following limitations of managerial bodies’ activity during Financial Rehabilitation:

“Without a consent of a creditors’ meeting the debtor is not entitled to enter into deals or several related deals in the accomplishment of which she/he/it is interested or which:

- are connected to the acquisition, alienation or the possibility of alienation either directly or indirectly of the debtor’s property of which the balance sheet value makes up over five per cent of the balance sheet value of the debtor’s assets as of the last accounting date preceding the date of conclusion of the deal;
- cause the issuance of loans (credits), the issuance of guarantees and also the institution of trust in respect of the debtor’s property.

The debtor is not entitled to make decisions concerning its reorganisation (merger, accession, division, separation, and transformation) without the consent of a creditors’ meeting and the person(s), which provided a security.

Without the consent of the administrative representative the debtor is not entitled to conclude deals or several related deals which:

- cause an increase in the debtor’s account payable of more than five per cent of the sum of the creditors’ claims included in the register of creditors’ claims as of the date of institution of financial rehabilitation;
- are related to the acquisition, alienation or the possibility of alienation either directly or indirectly of the debtor’s property, except for the sale of the debtor’s property being finished products (works, services) manufactured or sold by the debtor in the course of
ordinary economic activity;
- cause a claim assignment, a debt assignment;
- cause the receipt of loans (credits) (Art. 82 (3, 4), BL).

There are some limitations during **External Administration**:

“Within the competence established by a federal law, the managerial bodies of the debtor is entitled to make decisions:

- on designating the number and face value of announced shares;
- on an increase in the joint-stock company’s authorised capital by means of floating additional ordinary shares;
- on addressing a petition to a creditors’ meeting for including the possibility of an additional issue of shares in the external administration plan;
- on designating a procedure for conducting a general meeting of shareholders;
- on filing a petition for the sale of the debtor’s enterprise;
- on replacing the debtor’s assets;
- on electing a representative of the debtor’s participants (stakeholders);
- on concluding an agreement on the terms for the provision of funds for discharging the debtor’s obligations between a third person or third persons and the managerial bodies of the debtor authorised under the constitutive documents to adopt a decision to conclude largescale deals;
- other decisions as may be required for floating additional ordinary shares of the debtor (Art. 94(2), BL).”

During **Winding UP** there are no strict limitations of the management organ, but its transactions may be invalidated (Art. 129, BL).

Finally, in the **Voluntary Arrangement** the shareholders have no special rights, as it is set with the initiative of the external manager or the administrator - it depends on the choice of the measure.

### 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?)

There is a special procedure in liquidation distributions to shareholders in particular: preferred shares imply a certain paramount payments to its owners, rather than ordinary shares (Art. 31, 32, JSC Law).

“The property of the company subject to liquidation remaining after the completion of settlement of accounts with creditors shall be distributed by the liquidation commission among the shareholders in the following priorities:

- first priority shall be accorded to payments relating to stock which must be repurchased in accordance with the Article 75 of this Federal Law;
- second priority shall be accorded to payments for dividends credits but not paid with regard to preferred stock and to the liquidation value of preferred stock determined by the character of the company;
- third priority shall be accorded to the distribution of assets of the company under liquidation among the holders of common stock and all types of preferred stock.
The distribution of property of each priority shall be effectuated after the full distribution of property of the preceding priority. The payment by the company of the liquidation value of preferred stock determined by the character of the company shall be effectuated after the payment in full of the liquidation value of the preferred stock of the previous priority determined by the articles of association.

It the value of property existing in the company is insufficient for the payment of dividends credited but not paid, and also the liquidation value determined by the character of the company for all holders of preferred stock of one type, then the property shall be distributed among the holders of such type of preferred stock in proportion to the quantity of stock owed by them.” (Art. 23, JSC Law)

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?

Shareholders can supplement debtor’s assets by making a contribution into debtor’s property. However in the legislation this mechanism is provided only for the founders (participants) of the limited liability companies (Art. 27, LLC Law). There is a gap in the legislation regarding this right for the founders (participants) of joint-stock companies.

