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C. Reorganization in General

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D. Opening Decision

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21. What publicity rules are applicable to the different stages described above?

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22. Describe the transnational effects of a reorganization.

Australia
Mitchell Mathas

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Christoph Liebscher

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Addendum as a Result of a New Law on Bankruptcies
Canada
Jeffrey R. Lloyd, Gwen Chamberlain and Ginette Leclerc

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Christian D. Lundgren

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England and Wales
Christopher Mallon

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Appendix 1: Insolvency Act 1986 s. 8(3)

Appendix 2: Insolvency Act 1986 s. 8(1)

Appendix 3: Insolvency Act 1986 Schedule 1 – Powers of the Administrator or Receiver

Appendix 4: Countries to which s. 426 applies

Finland
Pekka Jaatinen

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18. What will be the effect of the adoption of the plan and the acquisition on the rights of other concerned parties (employees, suppliers, etc.)? What is the situation of the banks, and of the existing collateral?

19. If a potential acquirer offers to acquire the business of the company, is the person entitled to dispose of such a business required to look for alternative offers? If such a duty exists generally, does this duty continue if soliciting offers would be too lengthy and if there is a danger that the whole business will fall apart?

20. Who implements the reorganization plan? Who supervises its implementation? What are the effects of the implementation and its supervision on the powers of the management of the business? What sanctions and remedies are available?

F. Publicity

21. What publicity rules are applicable to the different stages described above?

G. Transnational Reorganization

22. Describe the transnational effects of a reorganization.

France

Alain Cohen-Boulakia and Paul de Drée

A. Definitions

1. What is the meaning of the terms reorganization, restructuring and insolvency? What are the corresponding terms in the language of your jurisdiction? Are any of these terms legally defined? Are other terms used to describe a reorganization in the broadest sense?

B. Pre-Insolvency Situation

2. What options are available to the management of a company in financial difficulties (in a pre-insolvency situation)?
3. In the case of a voluntary arrangement with creditors, what do you have to do as a lawyer for the company to persuade creditors to agree to the arrangement? Do you as a lawyer have specific liabilities in such a situation? 180

4. What legal concerns will any new investor have when providing finance to a company in a pre-insolvency situation (eg continuation of banking facilities, security, continuity of commercial contracts with customers and suppliers, danger of voidable preferences)? 180

5. Describe briefly the duties and potential liabilities of the management in a potential insolvency situation. 181

6. Under what circumstances is the approval of the shareholders required for the management to act in a pre-insolvency situation? 183

C. Reorganization in General

7. Does your jurisdiction have any procedures enabling a company in financial difficulties to arrange its reorganization under the control of an authority other than an insolvency procedure or liquidation? Name the code or the set of rules. Does your jurisdiction recognize any similar procedure that is not contained in the statutes? 183

8. Is it appropriate to retain special advisers other than lawyers (eg special business consultants or auditors) to rescue the business? 185

D. Opening Decision

9. At which point are the management powers effectively suspended or restricted? What are the powers of the person appointed to manage the reorganization? How are the powers divided between the management of the company and the person appointed for the reorganization if this is not the management? (Point out the difference between theory and practice.) 185

10. What is the effect of the opening decision on the creditors, employees and shareholders? Is there an individual or collective stay of execution preventing the creditors from pursuing the company once the opening decision has been taken? 186

11. In what way does the supervising authority intervene in the reorganization? 189

12. Who will draft and submit the plan to reorganize the business? What is the title of the person appointed to manage the reorganization of the business? To which profession does that person belong? Who appoints such a person? For what period of time? Who controls or supervises this person? What are his/her most important duties? Who decides on the fees and expenses of this person and normally bears such fees and expenses? 190

13. Within what period of time from the opening decision has the reorganization plan to be presented? 192

14. With whom do you deal if you are representing a potential acquirer after the opening decision? Who has the power
to enter into a valid and binding agreement? Are classes of creditors treated differently at this point? As an adviser of the potential acquirer of the business, is it appropriate to contact and to negotiate with all persons or groups of persons who have to approve the transaction?

E. Adoption and Implementation of the Reorganization

15. Is it normal during the reorganization procedure for the banks to provide fresh money to continue the operation of the business for a limited period of time during which the acquisition of the business can be negotiated?

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20. Who implements the reorganization plan? Who supervises its implementation? What are the effects of the implementation and its supervision on the powers of the management of the business? What sanctions and remedies are available?

F. Publicity

21. What publicity rules are applicable to the different stages described above?

G. Transnational Reorganization

22. Describe the transnational effects of a reorganization.

Germany

Arndt Stengel and Volker Kammel

A. Definitions

1. What is the meaning of the terms reorganization, restructuring and insolvency? What are the corresponding terms in the
B. Pre-Insolvency Situation

2. What options are available to the management of a company in financial difficulties (in a pre-insolvency situation)?

3. In the case of a voluntary arrangement with creditors, what do you have to do as a lawyer for the company to persuade creditors to agree to the arrangement? Do you as a lawyer have specific liabilities in such a situation?

