



Who Gets to Control the Company? - Creditors and Corporate Law

Klaus Ilmonen, LL.D., LL.M. | 2020

Presentation Headlines

- > Examples of conflicts between corporate constituencies
- > Cleavages in corporate constituencies
- > Agency relationships and changing environments
- > Legal strategies and regulatory mechanisms
- > Legislative initiatives

Componenta 1/2

- > [Componenta carried out EUR 35.8 million share issue and hybrid bond in total](#)
Componenta Corporation Stock Exchange Release 27.3.2012
- > [New long-term credit facility of EUR 90 million for Componenta Componenta](#)
Corporation Stock Exchange Release 12.10.2012
- > [Componenta decided to defer interest payment of hybrid bonds Componenta](#)
Corporation Stock Exchange Release 13.2.2014
- > [Componenta to renew its strategy and start financial negotiations to ensure the change and liquidity](#) Componenta Corporation Stock Exchange Release 4.12.2015

Componenta 2/2

- > [Componenta has signed a standstill agreement with Nordic lenders](#) Componenta Corporation Stock Exchange Release 30.12.2015
- > [Componenta informs the progress of its financial negotiations](#) Componenta Corporation Stock Exchange Release 11.3.2016
- > [Componenta is preparing to strengthen its financial position by a convertible capital loan of EUR 30 - 40 million and through significant changes in the structure of its balance sheet](#) Componenta Corporation Stock Exchange Release 24.3.2016
- > [Componenta strengthens its financial standing by discharging its secured debt and by issuing a convertible capital loan](#) Componenta Corporation Stock Exchange Release 29.4.2016
- > [Componenta files for restructuring](#) Componenta Corporation Stock Exchange Release on 1.9.2016

Talvivaara 1/3

Pekka Perälle Talvivaarasta yli 20 miljoonan euron tulot

Parhaimpina vuosina kaivosinsinööri ansaitsi 200–300 suomalaisen tulot
Helsingin Sanomat 8.11.2014

Näin Pekka Perä myi Talvivaaraa sijoittajille: ”Pitää olla hyvä tarina – ei kukaan kehu, että hyvät faktat”

SK:n arkistoista: Sitten on niitä tarinoita, joita ei välttämättä kerrota sijoittajakiertueilla.
Suomen Kuvalehti 28.5.2016

Analyysi: Näin Talvivaaralla yhä rahastetaan – Pekka Perä kuittaa yli 26 000 euroa kuukaudessa
Yle 21.5.2016

Talvivaara 2/3

Talvivaarasta tuli piensijoittajan ongelma – verottaja hyväksyy tappiot, jos osakkeen myy pilkkahintaan

Talvivaaran osakkeet voi myydä Privanetin välittäjäpalvelun kautta – hinta osakkeelta 0,003 euroa.

Helsingin Sanomat 10.10.2016

Talvivaaran Kaivososakeyhtiö Oyj:n hallitus on tehnyt päätöksen saneerausohjelmaehdotuksen mukaisesta suunnatusta osakeannista

Pörssitiedote 24.11.2016

Pörssiyhtiö Talvivaara käynnistää suunnatun osakeannin - kuittaa velkojaan

Talvivaaran Kaivososakeyhtiö Oyj:n hallitus on tehnyt päätöksen saneerausohjelman mukaisesta suunnatusta osakeannista. Yhtiö tarjoaa osakeannissa merkittäväksi enintään 4 000 000 000 uutta osaketta osakkeenomistajien merkintäetuoikeudesta poiketen. Merkintäoikeus on kaikilla Talvivaaran vuoden 2015 huhtikuussa päivätyn saneerausohjelmaehdotuksen mukaisilla etuoikeudettomien saneerausvelkojen haltijoilla.

Saneerausohjelmaehdotuksen mukaisesti velkoja ei voi konvertoida saatavaansa osittain.

Osakeanti vähentää toteutuessaan yhtiön velkoja, mutta siitä ei kerry varoja kaivosyhtiölle.

Uuden osakkeen merkintähinta on 0,1144 euroa, joka maksetaan kuittaamalla saneerausvelkasaatava uusien osakkeiden merkintähintaa vastaan. Merkintähinta on määrätty saneerausohjelmaehdotuksessa.

Uudet osakkeet edustavat noin kahta kolmasosaa kaikista osakkeista annin jälkeen, jos kaikki uudet osakkeet merkitään.

Talouselämä 24.11.2016

Talvivaara 3/3

Pörssiyhtiö Talvivaarasta tulee velkajärjestelyllä lähes velaton

Yrityssaneerauksessa olevan Talvivaaran velkataakka kutistuu 451 miljoonasta eurosta alle 10 miljoonaan euroon.

Tiistaina päättynyt osakeanti tekee pörssiyhtiö Talvivaarasta lähes velattoman. Suunnatun osakeannin ja sitä seuraavan velkojen leikkaamisen seurauksena yhtiö velkataakka vähenee 451 miljoonasta eurosta 9,5 miljoonaan euroon.

”Tämä on erittäin merkittävä askel yhtiölle”, sanoo Talvivaaran yrityssaneerauksen selvittäjä, asianajaja Pekka Jaatinen.