Nevertheless court practice provides a possibility to apply the principles of LLC Law to joint-stock companies by analogy (The order of the Federal Arbitrage, West-Siberian District, on 26.09.2002 within the case N F04/3614-453/A75-2002).

Moreover, acting legislation contains civil principle of regulation according to that everything is allowed that is not prohibited (Art. 1, the Civil Code of the Russian Federation). Neither the Civil Code, nor JSC Law prohibits directly shareholders to supplement to the debtor’s property. The property, formed by the contributions of founders (participants) and also produced or acquired by the legal entity as a result of its activity, belongs to this legal entity under the ownership right (Art. 66 (1), the Civil Code of the Russian Federation). Accordingly all the participants can contribute not only in the form of contribution to the authorized capital, but in the other forms, including supplement to the debtor’s property. This can be applies also to joint-stock companies, since there is no requirements to apply it only regarding limited liability companies.

Meanwhile, it is worth to notice, that after the opening of the supervision managerial bodies of the debtor are entitled to provide such activity only exclusively on the consent of the interim administrator in writing(Art. 64 (2), BL).

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?)

According to the general rule operating activity of the debtor does not stop during insolvency proceedings. All the existing contracts (including contracts where one of the counterparties is shareholders) remain therefore valid. Nevertheless during Winding Up creditors have right to make a decision on stoppage of the debtor’s entrepreneurial activity on condition that this stoppage doesn’t lead to technogeneous, ecological or other disasters.
25. - 26. 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?)

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?)

According to the BL shareholders are entitled to participate in the bankruptcy proceedings and arbitration proceedings in the bankruptcy case by electing a representative of the founders.

According to Art. 2 of the BL representative of the founders of the debtor is chairman of the Board of Directors (Supervisory Board) or other similar collegial executive body of the debtor or the person elected Board of Directors (Supervisory Board) or other similar collegial body of the debtor or a person elected by the founders (participants) of the debtor to represent their legal interests during the procedures applied in the bankruptcy case.

The representative of the founders (participants) may be elected at any stage of the bankruptcy process, including liquidation, despite of the fact that the administration of the debtor is out of business since the introduction of the liquidation. This issue was repeatedly the subject of controversy in the arbitration. The Supreme Arbitration Court of the Russian Federation has also spoken about this in the following way:

"In considering an application to the specified case the courts of first instance and appeal courts erroneously concluded that the impossibility of electing representatives to the founders (participants) of the debtor at liquidation.

A representative of the founders (participants) of the debtor could be chairman (Supervisory Board) or other similar collegial body of the debtor or the person elected Board of Directors (Supervisory Board) or other similar collegial body of the debtor or the person elected by the founders (participants) debtor to represent their legitimate interests in liquidation (Art. 2, BL).

If the founders (participants) of a debtor or its governing bodies are not settled the question of the election of a representative, than a Chair of the Board of Directors (Supervisory Board) or other similar collegial managing body of the debtor can be settled as such representative.

As the representative of the founders (participants) has no monetary claims against the debtor and were elected by shareholders to represent their interests in bankruptcy proceedings, they have no right to bring separate claims against the debtor in the manner prescribed by the BL. However, in order to ensure that the interests of shareholders, the representative of the founders (participants) shall be entitled to claim in arbitration court objections to the requirements of creditors’ claims. Thus, according to Art. 71 of the BL objections to creditors’ claims may be brought before the arbitral tribunal within fifteen calendar days from the deadline for submission of claims of creditors by the debtor, the temporary administrator, the creditors claim against the debtor, the representative founders (participants) of the debtor. In this case, the arbitral tribunal shall in the presence of objections to the claims of creditors to verify the validity of claims and the grounds for the inclusion of these requirements in the register of creditors' claims.