4. What legal concerns will any new investor have when providing finance to a company in a pre-insolvency situation (eg continuation of banking facilities, security, continuity of commercial contracts with customers and suppliers, danger of voidable preferences)?

5. Describe briefly the duties and potential liabilities of the management in a potential insolvency situation.

6. Under what circumstances is the approval of the shareholders required for the management to act in a pre-insolvency situation?

C. Reorganization in General

7. Does your jurisdiction have any procedures enabling a company in financial difficulties to arrange its reorganization under the control of an authority other than an insolvency procedure or liquidation? Name the code or the set of rules. Does your jurisdiction recognize any similar procedure that is not contained in the statutes?

8. Is it appropriate to retain special advisers other than lawyers (eg special business consultants or auditors) to rescue the business?

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Hungary
Péter Nógrádi

A. Definitions
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F. Publicity
   21. What publicity rules are applicable to the different stages described above? 240

G. Transnational Reorganization
   22. Describe the transnational effects of a reorganization. 241

Ireland
   Bill Holohan

A. Definitions
   1. What is the meaning of the terms reorganization, restructuring and insolvency? What are the corresponding terms in the language of your jurisdiction? Are any of these terms legally defined? Are other terms used to describe a reorganization in the broadest sense? 245

B. Pre-Insolvency Situation
   2. What options are available to the management of a company in financial difficulties (in a pre-insolvency situation)? 247
   3. In the case of a voluntary arrangement with creditors, what do you have to do as a lawyer for the company to persuade creditors to agree to the arrangement? Do you as a lawyer have specific liabilities in such a situation? 248
   4. What legal concerns will any new investor have when providing finance to a company in a pre-insolvency situation (e.g. continuation of banking facilities, security, continuity of commercial contracts with customers and suppliers, danger of voidable preferences)? 248
   5. Describe briefly the duties and potential liabilities of the management in a potential insolvency situation. 250
   6. Under what circumstances is the approval of the shareholders required for the management to act in a pre-insolvency situation? 252

C. Reorganization in General
   7. Does your jurisdiction have any procedures enabling a company in financial difficulties to arrange its reorganization under the control of an authority other than an insolvency procedure or liquidation? Name the code or the set of rules. Does your jurisdiction recognize any similar procedure that is not contained in the statutes? 252
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D. Opening Decision

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G. Transnational Reorganization

22. Describe the transnational effects of a reorganization.

Italy

Cecilia Ghittoni

A. Definitions

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B. Pre-Insolvency Situation

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5. Describe briefly the duties and potential liabilities of the management in a potential insolvency situation.

6. Under what circumstances is the approval of the shareholders required for the management to act in a pre-insolvency situation?

C. Reorganization in General

7. Does your jurisdiction have any procedures enabling a company in financial difficulties to arrange its reorganization under the control of an authority other than an insolvency procedure or liquidation? Name the code or the set of rules. Does your
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19. If a potential acquirer offers to acquire the business of the company, is the person entitled to dispose of such a business required to look for alternative offers? If such a duty exists generally, does this duty continue if soliciting offers would be too lengthy and if there is a danger that the whole business will fall apart? 276

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F. Publicity 277

21. What publicity rules are applicable to the different stages described above? 277

G. Transnational Reorganization 277

22. Describe the transnational effects of a reorganization. 277

Liechtenstein 279
Andreas Batliner

A. Definitions 281

1. What is the meaning of the terms reorganization, restructuring and insolvency? What are the corresponding terms in the language of your jurisdiction? Are any of these terms legally defined? Are other terms used to describe a reorganization in the broadest sense? 281

B. Pre-Insolvency Situation 282

2. What options are available to the management of a company in financial difficulties (in a pre-insolvency situation)? 282

3. In the case of a voluntary arrangement with creditors, what do you have to do as a lawyer for the company to persuade creditors to agree to the arrangement? Do you as a lawyer have specific liabilities in such a situation? 282

4. What legal concerns will any new investor have when providing finance to a company in a pre-insolvency situation (eg continuation of banking facilities, security, continuity of commercial contracts with customers and suppliers, danger of voidable preferences)? 282

5. Describe briefly the duties and potential liabilities of the management in a potential insolvency situation. 282
6. Under what circumstances is the approval of the shareholders required for the management to act in a pre-insolvency situation? 283

C. Reorganization in General
7. Does your jurisdiction have any procedures enabling a company in financial difficulties to arrange its reorganization under the control of an authority other than an insolvency procedure or liquidation? Name the code or the set of rules. Does your jurisdiction recognize any similar procedure that is not contained in the statutes? 283