Talvivaara omisti aikaisemmin suuren osan Talvivaara-Sotkamosta, joka vastasi kaivostoiminnasta Kainuussa. Yhtiö hakeutui konkurssiin vuonna 2013. Kaivostoimintaa pyörittää nyt valtion omistama Terrafame, joka osti Talvivaara-Sotkamon liiketoiminnan konkurssipesältä.

Suunnatussa osakeannissa yhtiön velkojat suostuivat muuttamaan 236,7 miljoonan euron arvosta velkoja yhtiön osakkeiksi. Noin kaksi miljardia uutta osaketta listataan Helsingin pörssiin myöhemmin tällä viikolla.

Kaikki velkojat eivät suostuneet velkojensa muuntamiseen uusiksi osakkeiksi, vaan 204 miljoonan euron arvosta velkoja leikataan. Näiden velkojen saatavat leikataan prosenttiin alkuperäisestä velkasummasta.

Helsingin Sanomat 3.1.2017

European Debt Crisis

The State's Silent Takeover

Germany's Big Banking Bailout

The German government wants to buy up large segments of the domestic banking sector. In addition to the partial nationalization of many ailing financial institutions, Berlin's plans include a complete takeover – by expropriation, if necessary.

Der Spiegel 22.9.2009

"Euroopan pankit tarvitsevat satoja miljardeja"

Taloussanomat 9.10.2011

Pankit odottavat jännityksellä valtion pääomaintojen ehtoja

Finanssialan keskusliiton Piia-Noora Kauppi: Nyt ei ole kyse pankkituesta. Hallituksen tukipäätökset julkistetaan tänään.

Kauppalehti 27.1.2009

Greek Debt Crisis

German Banks Have Big Investment in Greece

The New York Times 28.4.2010

Ben Chu: Germany is not bailing out Europe, it is rescuing itself

Huge transfers are still required. Without more honesty from Germany this crisis will not end well

Independent 5.7.2012

Greek Bailout Deal A Farce To Benefit Banks At The Expense Of Greece

Forbes 21.2.2012

Germany has gained £71billion from its tough stance on Greek debt crisis... and will still make a profit if Athens never pays back a single cent

- Germany 'saved' 100bn through lower interest rates as a result of crisis
- The money saved will exceed the cost of the crisis even if Greece defaults
- Savings since 2010 accounted for over three per cent of Germany's GDP

Daily Mail 10.8.2015

Warren Buffet & Goldman Sachs

**BERKSHIRE HATHAWAY TO INVEST \$5
BILLION IN GOLDMAN SACHS**

Goldman Sachs 23.9.2008

**Berkshire to Pay Nothing to Be
Among Top Goldman Sachs Holders**

Bloomberg 26.3.2013

Warren Buffett, Through His Berkshire Hathaway Company, To Become Major Goldman Sachs Shareholder By Swapping Warrants For Shares

Warren Buffett, through his Berkshire Hathaway Inc. investment vehicle, will become a major shareholder of Goldman Sachs Inc., the New York-based investment bank disclosed Tuesday.

Berkshire Hathaway will swap warrants issued to it by Goldman Sachs in October 2008, at the worst of the financial crisis, for a 9 percent stake in Goldman Sachs, according to an SEC filing by the bank.

Buffett rescued Goldman, in exchange for the warrants, when it was reeling from the collapse of the U.S. housing market and the ensuing recession. Warrants are rights to purchase securities at a specific date and specific price.

Under the original terms, Berkshire had until Oct. 1, 2012, to make the warrants-for-shares swap.

"We are pleased that Berkshire Hathaway intends to remain a long-term investor in Goldman Sachs," Goldman Sachs CEO Lloyd Blankfein said.

International Business Times 26.3.2013

Argentina

How Hedge Funds Held Argentina for Ransom

PERHAPS the most complex trial in history between a sovereign nation, Argentina, and its bondholders – including a group of United States-based hedge funds – officially came to an end yesterday when the Argentine Senate ratified a settlement.

The New York Times 1.4.2016

Argentina makes peace with vulture funds after 14 years

The dispute has left Argentina frozen out of the global debt markets

Independent 1.3.2016

Who Controls the Company? - Creditors and Corporate Law

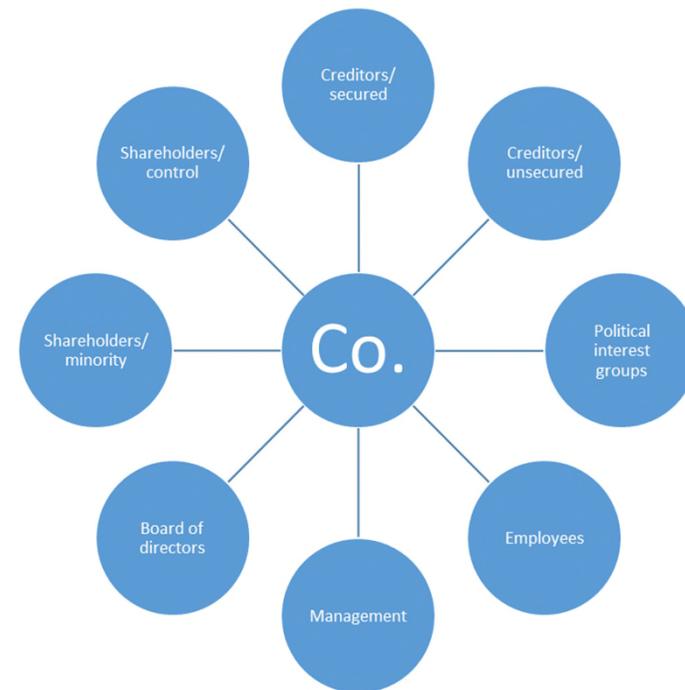
- > Agency relationships in changed circumstances
- > Moral hazard
- > Potential for abuse
- > Incomplete contracts
- > Incentive problems
- > Ineffective regulatory mechanisms (transaction costs)