According to Art. 12 of the BL participants of the meeting of creditors with voting rights are bankruptcy creditors and authorized bodies; claims are included in the register of creditors’ claims on the date of the meeting of creditors. At a meeting of creditors following categories are entitled to
participate without voting rights: representative of the employees of the debtor, the representative of the founders (participants) of the debtor, the debtor's representative of the owner of the property - a unitary enterprise, representative of the self-regulatory organization of which is the court-appointed trustee, approved in the bankruptcy case, the representative body (supervision) that have the right to speak on the agenda the meeting of creditors.

Thus, the shareholders through his representative have the right to participate without vote in the meetings of creditors. This right implies the arbitration manager a duty to notify founders’ representative to convene such a meeting of creditors, the agenda for the alleged meeting. Within the meeting of creditors a founders’ representative may speak on agenda items. His position may be considered by the participants of the creditor’s meeting while making decision on the agenda.

In addition, Art. 71.1 of the BL provides the right to the representative of the founders of the debtor to repay the debt on obligatory payments. As a result of full performance of obligatory payments the founders’ representative becomes a bankruptcy creditor with the relevant rights and duties.

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

The BL provides direct obligation of the director of the debtor to notify debtor's employees, the founders (participants) of the debtor about introduction of bankruptcy procedures (Art. 63 (3), BL). There is the obligation to publish interim manager in the official edition information on the introduction of bankruptcy procedure against the debtor (Art. 63 (1), BL).

Thus, shareholders can learn about the introduction of bankruptcy procedure - observation from the notification of the debtor and from public sources. Failure to notify the shareholders of the debtor by the head of the debtor is in violation with the BL.

To participate in the bankruptcy procedures, shareholders must elect or appoint a representative. In the absence of such a representative of the shareholders they will not be able to receive information on the activities undertaken in the bankruptcy case. This position is confirmed by the court practice.

Thus in the Regulation of Federal Arbitrage of Moscow District on 20.12.2013 in case number A41-23572/2013 following was explained:

"By virtue of Article 35 of the Bankruptcy Act a person involved in the arbitration proceedings in the bankruptcy case, having the rights provided for arbitration procedural law, is representative of the founders (participants) of the debtor. Meanwhile, the complainant did not present evidence of electing representatives to the founders (participants) of the debtor."

According to the Art.126 of the BL the founders (participants) of the debtor are provided by the rights of persons involved in the bankruptcy case, after opening a bankruptcy proceeding. Because of the provisions of the Art.2 of the BL that a representative of the founders (participants) of the debtor - Chairman of the Board of Directors (Supervisory Board) or other similar collegial executive body of the debtor or the person elected Board of Directors (Supervisory Board) or other similar collegial body of the debtor or a person elected by the founders (participants) of the debtor, is empowered to represent the legitimate interests of the owner of the property only if the bankruptcy proceedings, and not to represent the respective interests in the bankruptcy proceedings at the stage when any bankruptcy proceedings against the debtor has not carried out, the argument of "AgroProm" (the complainant) that the decision to declare the debtor bankrupt was made without proper notification of the shareholders of the debtor must be rejected ". 
III. THE ROLE OF THE SHAREHOLDERS’ MEETING IN COMPANIES SUBJECT TO INSOLVENCY

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

In reorganization procedures such as Supervision and Financial Rehabilitation the shareholders’ meeting continues to exist, but there are some limitations of its powers (Art. 64, BL).

After the External Administration was commenced the powers of the shareholders’ meeting and of the other governing bodies of the debtor are terminated and go over to the insolvency representative apart from several special powers (Art. 94, BL).

In the Winding Up proceeding the powers of the shareholders’ meeting are terminated apart from the power of shareholders’ meeting to make decisions on concluding agreements for the provision of the funds by a third person or third persons for the purpose of discharging the debtor’s obligations (Art. 126, BL).

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

The shareholders’ meeting doesn’t preserve all of its competence, generally. The amount of limitations depends on the characteristics of proceeding.