8. Is it appropriate to retain special advisers other than lawyers (eg special business consultants or auditors) to rescue the business? 284

D. Opening Decision
9. At which point are the management powers effectively suspended or restricted? What are the powers of the person appointed to manage the reorganization? How are the powers divided between the management of the company and the person appointed for the reorganization if this is not the management? (Point out the difference between theory and practice.) 284

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13. Within what period of time from the opening decision has the reorganization plan to be presented? 287

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E. Adoption and Implementation of the Reorganization
15. Is it normal during the reorganization procedure for the banks to provide fresh money to continue the operation of the business...
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F. Publicity

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G. Transnational Reorganization

22. Describe the transnational effects of a reorganization.

Appendix 1: Special Provisions for Banks

Appendix 2: Special Provisions for Bond Debtors

Mexico

Alejandro Staines

A. Definitions

1. What is the meaning of the terms reorganization, restructuring and insolvency? What are the corresponding terms in the language of your jurisdiction? Are any of these terms legally defined? Are other terms used to describe a reorganization in the broadest sense?
B. Pre-Insolvency Situation

2. What options are available to the management of a company in financial difficulties (in a pre-insolvency situation)?

3. In the case of a voluntary arrangement with creditors, what do you have to do as a lawyer for the company to persuade creditors to agree to the arrangement? Do you as a lawyer have specific liabilities in such a situation?

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5. Describe briefly the duties and potential liabilities of the management in a potential insolvency situation.

6. Under what circumstances is the approval of the shareholders required for the management to act in a pre-insolvency situation?

C. Reorganization in General

7. Does your jurisdiction have any procedures enabling a company in financial difficulties to arrange its reorganization under the control of an authority other than an insolvency procedure or liquidation? Name the code or the set of rules. Does your jurisdiction recognize any similar procedure that is not contained in the statutes?

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Netherlands
Erik Limpens

A. Definitions
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15. Is it normal during the reorganization procedure for the banks to provide fresh money to continue the operation of the business for a limited period of time during which the acquisition of the business can be negotiated?
16. Describe briefly the procedure to adopt the plan to reorganize the business, the authorizations required for its adoption, and the rights and duties of creditors and shareholders.
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20. Who implements the reorganization plan? Who supervises its implementation? What are the effects of the implementation and its supervision on the powers of the management of the business? What sanctions and remedies are available?

F. Publicity
21. What publicity rules are applicable to the different stages described above?
G. Transnational Reorganization
   22. Describe the transnational effects of a reorganization.

Peru
Luis Carlos Rodrigo Prado

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   1. What is the meaning of the terms reorganization, restructuring and
      insolvency? What are the corresponding terms in the language of your
      jurisdiction? Are any of these terms legally defined? Are other terms
      used to describe a reorganization in the broadest sense?

B. Pre-Insolvency Situation
   2. What options are available to the management of a company in
      financial difficulties (in a pre-insolvency situation)?
   3. In the case of a voluntary arrangement with creditors, what do you
      have to do as a lawyer for the company to persuade creditors to
      agree to the arrangement? Do you as a lawyer have specific
      liabilities in such a situation?
   4. What legal concerns will any new investor have when providing
      finance to a company in a pre-insolvency situation (e.g.,
      continuation of banking facilities, security, continuity of
      commercial contracts with customers and suppliers, danger of
      voidable preferences)?
   5. Describe briefly the duties and potential liabilities of the
      management in a potential insolvency situation.
   6. Under what circumstances is the approval of the shareholders
      required for the management to act in a pre-insolvency situation?

C. Reorganization in General
   7. Does your jurisdiction have any procedures enabling a company
      in financial difficulties to arrange its reorganization under the
      control of an authority other than an insolvency procedure
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      jurisdiction recognize any similar procedure that is not
      contained in the statutes?
   8. Is it appropriate to retain special advisers other than lawyers (e.g.,
      special business consultants or auditors) to rescue the business?

D. Opening Decision
   9. At which point are the management powers effectively
      suspended or restricted? What are the powers of the person
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Lesław Kostórkiewicz

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*Miguel de Avillez Pereira*  

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Norman M. Martin

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Conclusion

Spain

Coloma Armero

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Mikael Karlsson

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B. Pre-Insolvency Situation

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22. Describe the transnational effects of a reorganization.

Switzerland

Vincent Jeanneret

A. Notions

1. Le champ d’application des règles prévues dans le CO

2. Le champ d’application des règles de la LPDF

3. Concordat extrajudiciaire

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F. Les règles de publicité

G. Les aspects internationaux

United States
Richard E. Mendales

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James Y. Rayis

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