Corporate Constituencies

Corporate constituencies

- > Shareholders
- > Management
- > Employees
- > Creditors
- > Political interests



Corporate Constituencies and Corporate Law

SHAREHOLDERS

- > Shareholder interest
 - “residual interest in the profit of the company”
- > Shareholder rights
 - governance rights (shareholders meetings etc.)
 - regulation of director duties
 - investor protection rights (disclosure, exit rights)

CREDITORS

- > Creditor interest
 - “repayment of debt and interest”
- > Creditor rights
 - contractual obligations and rights
 - Regulation of distribution
 - insolvency regimes

Corporate Constituencies – Order of Payment in Insolvency

Formal process

- > Specially protected creditors
- > Secured creditors
- > Non-secured creditors
- > Capital loans
- > Shareholders

Pre-insolvency

- > Shareholder control vs. covenants?
- > Covenants vs. disclosure
- > Secured vs. unsecured
- > Assets at risk and portfolio diversification
- > Asymmetric information (entrepreneurship)

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Agency relationships

Agency Relationships

- > Shareholders – management
- > “Block Shareholders” - Shareholders
- > Shareholders – creditors
- > Creditors – creditors
- > Shareholders/creditors – management

Agency Relationships

- Issues in Fundamental Change Situations

Environment changes

- > Deliberate: change in company assets or risk profile
- > Undeliberate: business, political or technological environment changes with similar effects

Typical Changes

- > Mergers/demergers
- > Sale of assets
- > Financing (debt & equity)
- > Distress and insolvency

Agency Relationships

- Issues in Fundamental Change Situations

Agency and Change

- > Changed bargaining power
- > Incomplete contracts
- > End-game situations
- > Potential for abuse



Mechanisms

Mechanisms for agency relationships

Shareholders

- > EGM
- > Director duties
- > Disclosure

Creditors

- > Covenants
- > Security interest
- > Disclosure
- > Distribution restrictions
- > Director duties (“shadow directors”)
- > Insolvency regulation

Legal Strategies

	Regulatory Strategies		Governance Strategies		
	Agent Constraints	Affiliation terms	Appointment Rights	Decision Rights	Agent Incentives
Ex Ante	<u>Rules</u>	<u>Entry</u>	<u>Selection</u>	<u>Initiation</u>	<u>Trusteeship</u>
Ex Post	<u>Standards</u>	<u>Exit</u>	<u>Removal</u>	<u>Veto</u>	<u>Reward</u>

Kraakman et al.

Mechanisms: Challenges

- > "Blunt" instruments
 - Formal insolvency involves considerable transaction costs
- > Incentive problems
 - Free-riding
- > Quality of institutions
 - Courts
 - Agencies



Legislative Initiatives

Finland

- > Recent amendment regarding authority of bondholders' representatives (New trustee-legislation, 574/2017)
 - Legislative basis to represent bondholders
 - Authority to apply for insolvency proceedings
- > Initiative to amend insolvency proceedings based on EU directive 2019/1023

EU

- > EU directive on pre-insolvency processes (2019)
 - DIRECTIVE (EU) 2019/1023 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)
 - Introduction of harmonized restructuring regimes
 - Many features as in Finnish regime
 - Differences:
 - Priority rule
 - Defining "insolvency"
 - Stay of private execution
 - Shareholder vote
 - Need for court order (no need if sufficient majorities reached)
 - Debt to equity with/without shareholder approval?

UK Scheme of Arrangement

- > A scheme of arrangement is a statutory procedure under the UK Companies Act 2006
- > A scheme of arrangement allows the company to reach agreement for a consensual restructuring with 75% of a certain class of its creditors, which agreement then binds all creditors in that class (even if they vote against the scheme or have not had notice)
- > The scheme can also apply to shareholders and has been used to execute takeovers
 - Squeeze out at 90% vs. Scheme approval at 75%
 - Only applicable in friendly context
- > Doctoral thesis: Scheme of Arrangement as a Company Law Framework – Protection Against Abuse of Holdout Positions for a Company and its Key Stakeholders (Matti Engelberg, University of Helsinki, 2019)

Thank you for your interest

Klaus Ilmonen

Doctor of Laws (U. of Helsinki)

LL.M. (Columbia Law School)

Visiting Researcher (HLS)

HANNES SNELLMAN