After the Supervision was commenced the shareholders’ meeting and the other debtor’s governing bodies may execute some transaction or several interrelated transactions exclusively by authority of the insolvency representative. Such transaction or several interrelated transactions are:

- related to the acquisition, the alienation or possibility of the alienation directly or indirectly of the debtor’s property of which the balance sheet value makes up over five per cent of the balance sheet value of the debtor’s assets on the date the supervision was commenced;
- related to the obtaining and granting of the loans (credits), related to the granting of the suretyship and the guarantee, related to the claim assignment, to the debt assignment and also related to the institution of a trust in respect of the debtor’s property.

The shareholders meeting and the other debtor’s governing bodies shall not be entitled to adopt decisions on:

- the reconstruction (merger, accession, division, separation, transformation) and the liquidation of the debtor;
- the formation of the legal persons or the debtor’s interest in the other legal persons;
- the formation of the branches and the representative offices;
- the disbursement of the dividends or the distribution of the profit of the debtor among the debtor’s shareholders;
- the floatation of the bonds and the other issue securities by the debtor, except for the shares;
- somebody’s ceasing to be a shareholder of the debtor, on the acquisition of the shares issued earlier from the shareholders;
• the participation in associations, unions, holding companies, financial and industrial groups and other associations of legal persons;
• the conclusion of a contract of simple partnership (Art. 64, BL).

After the **External Administration** was commenced the powers of the shareholders’ meeting and of the other debtor’s governing bodies are terminated and go over to the insolvency representative apart from the following:

“within the competence established by a federal corporate law, the shareholders’ meeting and the other governing bodies of the debtor shall be entitled to make decisions

• on designating the number and the face value of the announced shares;
• on an increase in the joint-stock company’s authorized capital by means of the floating additional ordinary shares;
• on addressing a petition to a creditors’ meeting for including the possibility of an additional issue of shares in the external administration plan;
• on determination of the shareholders’ meeting procedure;
• on filing a petition for the sale of the debtor’s enterprise;
• on replacing the debtor’s assets;
• on electing a representative of the debtor’s shareholders;
• on concluding an agreement between a third person or third persons and the debtor’s governing bodies authorized under the charter to adopt a decision to conclude the largescale deals, on the terms for the provision of the funds for discharging the debtor’s obligations;
• other decisions as may be required for the floating additional ordinary shares of the debtor (Art. 94, BL).”

In the **Winding UP** proceeding the powers of the shareholders’ meeting are terminated apart from the powers of the shareholders’ meeting to make decisions on concluding the agreements for the provision of the funds by a third person or by third persons for the purpose of discharging the debtor’s obligations (Art. 126, BL).

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

According to **Art. 48 of the JSC Law** the shareholders’ meeting has the power to approve the accounts of the company. The shareholders’ meeting powers of the distressed company are not changed. After the insolvency was started the power of the shareholdings’ meeting to approve the accounts of the company is preserved or is terminated depending on the proceeding (as it is described in the answers 28 and 29). Such a power is preserved in supervision apart from the power to distribute the dividends or the profit of the debtor among the debtor’s shareholders. In the External Administration and the Winding Up proceeding the power to approve the accounts is terminated.

### 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?)

The shareholders’ meeting has the power to dismiss the director in the reorganization
procedures. After the court adopted the Supervision the debtor’s director applies for the shareholders’ meeting to make a decision about opening the Financial Rehabilitation. The shareholders’ meeting has the power to dismiss the director prematurely and to appoint the new one (Art. 77(2), BL). In the liquidation procedure the debtor’s director has no powers and doesn’t control insolvent company, that’s why the power to dismiss the director is not needed to any governing body of the debtor.

The shareholders’ meeting is not entitled to remove the insolvency representative. But the representative of the shareholders – special person, vested with the powers to defend the shareholders’ rights – has the power to challenge the legal acts of the insolvency representative in liquidation proceeding (he is not entitled to do it in reorganisation proceedings). In some circumstances it can result in the insolvency representative removal (Art. 2, Art. 126, BL).

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?)

The shareholders’ meeting authorisation is not required to start an insolvency procedure. But the debtor’s director should file for the bankruptcy into the court, if the shareholders’ meeting has adopted this decision (Art. 9, BL). The shareholders’ meeting decision to initiate the Financial Rehabilitation and the following request from the shareholders’ meeting to the first creditors’ meeting to initiate the financial rehabilitation are necessary for the Financial Rehabilitation to be commenced (Art. 77, BL). The shareholders’ meeting authorisation is not required for institution of the external administration and the Winding Up proceeding.

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

BL doesn’t provide any requirements on preparing insolvency or reorganization plan. At the same time BL establishes the obligation to prepare a plan of financial rehabilitation and schedule for the payments while financial rehabilitation and a plan of external administration while external administration.

BL doesn’t entitle/provide any requirements for shareholders’ meeting on improvement an insolvency or reorganization plan. Corporate law also doesn’t suppose such requirement.

At the same time “the decision to present a petition for the institution of financial rehabilitation to the first creditors’ meeting shall be adopted by the general meeting by a majority vote of the debtor’s participants (stake-holders) which attended the meeting...” (Art.77 (1), BL)

To the decision to present a petition for the institution of financial rehabilitation to the first creditors’ meeting a plan of financial rehabilitation and schedule for payments should be attached (Art. 77 (5), BL).

Plan of financial rehabilitation and schedule for payments should be prepared by the founders (stakeholders) of a debtor (Art. 84, BL). Preparation of external administration plan is a duty of external administrator (Art.99 (2), Art. 106 (1), BL).

The decision on approval of a plan of financial rehabilitation, a schedule for payments, a plan of external administration lies within an exclusive competence of creditor’s meeting (Art. 12 (2), Art 84 (1), Art. 107 (1), BL).

The mentioned above decision should be adopted by the majority of the total number of
votes of bankruptcy creditors and authorized bodies (Art. 15 (2), BL).

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?

BL provide the possibility to issue additional shares of debtor.

The aphorized body a debtor should make the decision on additional issue of debtor’s shares. “The decision to increase the founding capital of a company by means of offering additional shares shall be adopted by a general meeting of the shareholders or the board of directors (supervisory board) of the company if it has the right to make such a decision under the company’s articles of association.” (Art. 28 (2), JSC Law)

Within receivership (supervision) “the debtor’s managerial bodies shall not be entitled to adopt decisions on … the floatation of bonds and other issue securities by the debtor, except for shares” (Art. 64 (3), BL).

“Within 10 days after the issuance of a ruling on the institution of receivership the head of the debtor shall propose to the debtor’s founders (stake-holders) to hold a general meeting of the debtor’s founders (stakeholders), and to the owner of the debtor being a unitary enterprise, to consider issues concerning the making of a proposal to the first meeting of the debtor’s creditors to conduct an additional issue of shares” (Art. 64 (4), BL).

Within External Administration one of recovery measures an increase in the founding capital of the debtor being a joint-stock company through the offer of an additional ordinary registered book-entry shares (Art. 109, Art. 114, BL).

An increase in the founding capital of the debtor through the offer of additional ordinary registered book-entry shares can be included to a plan of external administration exclusively by the petition of managerial body (Art. 94 (2), BL).

Within external administration “the managerial bodies of the debtor shall be entitled to make decisions: on designating the number and face value of announced shares: on an increase in the joint-stock company’s authorized capital by means of floating additional ordinary shares; on addressing a petition to a creditors’ meeting for including the possibility of an additional issue of shares in the external administration plan… .” (Art. 94 (2), BL)

BL doesn’t provide possibility of the founding capital’s increase through convention of claims into new shares.

BL doesn’t entitle shareholders’ (participants’) meeting make decisions on an additional issue of shares within financial rehabilitation and winding up.

An insolvency manager cannot make decisions regarding an additional issue of debtor’s shares.

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?

According to the BL one of the measures to recover a solvency of a debtor is a Substitution of Debtor’s Assets.
The Substitution of Debtor’s Assets can be applied within External Administration (Art. 115, BL) and Winding Up (Art. 141, BL). This measure is not a way of debtor’s reorganization, but the restructuring of debtor’s assets. After application of this measure shareholders (participants) of the debtor don’t lose their rights on the shares (parts) of debtor.

“The Substitution of Debtor’s Assets shall be effected by founding one public joint-stock company or several public joint-stock companies on the basis of the debtor’s property. In the case of foundation of one public joint-stock company its authorized capital shall incorporate the whole property incorporated in the enterprise and intended for the pursuit of entrepreneurial activity.” (Art. 115 (1), BL)

“The Substitution of Debtor’s Assets by founding one public joint-stock company or several public joint-stock companies on the basis of the debtor’s property may be included in the External Administration Plan under a decision of the debtor’s managerial body authorized under the constitutive documents to adopt decisions on conclusion of relevant transactions of the debtor.” (Art. 115(2), BL)

Under a decision of a creditors’ meeting during the Winding Up the debtor’s assets may be substituted on the condition that the decision to do so is voted for by all the creditors whose obligations are secured with the pledge/mortgage of the debtor’s property.” (Art. 141(1), BL)

Within Winding Up the Substitution of Debtor's Assets is conducted the same way as within External Administration by founding one public joint-stock company or several public joint-stock companies on the basis of the debtor’s property with the authorized capital paid by the debtor’s assets.

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?

The BL doesn't provide a requirement to stop entrepreneurial activity of the debtor while bankruptcy proceeding.

A decision on the continuing the activity and the applying for the next bankruptcy proceeding (Financial Rehabilitation, External Administration or Winding Up) should be made considering results of the analyze of debtor’s financial status.

According to the Art. 124 (1) of the BL “the adoption of the decision to declare a debtor bankrupt shall entail commencement of Winding Up proceeding”.

Within Winding Up according to the Art. 129 (6) of the BL “creditors’ meeting shall be entitled to make a decision about a stoppage of entrepreneurial activity on condition that this stoppage doesn’t lead to technogeneous or ecological disaster, stoppage of legal entities which are responsible of the life support of the citizen. The administrator is obliged to stop the production of goods (services) by the debtor on the decision of creditors’ meeting during 3 months from the date when this decision was made.

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

According to the general rule operating activity of the debtor does not stop during insolvency proceedings, but insolvency representative – during 3 months from the date of External Administration or Winding Up procedure opening – is entitled to repudiate contracts and other transactions of the debtor if:

such deals impede (in full or in part) restoration of the debtor’s solvency – only during External Administration (Art. 102 (1,2), BL)

execution of such contracts will cause losses for the debtor in comparison with similar transactions made in comparable circumstances – during External Administration and Winding Up(Art. 102 (1,2), Art. 129 (3), BL).

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?

Russian national law doesn’t provide any specific provisions relating to group of companies. Insolvency Law contains only some related definitions – “control person of the debtor”, “obligatory guidance” (Art. 2 (1), BL). The draft of the Federal Law “On amending Federal Law “On insolvency (bankruptcy)” in the part of specification of corporate groups insolvency proceeding” (proposed by the Ministry of Economy 15 December 2011) is not passed yet but will allow the treatment of corporate group insolvencies within a single procedure. Consolidation of bankruptcy proceedings for related legal entities, which is supposed in the law draft “On insolvency of corporate groups”.

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?

The Russian national law does not provide any specific requirement for coordination mechanisms among insolvency procedures of corporate groups (See the answer above).

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.

The BL provides a definition on control person of the debtor. There is no such definition in Corporate Law. There the control is defined by the affiliation or the economy dependence. The BL provides wider range of features determining a control person of the debtor. This gap makes it difficult to pierce the corporate veil, since it doesn’t let to call to account real decisions-makers whose actions led to the bankruptcy. This gap also makes impossible to pass the law on insolvency of corporate groups.

Another problem concerns the substitution of debtor’s assets. The substitution of debtor’s assets is a recovery measure from the point of view of the BL, but the corporate law considers it as assets withdrawal.